APPORTIONMENT AND REDISTRICTING MATERIALS

LEGISLATIVE SERVICES OFFICE

1981

A limited number of copies of this report is available for distribution through the Legislative Library.

Room 2126, 2226
State Legislative Building
Raleigh, N. C. 27611

Phone: (919) 733-7778

PREFACE

The purpose of this booklet is to provide the members of the General Assembly with an analysis of and materials relating to reapportionment and redistricting.

The booklet is divided into three basic parts. The first section is an analysis of the federal case law and statutes on state legislative and congressional districting, reprinted with permission from "Reapportionment: Law and Technology," National Conference of State Legislatures (1980), Andrea J. Wollock, Editor. The second portion contains the Federal and State constitutional and statutory provisions relating to this matter. The last division contains statistical information on North Carolina redistricting and reapportionment. Please note that the statistical information contained in the tables on North Carolina State Senate and House District and on Congressional Districts uses the Preliminary Census Figures released at the end of 1980.

THE PRELIMINARY CENSUS FIGURES ARE SUPPLIED FOR INFORMATIONAL PURPOSES ONLY. THIS OFFICE WILL FORWARD THE OFFICIAL CENSUS FIGURES TO BE USED IN REDISTRICTING AND REAPPORTIONMENT TO THE MEMBERS AND COMMITTEES OF THE GENERAL ASSEMBLY AS SOON AS THEY ARE RELEASED BY THE BUREAU OF THE CENSUS. The official census figures are not expected to be released earlier than APRIL 1 because of various suits pending in the federal courts.

General Research Division
Legislative Services Office

REAPPORTIONMENT AND REDISTRICTING MATERIALS

CONTENTS

FEDERAL CASE LAW:

STATE LEGISLATIVE AND CONGRESSIONAL DISTRICTING

Reprinted with permission from "Reapportionment: Law and Technology," National Conference of State Legislatures (1980), Andrea J. Wollock, Editor

Introduction

The United States Supreme Court's 1962 decision in *Baker v. Carr*[1] was a sharp departure from that Court's longstanding policy of judicial nonintervention in redistricting cases.[2] Many redistricting cases that reached the Supreme Court in the next several years were challenges to situations in which differences in population among legislative districts, or in the number of people represented by members of a single legislative body, were so great that—viewed from the perspective of 1980—they are not only obviously impermissible but also ludicrous. These situations had nearly all disappeared either before or during the post-1970 round of redistricting; since 1973 the focus of redistricting cases coming before the Supreme Court has shifted from questions of mathematical equality to questions involving what may be termed quality of representation.

That is not to say that states need no longer be greatly concerned about equal representation. The first part of this paper discusses the case law of population equality for both legislative and congressional districts, with particular emphasis on post-1970 cases. The second and third portions of the paper each deal with cases involving complaints of discriminatory districting which are not based primarily on population inequality. Cases arising from complaints of gerrymandering and from attacks upon use of multimember districts are discussed in the second major part of the paper, while the third part is devoted more specifically to cases in which allegations of racial discrimination were made, and to the relationship between the Federal Voting Rights Act of 1965 and legislative districting.

Equal Representation

While the history-making decision in *Baker v. Carr* held that state legislative (and, by implication, congressional) districting cases are justiciable, and expressed confidence that courts would prove able to "fashion relief" where constitutional violations might be found,[3] the Supreme Court did not spell out specific standards or criteria for judicial review of state districting, nor for judicial remedies.

Development by the Supreme Court of the substantive case law standards which, to a considerable extent, currently govern state legislative and congressional districting, began the following year with *Gray v. Sanders*,[4] in which the Court held that weighted voting systems are unconstitutional *per se*. That decision included the now-familiar assertion by former Justice Douglas that "The conception of political equality from the Declaration of Independence, to Lincoln's Gettysburg Address, to the Fifteenth, Seventeenth and Nineteenth Amendments can mean only one thing—one person, one vote."[5]

That emphasis on population equality among districts has continued throughout the succeeding one and one-half decades, although the degree of mathematical equality required by the Supreme Court has varied somewhat with respect to state legislative districts and congressional districts. Table 1 presents a chronological listing of major United States Supreme Court legislative and congressional districting decisions from *Reynolds v. Sims*,[6] in 1964, until 1978.

In theory, the equal-population requirements for two types of districts do not rest on the same stone in the constitutional foundation of the Republic. The Supreme Court has held since *Reynolds v. Sims* that states are required by the Equal Protection Clause of the Fourteenth Amendment to construct legislative districts which are substantially equal in population. Table 2A outlines chronologically the evolution of the population standards for legislative districts since *Reynolds*.

By contrast, the equal population standard for congressional districts, first enunciated by the Supreme Court in *Wesberry v. Sanders* (1964),[7] arises from the provisions of Article I, Section 2 of the Constitution. This standard has been quite strictly interpreted by the Court in *Kirkpatrick v. Preisler* (1969)[8] and *White v. Weiser* (1973).[9] Table 2B outlines that sequence of cases.

Measuring Population Equality Among Districts

How is the degree of population equality (or inequality) among legislative or congressional districts measured? A clear understanding of the measures available and those used by the courts—and by the drafters of redistricting plans—is essential. The courts have not always been consistent or precise in their terms, and this has led to considerable misunderstanding and confusion. For example, courts have sometimes used terms with definite statistical meaning in a general, nonstatistical manner. A definition of terms, therefore, may be helpful at this point.

A logical starting point is the "ideal" district population. In a single-member district plan, the "ideal" district population is equal to the total state population divided by the total number of districts. For purposes of this discussion, it will be assumed that a single-member districting plan is being considered. In districting plans using multimember districts, the "ideal" population is more properly expressed as the "ideal" population per representative, and is obtained by dividing the total state population by the total number of representatives. The number of representatives rather than the number of districts would thus be used in performing statistical calculations for districting plans employing multimember districts.

There is then need to express the degree to which: (1) an individual district's population varies, or differs, from the "ideal"; and (2) all the districts collectively vary, or differ, in population from the "ideal."

The degree by which a single district's population varies from the "ideal" may be stated in terms of "absolute deviation" or "relative deviation." Its "absolute deviation" is equal to the difference between its population and the "ideal" population, expressed as a plus (+) or minus (–) number, meaning that the district's population exceeds, or falls short of, the "ideal" by that number of people. "Relative deviation" is the more commonly used measure, and is attained by dividing the district's absolute deviation by the "ideal" population. The resulting quotient indicates the proportion by which the district's population exceeds, or falls short of, the "ideal" population, and is usually expressed as a percentage of the "ideal" population.

Several methods of measuring the extent to which populations of all the districts in a plan vary, or differ collectively from the "ideal," are available.

Mean Deviation. A frequently used measure is the "mean deviation," expressed in "absolute" or "relative" terms. The "absolute mean deviation" of a set of districts from the "ideal" is equal to the sum of the absolute deviations of all the districts (disregarding " + " and " – " signs) divided by the total number of districts. The "relative mean deviation" is equal to the sum of the individual district relative deviations (disregarding " + " and " – " signs) divided by the total number of districts.

Median Deviation. In a few instances, the courts have referred to the deviation (expressed in absolute or relative terms) of that district which lies midway between the most populous and least populous districts. For example, in a plan having 21 districts, the deviation of the 11th district, when all 21 districts are arranged in descending or ascending order of population, is the "median" deviation of all the districts.

Range. Perhaps the most commonly used measure of population equality, or inequality, of all districts in a plan is "range," which again may be expressed in absolute or relative terms. The "range" is a statement of the population deviations of the most populous district and the least populous district expressed either in absolute or relative terms. (For example, if the ideal district population is 100,000, the largest district in the plan has a population of 102,000, and the smallest district has a population of 99,000, then the range

is +2000 and −1000, or +2 percent and −1 percent.)

Frequently, the courts and others have employed the measurement technically known as the "overall range," although they have used other terms to identify this measure.[10] The "overall range" is the sum of the deviation of the most and least populous district, disregarding the "+" and "−" signs, expressed in absolute or relative terms. (In the preceding example, the "overall range" is 3000 people or 3 percent.)

Sometimes, the range is expressed as a ratio. (In the above example, that ratio would be 102,000:99,000 or 1.033:1.)

Standard Deviation. "Standard deviation" is a statistical measure which has been used infrequently, but which may in the future be used more frequently in judging the degree to which all the districts collectively approximate the "ideal." More than any of the preceding methods, it measures the degree of clustering of the deviations of the individual district populations around the "ideal." It is attained by finding the square root of the sum of the squares of all the individual district deviations (absolute or relative) divided by the total number of districts.

None of the foregoing measures provides a full picture of the degree of population equality, or inequality, and perhaps several measures should be used in evaluating any set of districts. (For example, the range may be a large one because of the large deviation of only one district, but all of the remaining districts may be clustered closely around the "ideal." (The use of "mean deviation" and, particularly, "standard deviation" would reveal this.) For purposes of comparison and clarity, this paper uses the measures of relative overall range and relative mean deviation expressed simply as overall range and mean deviation.

Statistical Terminology for Districting

IDEAL DISTRICT POPULATION

$$\frac{\text{State Population}}{\text{Number of Districts}}$$

INDIVIDUAL DISTRICTS

ABSOLUTE DEVIATION

District Population
Minus
Ideal Population

RELATIVE DEVIATION

$$\frac{\text{Absolute Deviation}}{\text{Ideal Population}}$$

ALL DISTRICTS

RANGE

ABSOLUTE

Largest Absolute Deviation
and
Smallest Absolute Deviation

RELATIVE

Largest Relative Deviation
and
Smallest Relative Deviation

OVERALL

Largest Deviation + Smallest Deviation (Ignoring " + " and " – " Signs)
Absolute or Relative*

RATIO

Largest Population
÷
Smallest Population

ABSOLUTE MEAN DEVIATION

Sum of All Absolute Deviations
÷
Number of Districts
(Ignoring " + " and " – " Signs)

RELATIVE MEAN DEVIATION**

Sum of All Relative Deviations
÷
Number of Districts
(Ignoring " + " and " – " Signs)

STANDARD DEVIATION

The Square Root of the Sum of the Squares of All Deviations
÷
Number of Districts;
(Ignoring " + " and " – " Signs)

Expressed Algebraically:

$$\sqrt{\frac{\Sigma \text{ Deviations}^2}{\text{Number of Districts}}}$$

*Overall Range
**Mean Deviation

Reynolds v. Sims—How Much Flexibility?

Reynolds v. Sims is the cornerstone in the development of the Federal judiciary's population variance standards for state legislative districting. The case is notable both for the ruling that both houses of a bicameral state legislature must be districted on a population basis, and for comments about what population-base districting requires. The opinion by former Chief Justice Warren includes the often-quoted comment that "mathematical nicety is not a constitutional requisite"[11] but nevertheless states that "the overriding objective must be substantial equality of population among the various districts."[12] The court declined at that time to express any view as to what degree of population equality would or would not be held constitutional, observing that "what is marginally permissible in one state may be unsatisfactory in another, depending on the particular circumstances of the case."[13]

An especially significant comment—as matters later developed—differentiated between congressional and legislative districting. The Warren opinion said: ". . .some distinctions may well be made between congressional and state legislative representation. Since, almost invariably, there is a significantly larger number of seats in state legislative bodies to be distributed within a State than congressional seats, it may be feasible to use political subdivision lines to a greater extent in establishing state legislative districts than in congressional districting while still affording adequate representation to all parts of the State."[14]

In *Wesberry v. Sanders,* the congressional districting case decided shortly before *Reynolds v. Sims,* the Supreme Court had held that the population of congressional districts in the same state must be as nearly equal in population as practicable. Thus, the Supreme Court has seemed to indicate to the states that congressional districts were subject to a higher standard of population equality than were state legislative districts, although the Court's refusal to state a specific maximum permissible variance among legislative districts made the degree of difference between the two standards uncertain.

The Strict-Equality Standard

In April 1969, nearly five years after the *Reynolds* decision, the Supreme Court decided *Kirkpatrick v. Preisler*, a case involving congressional districts drawn by the Missouri Legislature. The ten districts had an overall range of approximately six percent. Writing for a five-member majority, Justice Brennan found that the plan failed to satisfy the "as nearly as practicable" standard of population equality the Court had earlier enunciated ih *Wesberry v.*

Sanders. The *Kirkpatrick* opinion specifically rejected the suggestion that there is a point at which population differences among districts become *de minimis*, and held that insofar as a state fails to achieve mathematical equality among districts it must either show that the variances are unavoidable or specifically justify the variances.[15] The opinion went on to reject several purported justifications advanced by Missouri.

The justifications rejected included a desire to avoid fragmenting either political subdivisions or areas with distinct economic and social interests, considerations of practical politics, and even an asserted preference for geographically compact districts. Also, the majority opinion held that Missouri had failed to show any systematic relationship between its congressional district population disparities and either of two other factors offered as justifications, varying proportions of eligible voters to total population and projected future population shifts among districts.[16] (The Court did not flatly rule out the latter consideration, but said such projections must be well documented and uniformly applied.)

An important question, at the time, was whether the stringent standards set out in *Kirkpatrick* were also applicable to state legislatures. Neither the majority opinion nor a concurring opinion by former Justice Fortas referred specifically to state legislatures, although the majority opinion did include citations to both *Reynolds* and *Swann v. Adams* (1967),[17] another well-known legislative redistricting case. A dissenting opinion by Justice White asserted that "the Court invokes *Reynolds* today and in no way distinguishes Federal from state districting."[18]

Mahan v. Howell—Legislative and Congressional Districting Differentiated

This uncertainty prevailed for nearly four years, a period during which the 1970 census was completed and the states undertook, and in many cases completed, legislative districting based on that census. Then, in February 1973, the U.S. Supreme Court announced its decision in *Mahan v. Howell,*[19] a rather complicated challenge to Virginia's legislative districting plan. *Mahan* involved issues of the constitutionality of multimember districts and the treatment of certain naval personnel "home-ported" in Norfolk, Virginia, as well as a challenge to the overall range of the plan enacted by the Virginia General Assembly. A Federal district court, concluding that the overall range among House districts was approximately 16 percent, declared the plan unconstitutional by reason of that population disparity.

The Supreme Court majority opinion recounted some of the facts stated and conclusions reached in *Reynolds*, including those factors the Court had suggested might justify limited departure from strict population equality in legislative, as opposed to congressional, districting. The opinion, by Justice Rehnquist, stated:

> Thus, whereas population alone has been the sole criterion of constitutionality in congressional redistricting under Article I, Section 2 (i.e., of the United States Constitution), broader latitude has been afforded the States under the Equal Protection Clause in state legislative redistricting . . . . The dichotomy between the two lines of cases has been consistently maintained.[20]

The majority took note of the Virginia General Assembly's state constitutional authority to enact local legislation dealing with particular political subdivisions, and found that this legislative function was a significant and a substantial aspect of the Virginia Legislature's powers and practices, and thus justified an attempt to preserve political subdivision boundaries in drawing House of Delegates' districts. The majority concluded that while the resulting overall range among House districts "may well approach tolerable limits, we do not believe it exceeds them."[21] Chief Justice Burger and Justices Stewart, White and Blackmun joined in the majority opinion; Justice Powell took no part.

Dissenting Justices Brennan, Douglas and Marshall sought, at some length, to refute the contention that a distinction between standards for legislative and congressional districting had been maintained by the Court.[22] They suggested that the overall range in the Virginia House approached 25 percent, a figure they said placed the plan in the same range as several others invalidated by the Supreme Court in the period 1967-1971.[23] (The differing conclusions as to the overall range of the Virginia plan stem from alternative ways of treating the effect of floterial districts included in the plan.)[24]

"*Gaffney*" and "*White*"—A "10 Percent Standard"?

The distinction between the standard of population equality demanded in congressional districting and that required in state legislative districting was again recognized and the legislative districting standard somewhat clarified, in June 1973, by the U.S. Supreme Court decisions in *Gaffney v. Cummings*,[25] a Connecticut case, and *White v. Regester*,[26] a Texas case. Each of these cases

also arose from a state-drawn legislative districting plan which had been challenged and struck down by a Federal district court.

Gaffney v. Cummings involved a plan prepared by a bipartisan commission appointed pursuant to Connecticut law. The plan's overall range was 1.8 percent in the Senate and 7.8 percent in the House, and one of its objectives was described as "political fairness"; i.e., the political makeup of each house should roughly reflect the proportion of the statewide total vote received by candidates of each major party. *White v. Regester* concerned the distribution of Texas House seats in a plan, drawn by the State Legislative Redistricting Board, which had an overall range of just under 10 percent. It was challenged both on that ground and on the complaint that certain multimember districts invidiously discriminated against particular racial or ethnic groups. (The latter complaint was found valid by the district court and upheld by the Supreme Court—that aspect of the case will be discussed later in this paper.)

The majority opinion in each of these cases was written by Justice White for himself, Chief Justice Burger, and Justices Stewart, Blackmun and Rehnquist, the same group who had formed the majority in *Mahan v. Howell*, as well as Justice Powell, who had taken no part in *Mahan*. In the *Gaffney* opinion, after again asserting that the Supreme Court had always maintained a distinction between congressional and state legislative districting cases, Justice White said:

> Although requiring that population variations among legislative districts in *Mahan* be justified by substantial state considerations, we did not hold that in state legislative cases any deviations from perfect population equality in the district, however small, make out *prima facie* equal protection violations and require that the contested reapportionment be struck down absent adequate state justification.[27]

The *Gaffney* opinion continued by holding that no *prima facie* violation of the equal protection clause had been shown, and that the "political fairness" objective of *Gaffney* did not invalidate the plan.[28] Similarly, in the *White* opinion, the Supreme Court majority declared:

> Insofar as the District Court's judgment rested on the conclusion that the population

> differential (i.e. overall range) of 9.9 percent . . . made out a *prima facie* equal protection violation under the Fourteenth Amendment, absent special justification, the court was in error.[29]

The majority opinion observed:

> Very likely, larger differences between districts would not be tolerable without justification "based on legitimate considerations incident to the effectuation of a rational state policy," . . .[30]

Justices Brennan, Douglas and Marshall, dissenting in both *Gaffney* and *White* with a single opinion, asserted that the majority opinions in the two cases had in effect established a 10 percent *de minimis* rule for state legislative districting, with states not required even to try to justify overall ranges of that or a lesser degree.[31] Two later Supreme Court decisions have tended to add weight to that assertion.

Later Cases

In *Chapman v. Meier,*[32] decided January 27, 1975, Justice Blackmun, writing for the unanimous Court, recalled that state-drawn redistricting plans having less than 10 percent overall range, and where there was no showing of invidious discrimination, were found valid in the *Gaffney* and *White* cases, and that an overall range of more than 16 percent was subject to court scrutiny but was found justified in the *Mahan* case because it served to implement a rational state policy. *Chapman v. Meier* involved a redistricting of the North Dakota State Senate devised by a Federal court, under which the overall range among districts was slightly over 20 percent. The Supreme Court held that this circumstance required specific justification, and that none of the reasons advanced—absence of a particular racial or political group whose voting power was minimized or canceled, sparse population of the state generally, and desire both to preserve political subdivision boundaries and to continue an asserted tradition of dividing the state along political subdivision lines and along the Missouri River—were sufficient to justify so high an overall range.[33]

One of the more recent United States Supreme Court decisions affecting state legislative districting is *Connor v. Finch,*[34] a case from Mississippi decided in May 1977. With respect to the matter of population equality, the Supreme Court's majority opinion, by Justice Stewart, states that the overall range of the Mississippi

redistricting plan at issue was computed by the Federal district court (which drew the plan) to be 16.5 percent for the Senate and 19.3 percent for the House. The opinion notes that these figures "substantially exceed the 'under-10 percent' deviations (i.e., overall range) that the Court has previously considered to be of *prima facie* constitutional validity only in the context of legislatively enacted apportionments," and concluded that the district court failed to cite any unique feature of the Mississippi political structure which would justify an overall range of such magnitude.[35] The plan was therefore invalidated. (The only dissenter was Justice Powell, who believed the plan should have been remanded to the district court for such limited changes as were necessary to bring it into conformity with Supreme Court guidelines.)[36]

Population Equality Standards for the 1980's

In the post-1980 round of redistricting that will be required in most states, the basic goal will presumably continue to be equal representation; i.e., general equality of population among districts. However, where Federal court scrutiny of population disparity among state legislative districts is concerned, a sort of three-tiered standard seems to have evolved, with the dividing points at approximately the 10 percent and 16.5 percent levels.

It should not be assumed that any legislative districting plan having less than a 10 percent overall range is safe from successful challenge. However, the decisions in *Gaffney* and *White* indicate that the challenger of such a plan has the initial burden of showing that the plan violates the Equal Protection Clause.[37] The Supreme Court said in the *White* case that it could not "glean an equal protection violation from the single fact that two legislative districts in Texas differ from one another by as much as 9.9 percent . . . ."[38] And it indicated in *Gaffney* that a showing by the plaintiff that an alternative plan with a lower overall range could be devised is not in itself sufficient to require a Federal court to invalidate a plan adopted by a state legislature.[39]

Unfortunately, it cannot be said with certainty that every lower Federal court will follow the apparent precedents just described. Where they do not, reversal by the Supreme Court would seem to be a reasonable expectation—if the highest court grants certiorari. Moreover, as noted earlier, there is nothing in the U.S. Constitution or case law to prevent state courts from imposing stricter standards of population equality, under state constitutions, than the Federal courts demand.

Another reservation which is perhaps appropriate here is that a relatively high mean deviation, even within the context of an overall

range of less than 10 percent, may make it easier for a challenger to meet the burden of establishing a *prima facie* equal protection violation. In *Gaffney,* the majority opinion pointed out that although the overall ranges were 7.8 percent in the House and 1.8 percent in the Senate, the respective mean deviations were only 1.9 percent and .45 percent.[40] Similarly, the *White* opinion contrasts the overall 9.9 percent variance of the Texas House districting plan with its mean deviation of 1.8 percent.[41]

If a state enacts or adopts a plan with an overall population range of more than 10 percent in each house, and the plan is challenged in Federal court, it appears likely that the state will have the burden of showing both that the over 10 percent overall range is necessary to implement a rational state policy and that it does not dilute or take away the voting strength of any particular group of citizens. Here again, a low mean deviation is likely to prove helpful. In the *Mahan* case, where Virginia had to justify an overall range in its House districts which the court concluded was in excess of 16 percent, the majority noted that the mean deviation was less than half that great.[42] Again, since the Court has not always been consistent or precise in its terminology, the numbers should be considered carefully in the context of what they are, in fact, describing.

The next obvious question is, what are the criteria of a "rational state policy" which are constitutionally relevant to legislative districting? To date, *Mahan v. Howell* is the only case in which the Supreme Court has found justification for upholding a plan having an overall range of 10 percent or more. (The Court indicated in *White v. Regester* that overall ranges of 9.9 percent or less do not require justification on the basis of a rational state policy.)[43]

The majority opinion in *Reynolds v. Sims* stated: "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"[44] in legislative districting. That opinion continued: "Considerations of area alone provide an insufficient justification for deviations from the equal-population principle."[45] It also observed:

> A consideration that appears to be of more substance in justifying some deviations from population-based representation in state legislatures is that of insuring some voice to political subdivisions, as political subdivisions. Several factors make more than insubstantial ciaims that a State can rationally

consider according political subdivisions some independent representation in at least one body of the state legislature, as long as the basic standard of equality of population among districts is maintained. Local governmental entities are frequently charged with various responsibilities incident to the operation of state government. In many States much of the legislature's activity involves the enactment of so-called local legislation, directed only to the concerns of particular political subdivisions. And a State may legitimately desire to construct districts along political subdivision lines to deter the possibilities of gerrymandering.[46]

In *Mahan v. Howell* the majority reaffirmed the foregoing position, and stated:

> We are not prepared to say that the decision of the people of Virginia to grant the General Assembly the power to enact local legislation dealing with the political subdivisions is irrational. And if that be so, the decision of the General Assembly to provide representation to subdivisions *qua* subdivisions in order to implement that constitutional power is likewise valid when measured against the Equal Protection Clause of the Fourteenth Amendment.[47]

The majority opinion went on to hold that Virginia's "plan for apportionment of the House of Delegates may reasonably be said to advance the rational state policy of respecting the boundaries of political subdivisions."[48]

Thus, fairly consistent adherence to the boundaries of political subdivisions is, as of early 1980, the only "rational state policy" that has actually been accepted by the Supreme Court as justification for a legislative districting plan having an overall range greater than 10 percent. The record since 1973 suggests that the Supreme Court is not easily persuaded to accept such a justification. It declined to do so in both *Chapman v. Meier* and *Connor v. Finch;* in fact, *Mahan v. Howell* is the only case in which the Court has applied that justification. (Justice Rehnquist's majority opinion suggests that the majority perceived circumstances of that case as a quite unusual,

and possibly unique, situation where the Virginia Constitution vests local political subdivision boundaries with a legislative significance which is substantive as well as historical, and which does not apply in most states.)

In its unanimous decision in *Chapman,* the Court found: "It is far from apparent that North Dakota policy currently requires or favors strict adherence to political lines."[49] The opinion also noted that it would have been possible to follow such a policy in North Dakota and still achieve a significantly lower overall range.[50] Similarly, in a concurring opinion in *Connor,* Justice Blackmun wrote: "I do not understand the (Supreme) Court to disapprove the District Court's decision to use county lines as districting boundaries wherever possible, even though this policy may cause a greater variation in district population than would otherwise be appropriate for a court-ordered plan. The final plan adopted (i.e., by the District Court, and subsequently appealed) appears to produce even greater population disparities than necessary to effectuate the county boundary policy."[51]

As implied by Justice Blackmun, the Supreme Court appears to treat court-drawn districting plans somewhat differently than those drawn by legislatures or, presumably, by state constitutional or statutory districting bodies. An interesting feature of the *Chapman* and *Connor* cases is the Supreme Court's indication that where it becomes necessary for a Federal court to draw a state legislative districting plan, that court will be held to a higher standard than would the legislature or other state redistricting authority.[52] There is dicta in the *Chapman* decision which suggests that even an overall range of less than six percent might not be satisfactory in a plan drawn by a Federal court.[53]

Finally, it is questionable whether or not the Federal courts will accept any attempt to justify legislative districting plans with overall ranges of 16.5 percent or higher, as found in the *Chapman* and *Connor* cases. It cannot be stated with certainty that that level of overall range is the absolute maximum, but the *Mahan* decision suggests that it may be and no case since then has given any contradictory indication.

The evolution of this three-tiered quantitative standard of population equality for state legislative districts from *Reynolds v. Sims* to mid-1973 appears to be an effort by the Court to develop "judicially manageable standards" in redistricting cases, which Justice Frankfurter urged, and questioned, in his dissent to *Baker v. Carr.* Viewed in this light, the majority may be establishing a *de minimus* rule at the 10 percent range, below which a challenger

cannot by statistics alone establish a *prima facie* case requiring judicial scrutiny. If the majority adheres to this apparent standard, the 1980's round of redistricting may not encounter the case-by-case approach to judicial review so characteristic of the early decisions.

States should not, however, feel too secure with the 10 percent range standard. Not only has the Supreme Court majority refused to clearly articulate that this is to be the constitutional threshold of "one person, one vote" jurisprudence for state legislatures, but the decisions can be read to retain an element of the "smell test" approach. (With this in mind, this paper has emphasized the distinction between the "overall range" statistics in the cases and the "average district" approach.) Even if the Court is prepared to allow the states some leeway in redistricting perfection, now that the basic law of popular representation is well established, it is unlikely that the Justices would be unduly hesitant to strike down a plan having an overall range of less than 10 percent if the challenger succeeds in raising a suspicion that the plan was not a good faith effort overall or that there is something suspect about the districts involved. The Court has left the burden with the challengers in the under 10 percent cases; it has not said that a challenger cannot meet that burden with appropriate evidence, whatever that might be.

Similarly, an additional *caveat* may be worth the repetition for the over 10 percent cases. A state defending a redistricting plan in this "category" must bear the burden according to the decisions. What this means in practicality is not always so clear.

Initially, what the state may have to prove by way of justification may not be certain, since the Supreme Court has not accepted in actual cases most of the grounds it has outlined as potential defenses for a departure from strict equality (with the single exception of the political boundaries justification in the *Mahan v. Howell* case, which may well be somewhat unique).

It may be suggested, on the other hand, that the burden of the state is not so much in proving enough facts to add up to one of the *Reynolds* justifications, as it is in persuading the Court that the justification offered is constitutionally relevant in the particular case and powerful enough to overcome the differential from one person, one vote. In this sense, the shift of the burden from the challenger to the state may be more significant than a matter of mere evidence. The cases suggest that it is the burden of persuasion which shifts, and that this burden is most difficult to meet.

Population Equality Among Congressional Districts

The question of the permissible overall range among a state's congressional districts requires no elaborate discussion.

As related earlier, it has for the past several years been the position of a majority of the U.S. Supreme Court that that Court has always recognized a distinction between congressional districting and state legislative districting, and that less stringent standards of population equality apply to the latter than to congressional districts.

On the same day on which the *Gaffney* and *White* state legislative districting cases were decided—June 18, 1973—the U.S. Supreme Court decided *White v. Weiser,* a case involving Texas congressional districts.[54] In *Weiser,* the Supreme Court ruled that although the overall range among Texas' 24 congressional districts was smaller than that invalidated in *Kirkpatrick v. Preisler* in 1969, the Texas districts were not as mathematically equal as reasonably possible and were therefore unacceptable. The Court specifically rejected an argument that the variances resulted from the Texas Legislature's attempt to avoid fragmenting political subdivisions.[55]

It therefore appears that if any person or group can prove that it would have been possible for a state to draw congressional districts having materially greater population equality than those which are in fact adopted by that state's legislature or other districting body, it will be the state's burden to prove that there was a justifiable reason for doing so and that burden of proof will be very difficult to meet. The term "materially greater population equality" is used advisedly. Reason, if not the Supreme Court's opinions, suggests there is some point at which the difference between the degree of population equality of the districts actually established, and the greatest degree of population equality which could have been achieved, becomes so slight that the Federal courts would consider it insignificant. However, we do not yet know what that *de minimis* level is, except that it is very, very low indeed.

As a matter of interest, it may be noted that Justice Powell, joined by Chief Justice Burger and Justice Rehnquist, filed a concurring opinion in *White v. Weiser* in which he indicated he would not have sided with the majority had he been on the Supreme Court when *Kirkpatrick v. Preisler* was decided in 1969. However, he stated that he regarded *Kirkpatrick* as a controlling precedent, and added "unless and until the Court decides to reconsider that decision, I will follow it."[56] To date, there has been no such reconsideration. With the advent of computer-assisted districting, making possible near-perfect mathematical equality, it will be interesting to see if a *de minimis* rule for congressional districts evolves in the 1980's.

Discriminatory Districting

This paper has thus far dealt with questions regarding the degree of population equality required to satisfy the constitutional mandate of equal representation. However, meaningful and effective equal representation requires that states must consider factors other than mathematical population variance in drawing legislative districts. Skillful mapmakers can, if the needed data is available, produce plans with a variety of political, social and racial complexions while complying with strict population equality standards. This capability has, not surprisingly, led to judicial scrutiny.

Much of the pertinent Federal court litigation in recent years has involved allegations that particular districting arrangements have had the effect or potential effect of discriminating against a racial or ethnic minority. Before considering those cases, it may be useful to offer brief comments on what might be termed the historical or partisan uses of the redistricting processes.

Partisan Gerrymandering

While the Federal courts have historically been reluctant to take jurisdiction of complaints of partisan gerrymandering, it has been apparent since the 1973 *Gaffney v. Cummings* decision that states are not expected to draw—or purport to draw—legislative districting plans without regard to their political effect. What is not yet clear is to what extent the Federal judiciary might tolerate "equipopulous gerrymandering" of a purely partisan nature.

In *Gaffney,* the Supreme Court majority specifically accepted, and seemed to commend, the effort to draw districts whose political behavior could be predicted with reasonable accuracy. By creating a certain number of safe Democratic and safe Republican districts, and combining these with districts that either party might carry with varying degrees of difficulty, it apparently was intended that the makeup of the Connecticut General Assembly at any particular time should reflect the relative strength of the two major parties in the preceding legislative election. It will be recalled that this plan had overall population ranges of 7.8 percent in the House and 1.8 percent in the Senate. The Supreme Court's opinion concluded:

> . . . neither we nor the district courts have a constitutional warrant to invalidate a state plan, otherwise within tolerable population limits, because it undertakes, not to minimize or eliminate the political strength of any group or party, but to recognize it and, through districting, provide a rough sort of proportional representation in the legislative halls of the State.[57]

Before expressing this conclusion, the majority opinion in *Gaffney* pointed out that state legislative districts "may be equal or substantially equal in population and still be vulnerable" to a complaint of denial of equal protection.[58] After acknowledging the essentially political nature of the redistricting process, the opinion reiterated: "What is done in so arranging for elections, or to achieve political ends or allocate political power, is not wholly exempt from judicial scrutiny under the Fourteenth Amendment."[59]

As the states and the Supreme Court approach the post-1980 round of redistricting, the law appears to be that partisanship devoid of racial implications in drawing legislative districts will not be reviewed by the Federal courts. Nevertheless, the direction the Court may take in this area is not firmly resolved by the precedents. The Court has not squarely faced a plan which was shown to be a partisan effort to minimize the representation of an identifiable political group, although in *Gaffney* it declined to question the constitutionality of an effort to preserve the existing partisan balance.

Immediately before this paper was completed, Justice Stevens, who was not a member of the Court at the time of *Gaffney*, set forth his view that the Equal Protection Clause of the Fourteenth Amendment reaches all varieties of gerrymandering. In his concurring opinion in *City of Mobile v. Bolden*, Justice Stevens at some length argued that the constitutional prohibitions against invidious discrimination are "applicable, not merely to gerrymanders directed against racial minorities, but to those aimed at religious, ethnic, economic and political groups as well."[60]

Whether this view will command a majority of the Justices in the '80's remains to be seen, of course.

Protection of Incumbents. One other factor which may influence legislative districting, and may not necessarily be oriented favorably or unfavorably toward racial or ethnic minorities, is protection of current officeholders. The Supreme Court has, on several occasions, indicated that invidious discrimination is not established solely by a showing that the redistricting plans at issue were drawn so as to minimize or avoid contests among incumbents.[61] However, it should be noted that any special consideration given incumbents in determining the location of the boundaries of legislative districts may have effects which contribute to the difficulty of justifying those boundaries in subsequent litigation.

Multimember Districts Generally

Most of the case law concerning multimember districts involves

Partisan Gerrymandering Cases

Burns v. Richardson, 384 U.S. 73 at 89 (1966).
The Supreme Court noted that the drawing of district boundaries "in such a way that minimizes the number of election contests between present incumbents does not in and of itself establish invidiousness."

Kirkpatrick v. Preisler, 394 U.S. 526 at 553 (1969).
When a state legislature is attempting to draw districts of equal population, problems created by partisan politics cannot justify an apportionment which does not otherwise pass constitutional muster. "The rule is one of 'practicability' rather than political 'practicality'."

Ely v. Klahr, 403 U.S. 108 at 112-113, 118 (1971).
The Supreme Court struck down a state legislative reapportionment plan which insured, *inter alia*, that no incumbent would run for reelection against another incumbent.

Gaffney v. Cummings, 412 U.S. 735 at 754 (1973).
The Supreme Court upheld the state legislature's consideration of "political fairness" between major political parties when drawing legislative districts. (In this case, the plan took into account the party voting results in the preceding three statewide elections, and on that basis, created a proportionate number of Republican and Democratic legislative seats.)

White v. Weiser, 412 U.S. 783 at 797-798 (1973).
The Supreme Court reaffirmed its earlier holding that district boundaries which have been drawn "in such a way to minimize the number of contests between present incumbents does not in and of itself establish invidiousness."

questions about how such districts affect the voting strength of racial and ethnic minorities. It is therefore difficult to draw conclusions about multimember districts independent of the discrimination issues. Nevertheless, some general mention of the way in which Federal courts have viewed multimember districts is warranted by the fact that, as of 1978, 23 states continued to elect some or all of their legislators from districts of this kind.[62]

The United States Supreme Court has held that multimember districts are not unconstitutional *per se*.[63] However, the Court has indicated that it prefers single-member districts, at least where courts draw districts in fashioning a remedy for an invalid plan. The Court has held that the use of multimember districts in court-drawn plans is permissible only in the context of otherwise "insurmountable difficulties."[64]

Multimember Districts and Racial Discrimination. In holding that both houses of a bicameral state legislature must be districted predominantly on a population basis, the Supreme Court majority in *Reynolds v. Sims* commented that latitude still remained for states to vary the "composition and complexion" of the two houses and

Multimember District Cases

Fortson v. Dorsey, 379 U.S. 433 at 439 (1965).
The Supreme Court, affirming its position in *Reynolds v. Sims*, held that the Equal Protection Clause does not necessarily require the formation of all single-member districts.

Burns v. Richardson, 384 U.S. 73 at 88 (1966).
The Supreme Court ruled that the Equal Protection Clause does not require that at least one house of a bicameral state legislature consist of single-member legislative districts.

Kilgarlin v. Hill, 386 U.S. 120 at 121 (1967).
The Supreme Court reaffirmed its holding that the use of multimember and/or floterial districts in state legislative reapportionment plans is not unconstitutional *per se*.

Connor v. Johnson, 402 U.S. 690 at 692 (1971).
In court-ordered reapportionment schemes, "single-member districts are preferable to large multimember districts as a general matter."

Whitcomb v. Chavis, 403 U.S. 124 at 143 (1971).
The use of multimember state legislative districts is not *per se* unconstitutional under the Equal Protection Clause, but is subject to challenge where circumstances of a particular case may operate to minimize or cancel out the voting strength of racial or political elements of the voting population.

Connor v. Williams, 404 U.S. 449 at 451 (1972).
The Supreme Court affirmed its preference for and emphasis upon single-member districts in court-ordered reapportionment plans.

White v. Regester, 412 U.S. 755 at 765 (1973).
The Supreme Court, affirming the district court's findings, invalidated the use of multimember districts in two Texas counties because the black community had been "effectively excluded from participation in the Democratic primary selection process."

Chapman v. Meier, 420 U.S. 1 at 20 (1975).
Absent particularly pressing features calling for multimember districts, a United States district court should refrain from imposing them upon a state.

East Carroll Parish v. Marshall, 424 U.S. 636 at 640 (1976).
The Supreme Court's preference for single-member districts in court-ordered apportionment plans was extended to wards within a county.

suggested that as one way of doing so, "One body could be composed of single-member districts while the other could have at least some multimember districts."[65] In *Fortson v. Dorsey* (1965), the Court specifically declined to rule that the use of multimember districts is in itself an unconstitutional denial of equal protection.[66] However, it held that their validity in any particular situation is justiciable, where plaintiffs allege that multimember districting operates to deny them equal protection of the law.[67] This holding was reaffirmed, and criteria for testing whether a given multimember district or set of districts do in fact deny citizens equal protection of the law were described in *Burns v. Richardson* (1966).[68]

The test which the Supreme Court developed for use in weighing equal protection challenges to multimember districting plans is whether, on the basis of various significant factors, the group allegedly discriminated against has had a fair opportunity to influence the nomination and election of legislators. This concept has been described as follows:

> Although there is no constitutional right to proportional representation, the Fourteenth Amendment does guarantee every person the right to have access to the political processes of the community. Thus, the Court has found that, in the context of reapportionment, a constitutional infirmity arises not when there is a disparity between a minority group's percentage of elected representatives and its percentage of total electors, but when a redistricting scheme is purposefully designed to render the support of minority group members unnecessary to a candidate's campaign and thereby dilutes the minority vote.[69]

Such a test was applied by the Federal courts in both *Whitcomb v. Chavis* (1971)[70] and *White v. Regester* (1973).[71] Although neither of these cases arose under the Voting Rights Act of 1965, each is analogous in many respects to Voting Rights Act cases.

In *Whitcomb v. Chavis* the Supreme Court held that the plaintiffs had failed to establish that the creation of a multimember district in Marion County, Indiana, which encompassed the ghetto area in Indianapolis, discriminated against black residents of that ghetto. The multimember district was assigned eight senators and 15 representatives; plaintiffs argued that the ghetto was entitled to directly elect one senator and three representatives in order to be properly represented in the legislative halls.[72] In addition to contending that any multimember district confers unfair advantages on its voters, as against voters in single-member districts (or smaller multimember districts), the plaintiffs asserted that within the Marion County district the voting power of black ghetto residents was unconstitutionally minimized or cancelled out.[73]

The general and theoretical contention that multimember districts are inherently unfair was supported by mathematical reasoning, with which the Court did not specifically disagree. However, it found that the "real-life impact of multimember districts on individual voting power has not been sufficiently demonstrated . . . to warrant departure from prior cases" in which the Court declined to rule multimember districts unconstitutional *per se*.[74]

In response to the allegation that the Marion County district excluded ghetto blacks from the political process, the Supreme Court majority held (over the strong dissent of Justices Douglas, Brennan and Marshall) that the evidence in the case did not show that black residents of the district were unable to register and vote, choose their political party freely, and be equally represented in choosing legislative candidates.[75] Thus "the failure of the ghetto to have legislative seats in proportion to its population emerges more as a function of losing elections than of built-in bias against poor Negroes."[76] The majority opinion also concluded that the evidence failed to show that the Marion County legislative delegation was less concerned about the interests of ghetto residents than would have been the case if members of the delegation were elected from single-member districts.[77]

Two years after *Whitcomb v. Chavis,* as a part of its decision in *White v. Regester,* the Supreme Court upheld the orders of Federal district courts in Texas that single-member districts be substituted for multimember districts in Dallas and Bexar Counties. The Court unanimously found that, in the context of a history of discrimination against blacks in Dallas County and Mexican-Americans in Bexar County, election laws and practices had been maintained there which made it very difficult, if not impossible, for these classes of citizens to nominate and elect candidates of their choice. The laws and practices found objectionable included both a "place" rule forcing each candidate to declare for a particular seat rather than opposing all other candidates in the district at large (with no corresponding subdistrict residency rule), and a requirement that candidates win nomination in a primary by a majority rather than a plurality vote. While noting that neither of these mandates is in itself improper or invidious, the Court found that historically very few Dallas County blacks or Bexar County Mexican-Americans had ever won election to the Texas House, and also concluded that the respective legislative delegations from the two counties were not sufficiently concerned for or responsive to these respective minority constituencies.[78]

The portion of the Supreme Court's *White v. Regester* opinion affirming the Texas Federal district courts' directives for single-member districts notes that these lower Federal courts had taken into consideration that *Whitcomb v. Chavis* "did not hold that every racial or political group has a constitutional right to be represented in the state legislature . . . ."[79] *Whitcomb v. Chavis* and *White v. Regester* seemingly illustrate development of an "access to the political process" test for validity of a multimember district or districting plan.

It should be noted that the multimember district cases have all been instances of mixed plans, in which some multimember districts were drawn (usually in urban areas) in the context of a statewide scheme which generally employed single-member districts. This selective use of multimember districts appears to have contributed to their suspect treatment by the Courts, especially in the face of allegations that this representational technique was being used by the state for discriminatory purposes.

Indeed, the *Whitcomb* and *White* "access" test can be read as a judicial measure of whether a multimember district discriminates in its effect on minority representation, or as a measure of whether the district can be inferred to manifest an intent to discriminate, or possibly both. There is language in the opinions supporting both views. The ultimate focus of the "access" test makes quite a difference, of course, and this must be resolved by the later cases. As shown by *City of Mobile v. Bolden,* discussed later, there is still disagreement among the Justices on this point, although a majority sides with the view that discriminatory intent is required and that the *Whitcomb* and *White* applications of the "access" test must be read in this light.

In any event, the development of the "access" test has avoided, or perhaps circumvented, the simplistic approach of vesting with constitutional sanction a judicially preferred model or measure of effective minority group representation. In rejecting the calls for constitutionally mandated proportional representation for minority racial groups, the Court has consistently insisted that, whatever the measure, it is looking to affirmative discrimination as the touchstone of the constitutional protections of minority voting rights.

Similarly, but less obviously, it appears that the Court has declined to read into the Constitution its preference for single-member districts, and has thus far refused to adopt any particular model of how single-member district lines should be drawn to assure constitutionally acceptable representation of racial minorities. The Justices have wrestled with the timeless political question of whether a minority is more effectively represented by dominant concentration in a few districts, or by significant but not dominant concentration in several districts in which the minority vote can be influential. Clearly troubled by having to even consider these aspects of the "political thicket," the Court has not arrived at any common understanding of a basic measure of effective representation of minorities against which vote dilution complaints can consistently be weighed.

With this in mind, the "access" test may be viewed, tentatively, as the Court's best effort to avoid the need to develop such a model or measure in these hard cases. If this is true, then to an appreciable degree, vote dilution cases will continue to be decided largely on a case-by-case basis, with precious little guidance for future redistricting efforts involving substantial minority group populations. A reading of the actual decisions of the specific cases leaves at least a hint of the "smell test" approach, despite the intensive arguments over constitutional standards. To what extent the Court's recent holding in *City of Mobile v. Bolden,* that a showing of intentional discrimination is required in order to invoke judicial intervention, will focus application of the "access" test remains to be seen.

Judicial Use of Multimember Districts. As previously noted, the Supreme Court has not held multimember districts unconstitutional *per se.* However, it has demonstrated a preference for single-member districts by permitting lower Federal courts to use multi-member districts in court-drawn plans only when faced with otherwise "insurmountable difficulties."[80] In the *Mahan* case from Virginia, the Supreme Court upheld a court-drawn multimember districting scheme for the Norfolk area as the only effective way to deal with the problem of significant numbers of naval personnel "home-ported" there and thus counted in the census as residents of the Norfolk Naval Base area, although other evidence indicated many of them actually maintained homes elsewhere in the Norfolk-Virginia Beach area.[81] By contrast, in both the *Chapman* and the *Connor v. Finch* cases, the Supreme Court refused to accept use of multimember districts by Federal district courts.[82] (However, racial considerations were a factor in the latter case.)

While the Federal judiciary's basic policy in favor of single-member districts is well established, that policy may be more flexible than is implied by the "insurmountable difficulties" standard for use of multimember districts. The Fifth Circuit Court of Appeals, in an *en banc* decision affirmed by the Supreme Court, indicated that a Federal district court is justified in using or accepting multimember districts either where they "afford minorities a greater opportunity for participation in the political process than do single-member districts," or where "significant interests would be advanced by the use of multimember districts and the use of single-member districts would jeopardize constitutional requirements, ... But these significant interests must not themselves be rooted in racial discrimination."[83]

More recently, in a case involving city council districts in Dallas,

Texas, the Supreme Court told lower Federal courts that Dallas was not necessarily obligated to use single-member districts in a plan drawn by the city itself, even though the plan was drawn under a court mandate.[84] (Interestingly, the final outcome of the long sequence of events of which that decision was a part was adoption of a districting plan combining eight single-member districts with election of three council members at large. The plan is intended, apparently, to protect the interests of both black and Mexican-American minorities.)[85]

The latest judicial word on the subject of single-member v. multimember representation, at this writing, is *City of Mobile v. Bolden,* in which a fragmented Supreme Court upheld the at-large commission form of city government in Mobile, Alabama against a charge that this electoral form, together with other factors, diluted the votes of the black minority.[86] In this twice-argued case, the Court reversed both a district court and the Fifth Circuit Court of Appeals, which had ordered Mobile to adopt a mayor-council form of government and to create single-member council districts.

There is no majority opinion in *Mobile;* the case produced a total of six opinions, with the plurality opinion by Justice Stewart speaking for four members of the Court. What many observers had anticipated as a definitive decision reveals a sharp division among the Court.[87]

As a direct precedent for multimember state legislative districts, the *Mobile* case may well be irrelevant. Since the case involved the basic structure of a municipal government, and because the at-large character of the commission form involves both administrative as well as legislative functions, and because these aspects clearly influenced both the plurality and Justice Stevens, the Court's decision on the merits may have little application outside of local government redistricting litigation.

Nonetheless, the several opinions in *Mobile* have much to say about the basic constitutional principles which will continue to govern state legislative and congressional redistricting cases to come. At this level, and despite the Court's divisions, *Mobile* is a very important case.

Legislative Districting and Racial Discrimination: the 14th and 15th Amendments and the Voting Rights Act

In the years since the Federal courts began reviewing legislative districting, many cases have presented complaints that particular districting arrangements diluted the voting rights of racial or ethnic minorities. The judicial response to these claims initially depended to some extent on whether the challenged arrangement involved the use of single-member or multimember districts. Where such claims arose in the context of single-member districting, the Supreme Court has consistently required plaintiffs to show not only that particular district lines operated to the disadvantage of an identifiable minority, but that this effect was intended by the state. If the plaintiffs could not meet this rather demanding burden of proof, plans that did in fact fragment concentrations of minority population have been upheld by the courts.[88] The "access to the political process" test applied to cases involving multimember districts has already been described.

The judicial debate over whether racial discrimination in voting rights cases generally, and in redistricting and vote dilution cases more particularly, requires a showing of discriminatory intent or purpose has frequently been intense. In many opinions, the Justices have appeared evasive on this question as cases have been resolved more on their peculiar facts. Indeed, this crucial and fundamental issue is yet to be fully resolved by the Supreme Court.

In general, racial discrimination claims arise from three different legal bases: the Equal Protection Clause of the Fourteenth Amendment, the Fifteenth Amendment, and Section 5 of the Voting Rights Act of 1965, as amended. In those states and political subdivisions where the "special provisions" of Section 5 are applicable, it is likely that most future litigation will be brought under its standards, since the Act is stricter than either the Fourteenth or Fifteenth Amendment standards themselves.[89]

For Fourteenth Amendment claims, it now seems settled that governmental intent to discriminate is a required element. In *City of Mobile v. Bolden,* the Supreme Court clarified that this general interpretation of the Fourteenth Amendment applies equally in voting rights cases as in other areas of discrimination. The plurality opinion by Justice Stewart indicated that the prior equal protection voting and districting cases should be read in this light, and that all had been decided under this principle, as far back as *Wright v. Rockefeller* in 1964.[90]

In rejecting the contention that a districting plan can be attacked under the Equal Protection Clause by reason of its discriminatory effects alone, the plurality appears to speak for the entire Court except for Justices Brennan and Marshall. Thus a plaintiff in a racial

vote dilution case is required to prove that the districting plan being challenged has been "conceived or operated as a purposeful device to further racial discrimination," (the quoted phrase having been taken by the plurality from *Whitcomb v. Chavis).* The plurality opinion continues: "This burden of proof is simply one aspect of the basic principle that only if there is purposeful discrimination can there be a violation of the Equal Protection Clause of the Fourteenth Amendment."[91]

Although this standard of proof has not always been so evident in the prior opinions, it now appears that the confusion is at least partially resolved. Nonetheless, since some of the prior decisions in the equal protection field have found a constitutional violation without direct evidence of discriminatory intent, the use of circumstantial evidence, including that of discriminatory impact of voting schemes or of at-large or multimember districting plans, must be carefully considered.

In the *Mobile* plurality opinion, which upheld that city's at-large commission form of government, Justice Stewart went to some pains to affirm the Court's prior decision in *White v. Regester,* the one case in which the Equal Protection Clause was held to invalidate a (multimember) legislative districting plan because it "diluted the voting strength of a discrete group." As construed by the *Mobile* plurality, *White* was a case where the courts found that the multimember districts were in fact "being used invidiously to minimize or cancel out the voting strength of racial groups."[92]

The *White* Court had arrived at this critical finding by way of largely circumstantial and historical evidence, which traced the local history in Texas of official discrimination and systematic exclusion of blacks and Mexican-Americans from access to the political process, as well as showing the dilutive effect of the challenged districts on the challengers.

In *Mobile,* such proof of intent was implicitly approved as an acceptable method of establishing governmental motive or purpose for a claim under the Fourteenth Amendment, following the Court's previous acceptance of the technique in other contexts.[93]

Although the Supreme Court's approval of proof of discriminatory governmental intent by circumstantial evidence would seem to largely mitigate the difficulty of proving a racial discrimination case, the Court is not at all unanimous or clear about the standard under which the Justices will review intentional discrimination findings which are based on such evidence. That standard, whatever it may be, is of course critical.

In the *Mobile* case itself, it appears that the Justices were quite

divided over how strongly to weigh circumstantial evidence of intentional discrimination in districting or dilution cases. A full majority did reject the so-called *Zimmer* criteria, which the Fifth Circuit Court of Appeals had articulated in *Zimmer v. McKeithen*[94] as sufficient by themselves to establish intentional discrimination. It is not clear what else is specifically required. And, as Justice White pointed out in his dissent, the *Zimmer* factors were derived directly from the Supreme Court's own language in *White v. Regester* and *Whitcomb v. Chavis.*[95]

It is not at all clear where this leaves the ultimate standards under which a challenger must establish an allegation of discriminatory districting under the Equal Protection Clause. Ironically, in the *Mobile* case it appears that five Justices may have approved the lower courts' findings of intentional discrimination by the City of Mobile. Justice Stevens, whose vote is obviously decisive in the philosophical division of the current Supreme Court over the constitutional principles involved in this area, followed his own analysis in the *Mobile* case and did not rely on the intent factor. It is uncertain from his concurring opinion in *Mobile* whether he agrees that intentional discrimination on the part of the city was established.

Justice Stevens did not accept the plurality opinion's straightforward holding that the Equal Protection Clause requires a showing of intentional discrimination in vote dilution cases. The Stevens analysis is a three-phase test derived from *Gomillion v. Lightfoot,*[96] which does not rely entirely on either pure intent or pure impact as the constitutional test of racial discrimination. The Stevens test is whether the districting plan is: (1) "uncouth," i.e., unusual and "manifestly not the product of a routine or traditional political decision"; (2) has "a significant adverse impact on a minority group"; and (3) is "unsupported by any neutral justification" and therefore either irrational or the product of a discriminatory motive.[97] The Stevens approach is thus objective, rather than subjective, and is subject to a judicial balancing test in the final stage.

This analysis, of course, allowed Justice Stevens to uphold the *Mobile* commission form of at-large elections by virtue of the neutral justifications of that form of government for the city, which had undisputedly been adopted early in the century for governmental reasons totally unrelated to racial considerations.

Although it is important to keep the Stevens test in mind, since in future cases his vote may continue to be determined by that analysis, the majority rule in *Mobile* and thus, presumably, the precedent for the lower courts is that cases based on the Fourteenth Amendment will require a showing of intentional discrimination, however ascertained.

The Fifteenth Amendment law is less certain. In the *Mobile* case, the plurality held that the Fifteenth Amendment also requires proof of intentional or purposeful discrimination. That view, however, did not command a majority of the Supreme Court. In addition, the plurality opinion may be read to suggest that the Fifteenth Amendment is limited to pure voting rights (e.g., access to the right to vote) and thus does not reach dilution cases such as districting challenges. This position is not clearly stated by the plurality opinion, but several of the other Justices' opinions in the case challenge the plurality on this ground. In any event, at least four Justices do feel that the Fifteenth Amendment applies to vote dilution cases in some manner. Justice Blackmun is silent on the question thus far.

In his dissent, Justice Marshall vigorously contends that the Fifteenth (as well as the Fourteenth) Amendment reaches impact alone and reaches dilution situations. Significantly, Justice Marshall notes that if the Fifteenth Amendment is interpreted to prohibit only intentional voting rights discrimination, then it adds little, if anything, to the Fourteenth Amendment. Since the Fifteenth Amendment is aimed explicitly at voting rights, this argument has yet to be answered.

The Voting Rights Act

Turning to the Voting Rights Act of 1965, which is constitutionally based on the Fifteenth Amendment, the Supreme Court has upheld the Act's application to voting practices which are either discriminatory in purpose or discriminatory in effect. The Voting Rights Act, therefore, is a significantly broader prohibition against racial discrimination in voting than either the Fourteenth or Fifteenth Amendments, as currently interpreted.

In *City of Rome v. United States,* handed down the same day as the *Mobile* case, the Court not only reaffirmed its prior approval of the Act, but specifically upheld it as an "appropriate" congressional means of "enforcing" the Fifteenth Amendment, notwithstanding that the Act prohibits state action which would not violate the Amendment itself.[98] Six Justices adopted this position.

Many of the cases involving claims of discriminatory districting which the Supreme Court has heard in recent years have arisen under Section 5 of the Voting Rights Act. As noted earlier, the Act prohibits governmental changes in voting practices which discriminate either by purpose or by effect. When a state or political subdivision is subject to the preclearance requirements of this Act, the burden of proof relative to whether or not discrimination exists in a proposed districting plan rests on the state or political subdivision

involved rather than on parties which may be discriminated against.

A state, or certain of its political subdivisions, are subject to the preclearance provisions of Section 5 of the Voting Rights Act if, at the times of the 1964, the 1968, or the 1972 presidential elections: (1) any of several enumerated tests or devices were employed there as a prerequisite to voting; and (2) in any of those elections for which such tests or devices were used, fewer than 50 percent of the potentially eligible voters were registered to vote or actually voted.[99] Such a state or political subdivision may make no change in a "voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting" without prior review by either the District Court for the District of Columbia or the United States Attorney General, to ascertain that the proposed change "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color."[100] Access to the political process has emerged as the primary standard of evaluation applied to redistricting plans reviewed under the Voting Rights Act.

A list of North Carolina counties under the preclearance provisions of Section 5 of the Voting Rights Act appears on page 46.

Any possible doubt that a state legislative redistricting plan is subject to such review under the Voting Rights Act was removed by the Supreme Court's 1973 decision in *Georgia v. United States.*[101] Moreover, the Court held that the Attorney General—to whom Georgia had submitted its legislative redistricting plan for review in lieu of seeking a declaratory judgment from the District Court for the District of Columbia—was not required to make a positive finding of discrimination in order to prevent the state from putting the plan into effect. It was sufficient for the Attorney General to notify the state that he was "unable to conclude that the plan does not have a discriminatory racial effect on voting."[102]

Interestingly, however, the prior review requirements of Section 5 of the Voting Rights Act do not apply to redistricting plans formulated either by or at the order of a Federal court.[103] The Fifth Circuit Court of Appeals several years ago rejected the suggestion, offered by the Federal government as *amicus curiae,* that a distinction should be drawn with respect to prior review requirements between court-drawn and court-ordered plans.[104]

Department of Justice Standards for Review of Legislative Plans. Although the purpose of this paper is to explore the Federal case law of state legislative districting, it seems warranted to include a summary of those factors which the Civil Rights Division of the Department of Justice has indicated are used in evaluating districting plans submitted for review under Section 5 of the Voting Rights Act.

Racial Discrimination and Voting Rights Act Cases

Whitcomb v. Chavis, 403 U.S. 124 at 148-150 (1971).
The fact that: (a) part of a multimember legislative district was identifiable as a Negro ghetto; and (b) the proportion of legislators elected from the ghetto was: (1) less than the ghetto's proportion of the district's population; (2) less than the proportion of legislators elected from a less populous area within the district; and (3) less than the ghetto might have elected had the district been divided into single-member districts, did not result in invidious discrimination against Negro voters.

White v. Regester, 412 U.S. 755 at 769-770 (1973).
The Supreme Court upheld the District Court's finding that two (Texas) multi-member districts, as designed and operated, invidiously excluded blacks and Mexican-Americans from effective participation in political life, specifically in the election of representatives to the Texas House of Representatives.

City of Richmond v. United States, 422 U.S. 358 at 370-371 (1975).
The Supreme Court held that even though a city's annexation of an area with a white majority (combined with at-large councilmanic elections and a history of "racial bloc" voting), creates or enhances the power of the white majority to exclude Negroes totally from participation in city government through membership on the city council, such consequences can be satisfactorily obviated if at-large elections are replaced by a ward system of choosing councilmen affording Negro representation reasonably equivalent to their political strength in the enlarged community, notwithstanding racial bloc voting strength that caused fewer council seats to be held by Negroes. (Voting Rights Act of 1965, §5, 42 U.S.C.A. §1973c.)

Other Supreme Court cases which have applied the requirements of the Voting Rights Act of 1965 to legislative reapportionment plans include:

Georgia v. United States, 411 U.S. 526 (1973).

Beer v. United States, 425 U.S. 130 (1976).

United Jewish Organizations v. Carey, 430 U.S. 144 (1977).

Two extremely important discrimination cases were decided by the Supreme Court on April 22, 1980. The above cases should be considered in light of the potential implications of these decisions in future litigation.

City of Mobile, Alabama v. Bolden, No. 77-1844 (at-large commission form of government upheld). Six separate opinions dealing with the interpretation and application of the Fourteenth and Fifteenth Amendments to dilution cases.

City of Rome, Georgia v. United States, No. 78-1840. (Upheld constitutionality of Voting Rights Act against argument that Congress exceeded its enforcement powers under the Fifteenth Amendment.)

Speaking early in 1980 to a gathering of state legislators, Assistant Attorney General Drew S. Days, III said, "We find that the consideration given to minorities and the role played by minorities in shaping a redistricting or reapportionment plan goes further than any other single factor in assisting us in determining whether minorities have a fair opportunity for an effective vote under the plan."[105] Mr. Days then listed five other factors which the Civil Rights

Division considers in making its determination. These factors are:

- The reasons that are stated as being responsible for the particular shape and location of the districts that were adopted.
- The nature of problems and conditions that affect minorities and the extent to which those concerns are shared by others in the geographical area.
- The success of minorities' past efforts both to elect candidates of their choice under other apportionment plans, and to influence the legislative process.
- The history of discrimination against minorities in the electoral process and in legislative decisions that have been made.
- The extent to which minorities' views were solicited and incorporated into the apportionment plan that was adopted.

Mr. Days concluded: "In gaining information about these factors we ask questions. We talk to minorities and whites, people who contributed to fashioning the apportionment plan and those who did not, statisticians and theorists, politicians and voters. In essence, the information we get is the same as the information that is available to a legislature if it is sought . . . ."[106]

The Voting Rights Act and Access to the Political Process

The history and evolving precedents of the various districting cases coming before Federal courts under Section 5 of the Voting Rights Act in the past several years—most of them local rather than state legislative districting cases—is too complex to be dealt with in any real depth here. A few of the more significant cases will be briefly discussed.

Many of the cases alleging discriminatory legislative districting have arisen in the Fifth Circuit. One of the decisions of the Fifth Circuit Court of Appeals which is most frequently cited is *Zimmer v. McKeithen.*[107] Black voters of East Carroll, a rural parish in northeastern Louisiana, alleged they were discriminated against by an at-large system of electing members to the police jury (parish governing board) and the school board (whose members, under state law, were elected on the same basis as members of the police jury). In an *en banc* decision, a majority of the Fifth Circuit said:

> Inherent in the concept of fair representation are two propositions: first, that in apportionment schemes, one man's vote should equal another man's vote as nearly as practicable; and second, that assuming substantial equality, the scheme must not operate to

> minimize or cancel out the voting strength of racial elements of the voting population. Both the Supreme Court and this court have long differentiated between these two propositions. And although population is the proper measure of equality in apportionment, (citations omitted), the Supreme Court announced that access to the political process and not population was the barometer of dilution of minority voting strength.[108]

The Fifth Circuit noted that under *Whitcomb v. Chavis* the maintenance of an established policy of multimember districting does not constitute denial of access to the political process where minorities have opportunity to participate in the slating of candidates and the elected representatives are responsive to minority concerns. The Fifth Circuit Court continued:

> Conversely, where a minority can demonstrate a lack of access to the process of slating candidates, the unresponsiveness of legislators to their particularized interests, a tenuous state policy underlying the preference for multimember or at-large districting, or that the existence of past discrimination in general precludes the effective participation in the election system, a strong case is made. Such proof is enhanced by a showing of the existence of large districts, majority vote requirements, antisingle shot voting provisions and the lack of provision for at-large candidates running from particular geographical subdistricts. The fact of dilution is established upon proof of the existence of an aggregate of these factors. The Supreme Court's recent pronouncement in *White v. Regester,* supra, demonstrates, however, that all these factors need not be proved in order to obtain relief.[109]

After taking note of the district court's finding that there had been a history of discriminatory laws and practices in East Carroll Parish parallel in many respects to that found to have existed in Dallas and Bexar Counties in Texas prior to *White v. Regester,* the Fifth Circuit majority observed:

> The only distinction between the instant case and *White v. Regester* (citation omitted), is that here, there is no proof that representatives of police juries and school boards in East Carroll were particularly insensitive to the interests of minority residents . . . . We feel that this deficiency in proof compensated for by an additional distinction . . . . In Dallas and Bexar Counties, there was a strong tradition of multimember districting. In contrast, in East Carroll, the firmly entrenched state policy against at-large elections for police juries and school boards had persisted until as late as 1967.[110]

In its decision in *Kirksey v. Board of Supervisors* (1976),[111] the Fifth Circuit applied the access to the political process test to a situation in which single-member districts already existed, but were alleged to operate to the disadvantage of black voters of Hinds County, Mississippi. In an *en banc* rehearing, the Circuit Court agreed with the plaintiffs' allegations and remanded the case to the Federal district court for appropriate action. Noting that "redistricting done to comply with one man, one vote requirements may impinge upon the right of members of minorities to legal access to the processes of democracy,"[112] the Circuit Court declared that "the Supreme Court and this circuit have firmly held that where a reapportionment plan is formulated in the context of an existent intentional denial of access by minority group members to the political process, and would perpetuate that denial, the plan is constitutionally unacceptable . . . ."[113]

Some doubt has been cast on the "access to the political process" test in general, and the *Zimmer* guidelines in particular, by the Supreme Court's recent decision in *City of Mobile v. Bolden,* in which a majority of the Court rejected them under the Fourteenth Amendment. A close reading of the *Mobile* opinions, however, suggests that both the "access" test and the *Zimmer* factors continue to be viable under the Voting Rights Act, since the Court's rejection of them was based on the requirement that intent be shown in establishing a claim of discrimination under the Fourteenth Amendment.

The Voting Rights Act applies to discriminatory effects without regard to intent, and therefore the *Mobile* rationale would not seem to apply to discrimination claims brought under Section 5 of that Act.

Some Other Significant Redistricting Cases Under the Voting Rights Act

City of Richmond v. United States[114] involved an annexation to Richmond, Virginia, which had been in progress or under litigation since the early 1960's. When the case reached the Supreme Court, a central issue was the claim that a primary objective of the annexation was to bring a large number of white voters within the boundaries of the city, and thereby prevent black voters from becoming a majority of the city's electorate. The Richmond City Council had consisted of nine members elected at large. In an attempt to satisfy the requirements of the Voting Rights Act, a plan was devised to elect the Council members from nine wards, four having substantial white majorities, four having substantial black majorities, and one 59 percent white. A special master appointed by a Federal district court found the plan unsatisfactory and concluded that the only way to prevent unjustified dilution of the black vote in Richmond was to entirely divest the city of the annexed territory. The district court concurred in the special master's finding as to the nine-ward plan, although it did not agree with the divestiture recommendation.[115] At that point, an appeal was taken to the Supreme Court.

That Court, over the dissents of Justices Brennan, Douglas and Marshall, declined to accept the finding that the nine-ward plan was discriminatory. The majority held that the plan was not unfair, because black voters would be fairly represented on the new City Council although they did not constitute a majority within the enlarged city and therefore would not control the Council.[116] The case was remanded in 1975 for appropriate disposition by the district court.

The majority's analysis in *Richmond* is noteworthy, as an example of the interplay of the Voting Rights Act's dual standards of barring both discriminatory intent and discriminatory effects in voting law changes. The majority approved the annexation despite its dilutive impact on overall black voting strength, based on their assessment that there would be fair representation in the enlarged city. That determination relied primarily on the adoption of a district system to replace the prior at-large elections. The majority in effect restated its affirmation of *City of Petersburg v. U.S.*,[117] a 1972 district court decision which had rejected an annexation of predominantly white areas in the context of retained at-large elections, but indicated that the dilutive effects of the annexation could be cured by adoption of a ward system. *Richmond* approved the curative concept under the Voting Rights Act's "effect" standard.

The Court seems to have been acutely aware that a flat prohibition on annexations which dilute the overall minority vote would effectively bar all annexations in jurisdictions under the Section 5 provisions. Thus the Court adopted the standard of fair representation in the enlarged city, rather than dilution of the prior voting strength, as the measure of the Section 5 application to the annexations' "effects." The Court then required that the city show that the annexation is supported by nondiscriminatory purposes and was not intended as a purposeful discriminatory effort, thus applying the "intent" standard of Section 5 independently of the "effect" analysis.

The following year, the Supreme Court decided *Beer v. United States,*[118] involving City Council districts in New Orleans. There, two of the seven Council members had been elected at large since 1954, and the five remaining members had been elected from single-member wards last redrawn in 1961. One of the 1961 wards had a black population majority, although a majority of its registered voters were white, while the other four wards had white population and voter majorities; none had ever elected a black Council member. In the 1971 City Council redistricting one new ward had black population and voter majorities, one had a black population majority but a white registered voter majority, and the other three had white population and voter majorities. The city sought a favorable declaratory judgment from the District Court for the District of Columbia, but was turned down on the premise that only the ward with a black voter majority was likely to elect a black Council member and that in a city with a 45 percent black population and a 35 percent black voter registration, this result was unsatisfactory.[119]

The Supreme Court reversed the district court, Justices Brennan and Marshall again dissenting. The majority did not disagree with the district court's conclusions as to the probable course of events, but held that since there had been no black Council members in the past and there presumably would be a least one in the future, the effective exercise of the electoral franchise by blacks in New Orleans had been enhanced rather than diminished. Therefore, the wards in New Orleans were held to satisfy the requirements of the Voting Rights Act.[120] This concept is occasionally referred to as the non-retrogression standard.[121]

City of Richmond and *Beer* clearly rely on assumptions of racial bloc voting, and seem to establish the constitutionality of drawing district lines on the basis of racial criteria where not done with the intent or effect of discriminating against a minority. In *United Jewish Organizations v. Carey* (1977),[122] the Supreme Court had to deal with a complaint by white voters against redrawing of certain legislative

districts so as to increase those districts' black majorities and thereby win approval of the district lines by the United States Attorney General.

Kings County, New York, a part of New York City having a substantial black population, is subject to the Voting Rights Act. After New York's state legislative districts were redrawn in 1972, the United States Attorney General concluded that the state had not met the burden of proof that the new districts were not discriminatory. To meet the Attorney General's objections, the New York Legislature adjusted the boundaries of certain districts in Kings County so as to enhance the black population majorities in those districts.[123]

These changes split between two Senate and two Assembly districts a community of some 30,000 Hasidic Jews, living in the Williamsburgh area of Kings County, which had formerly been entirely within a single Senate district and a single Assembly district. A suit was brought by the United Jewish Organizations of Williamsburgh alleging that this change had been made solely on the basis of race, that it would cut in half the effectiveness of each Hasidic Jew's vote, and that the state's revision of the district lines in question was therefore in violation of the Fourteenth and Fifteenth Amendments to the United States Constitution.[124] The petitioners lost at the district and circuit court levels,[125] and ultimately also in the Supreme Court.

In its decision, the Supreme Court again expressly assumed that racial bloc voting would occur (although Chief Justice Burger specifically dissented from that view as well as from the result in general).[126] The Court held that permissible use of racial criteria is not limited to efforts to overcome past discriminatory districting.[127] It found no evidence that New York had sought to give black voters more representation in its Legislature than they had received under the previous districting arrangement, and therefore concluded that the State had done no more than the non-retrogression standard of *Beer V. United States* required.[128] Accordingly, the Court indicated that whites in Kings County were fairly represented and that the Hasidic Jewish community must rely on this factor for protection of their interests; they were not entitled to representation as Hasidic Jews, apart from other white voters.[129]

Must all Districts in a Plan Be Reviewed Under Voting Rights Act?

One final comment on legislative districting and the Voting Rights Act may be added. In a footnote in the 1973 *Georgia v. United States* decision, the Supreme Court specifically reserved a decision on the question whether pre-implementation review of every district in a legislative districting plan is required under the Voting Rights Act,

even if the state has found it unnecessary to change the boundaries of one or more of its previous districts.[130] In *Beer v. United States*, the Supreme Court found that the part of the New Orleans City Council districting arrangement providing for election of two of the seven Council members from the city at large, having been in effect for several years prior to adoption of the Voting Rights Act, could not be considered part of the 1971 Council districting plan which had to be reviewed under that Act.[131] However, in the *Beer* case the Court again included a footnote stating that this finding did not dispose of the question reserved in *Georgia v. United States*.[132] Thus, it remains possible that a state which is subject to the preclearance requirements of Section 5 of the Voting Rights Act and which concludes, after the census of 1980, that the boundaries of a particular existing legislative district or districts require no change, may not be required to have those districts reviewed by the Attorney General or the District Court for the District of Columbia before placing a new districting plan in effect.

Footnotes

[1] 369 U.S. 186 (1962).

[2] Cf *Colegrove v. Green*, 328 U.S. 549 (1946). However, in 1958, a three-judge Federal district court in effect threatened to intervene should the Minnesota Legislature fail to redistrict itself in accordance with the state's constitution. *Magraw v. Donovan*, 163 F. Supp. 184. The Legislature responded (although the new districts were held inequitable in the post-*Baker v. Carr* period) and the case was dismissed as moot on the plaintiff's motion. 177 F. Supp. 803 (1959).
For an interesting discussion of pertinent U.S. Supreme Court voting rights case law preceding *Baker v. Carr*, as well as an informative summary of the development of redistricting standards since that case was decided, see Fernando V. Padilla and Bruce Gross, "Judicial Power and Reapportionment," 15 *Idaho Law Review* 263 (1979).

[3] 369 U.S. 186, 197-98.

[4] 372 U.S. 368 (1963).

[5] *Ibid.*, 381.

[6] 377 U.S. 533 (1964).

[7] 376 U.S. 1 (1964).

[8] 394 U.S. 526 (1969).

[9] 412 U.S. 783 (1973).

[10] E.g., *Gaffney v. Cummings*, 412 U.S. 735 (1973) 742, 750-51; *White v. Regester*, 412 U.S. 755 (1973) 761-64; *Chapman v. Meier*, 420 U.S. 1 (1975) 23; *Connor v. Finch*, 431 U.S. 407 (1977) 418.

[11] 377 U.S. 533, 569.

[12] *Ibid.*, 579.

[13] *Ibid.*, 578.

[14] *Ibid.*

[15] 394 U.S. 526, 530-31.

[16] *Ibid.*, 533-36.

[17] 385 U.S. 440 (1967).

[18] 394 U.S. 526, 554.

[19] 410 U.S. 315 (1973).

[20] *Ibid.*, 322.

[21] *Ibid.*, 325-29.

[22] *Ibid.*, 340-43.

[23] *Ibid.*, 336.

[24] A floterial district encompasses within its boundaries two or more other districts each electing a member or members to a legislative or other public body. It is ordinarily used when none of the encompassed districts is by itself entitled to another seat, but their combined populations do entitle the area as a whole to additional representation.

[25] 412 U.S. 735.

[26] 412 U.S. 755.

[27] 412 U.S. 735, 743.

[28] *Ibid.*, 751-52.

[29] 412 U.S. 755, 763.

[30] *Ibid.*, 764.

[31] *Ibid.*, 776-77.

[32] 420 U.S. 1.

[33] *Ibid.*, 21-26.

[34] 431 U.S. 407.

[35] *Ibid.*, 418, 420.

[36] *Ibid.*, 430-33.

[37] 412 U.S. 735, 740-41.

[38] 412 U.S. 755, 764.

[39] 412 U.S. 735, 750-51.

[40] 412 U.S. 735, 737, 751.

[41] 412 U.S. 755, 764.

[42] 410 U.S. 315, 319.

[43] 412 U.S. 755, 763.

[44] 377 U.S. 533, 579.

[45] *Ibid.*, 580.

[46] *Ibid.*, 580-81.

[47] 410 U.S. 315, 325-26.

[48] *Ibid.*, 328.

[49] 420 U.S. 1, 25.

[50] *Ibid.*

[51] 431 U.S. 407, 426.

[52] 420 U.S. 1, 26-27; 431 U.S. 407, 417.

[53] 420 U.S. 1, 26.

[54] 412 U.S. 783.

[55] *Ibid.*, 790-91.

[56] *Ibid.*, 798.

[57] 412 U.S. 735, 754.

[58] *Ibid.*, 751.

[59] *Ibid.*, 754.

[60] _____ U.S. _____, at _____, 48 Law Week 4436 (No. 77-1844; April 22, 1980; Slip Opinion, concurring opinion at 4-5.)

[61] E.g., *White v. Weiser*, 412 U.S. 783, 791; *Ely v. Klahr*, 403 U.S. 108, 112; *Burns v. Richardson*, 384 U.S. 73, 89 (n. 16).

[62] "The Legislatures," *The Book of the States: 1978-79*, Council of State Governments (1978), tables, pp. 14-15.

[63] Although at least one state supreme court has so held. See *Kruidenier v. McCulloch*, 142 NW 2d 355 (Iowa, 1966); certiorari denied, 385 U.S. 851 (1966).

[64] *Connor v. Johnson*, 402 U.S. 690 (1971) 692.

[65] 377 U.S. 533, 576-77.

[66] 379 U.S. 433 (1965).

[67] *Ibid.*, 439.

[68] 384 U.S. 73 (1966) 88-89.

[69] "Proportional Representation by Race: The Constitutionality of Benign Racial Redistricting," 74 *Michigan Law Review* 820, at 824 (1976).

[70] 403 U.S. 124 (1971).

[71] 412 U.S. 755.

[72] 403 U.S. 124, 128-29.

[73] *Ibid.*, 144.

[74] *Ibid.*, 145-46.

[75] *Ibid.*, 149.

[76] *Ibid.*, 153.

[77] *Ibid.*, 155.

[78] 412 U.S. 755, 765-70.

[79] *Ibid.*, 769.

[80] *Connor v. Johnson*, 402 U.S. 690, 692.

[81] 410 U.S. 315, 330-33.

[82] 420 U.S. 1, 14-21; 431 U.S. 407, 415.

[83] *Zimmer v. McKeithen*, 485 F. 2d 1297, 1308 (affirmed as *East Carroll Parish School Board v. Marshall*, 424 U.S. 636).

[84] *Wise v. Lipscomb*, 437 U.S. 535.

[85] Drew S. Days, III (Assistant Attorney General, Civil Rights Division, U.S. Department of Justice), "The Voting Rights Act and Reapportionment," Address before the National Conference of States Legislatures' Assembly on the Legislature, Denver, Colorado, February 15, 1980, p. 13.

[86] _____ U.S. _____ (No. 77-1844; April 22, 1980).

[87] Justice Stewart wrote for himself, the Chief Justice and Justices Powell and Rehnquist. Justices Blackmun and Stewart both concurred in part, but refused to join in the plurality opinion. Justices White, Brennan and Marshall each wrote dissents.

[88] "Group Representation and Race-Conscious Apportionment: The Roles of States and the Federal Courts," 91 *Harvard Law Review* 1847, at 1848 (1978).

[89] *City of Rome v. United States*, _____ U.S. _____, 48 Law Week 4463 (No. 78-1840; April 22, 1980.) In those areas of the nation where Section 5 of the Voting Rights Act has not been invoked, the two Civil War amendments aimed at discrimination and voting rights of minorities, respectively, govern the cases.

[90] The plurality opinion in the *Mobile* case cites *Washington v. Davis*, 426 U.S. 229 (1976); *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977); and *Personnel Adm'r. of Massachusetts v. Feeney*, 422 U.S. 256 as the dispositive precedents. *Wright v. Rockefeller* appears at 376 U.S. 52.

[91] _____ U.S. _____ (No. 77-1844; April 22, 1980; Slip Opinion at 10.)

[92] *White v. Regester*, 412 U.S. 755, 756; emphasis by Justice Stewart in *City of Mobile v. Bolden*, _____ U.S. _____ (No 77-1844; April 22, 1980; Slip Opinion at 12.)

[93] Cf *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, involving a complaint of discriminatory zoning.

[94] 485 F. 2d 1297 (1973).

[95] *Zimmer v. McKeithen* was affirmed, although explicitly not on the issue of access to the political process, as *East Carroll Parish School Board v. Marshall*, 424 U.S. 636 (1976).

[96] 364 U.S. 339 (1960). *Gomillion* arose from a challenge to exclusion of significant parts of the black residential areas from the City of Tuskeegee, Alabama, a ploy which the Supreme Court struck down as being motivated by racial discrimination. Although generally perceived at the time of the decision as a voting rights case, it is now reasonable to view it as an indicator of the Supreme Court's forthcoming consent to enter the thicket of political districting.

[97] _____ U.S. _____ (No. 77-1844; April 22, 1980; Slip Opinion, concurring opinion at 8-9.)

[98] _____ U.S. _____ (No. 78-1840; April 22, 1980; Slip Opinion at 17-19.)

[99] 42 U.S.C. 1973b(b).

[100] 42 U.S.C. 1973c.

[101] 411 U.S. 526.

[102] *Ibid.*, 537-39.

[103] *Zimmer v. McKeithen*, 467 F. 2d 1381, 1383.

[104] *Kirksey v. Board of Supervisors*, 528 F. 2d 536 (1976) 540.

[105] Drew S. Days, III, *Ibid.*, 18-19.

[106] *Ibid.*, pp. 19-20.

[107] 485 F. 2d 1297.

[108] *Ibid.*, 1303.

[109] *Ibid.*, 1305. In this context, a "majority vote requirement" usually means that a successful candidate must receive the votes of more than half of all participating voters, while "anti-single-shot voting provisions" refer to voting rules which in effect force an interest group to run a full slate of candidates by requiring that each voter vote for as many candidates as there are offices to be filled, or have his or her ballot invalidated. Thus, should a group run less than a full slate, its supporters will have to vote for some of the group's opponents in order to have any of their votes counted.

[110] *Ibid.*, 1306-07.

[111] 554 F. 2d 139 (1977), certiorari denied, 434 U.S. 968.

[112] 554 F. 2d 139, 142.

[113] *Ibid.*, 143.

[114] 422 U.S. 358 (1975).

[115] *Ibid.*, 366-67.

[116] *Ibid.*, 371.

[117] 354 F. Supp. 1021 (1972), affirmed 410 U.S. 962 (1973).

[118] 425 U.S. 130 (1976).

[119] *Ibid.*, 134-37.

[120] *Ibid.*, 141-42.

[121] E.g., Robert S. Berman, "Constitutional Law—Due Process—Nonretrogressive Reapportionment Plan Upheld" (under "Recent Decisions"), 60 *Marquette Law Review* 173 (1976).

[122] 430 U.S. 144 (1977).

[123] *Ibid.*, 148-51.

[124] *Ibid.*, 152-53.

[126] 377 F. Supp. 1164 (1974); 510 F. 2d 512 (1975).

[128] 430 U.S. 144, 166-67; (dissenting opinion) 180-87.

[127] *Ibid.*, 161.

[128] *Ibid.*, 162-65.

[129] *Ibid.*, 166.

[130] 411 U.S. 526, 535 (n. 7).

[131] 425 U.S. 130, 138-39.

[132] *Ibid.*, 139 (n. 10).

CONSTITUTION OF THE UNITED STATES

Article. I.

Section. 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

AMENDMENT XIV.

SECTION. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SECTION. 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

CONSTITUTION OF THE UNITED STATES

AMENDMENT XV.

SECTION. 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

U.S. CODE TITLE 42

VOTING RIGHTS OF 1965, SECTION 5

§ 1973c. Alteration of voting qualifications and procedures; action by state or political subdivision for declaratory judgment of no denial or abridgement of voting rights; three-judge district court, appeal to Supreme Court

Whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the first sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the second sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the third sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: *Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28 and any appeal shall lie to the Supreme Court.

As amended Pub.L. 94–73, Title II, §§ 204, 206, Title IV, § 405, Aug. 6, 1975, 89 Stat. 402, 404.

COVERED JURISDICTIONS UNDER SECTION 5 OF THE VOTING RIGHTS ACT

The preclearance requirement of Section 5 of the Voting Rights Act (42 U.S.C. §1973c), as amended, applies in the following North Carolina counties. This determination was made on November 1, 1964, by the Civil Rights Division of the U.S. Department of Justice.

ANSON	EDGECOMBE	HOKE	PERSON
BEAUFORT	FRANKLIN	JACKSON	PITT
BERTIE	GASTON	LEE	ROBESON
BLADEN	GATES	LENOIR	ROCKINGHAM
CAMDEN	GRANVILLE	MARTIN	SCOTLAND
CASWELL	GREENE	NASH	UNION
CHOWAN	GUILFORD	NORTHAMPTON	VANCE
CLEVELAND	HALIFAX	ONSLOW	WASHINGTON
CRAVEN	HARNETT	PASQUOTANK	WILSON
CUMBERLAND	HERTFORD	PERQUIMANS	Wayne B.F.

ARTICLE II

Legislative

Section 1. *Legislative power.* The legislative power of the State shall be vested in the General Assembly, which shall consist of a Senate and a House of Representatives.

Sec. 2. *Number of Senators.* The Senate shall be composed of 50 Senators, biennially chosen by ballot.

Sec. 3. *Senate districts; apportionment of Senators.* The Senators shall be elected from districts. The General Assembly, at the first regular session convening after the return of every decennial census of population taken by order of Congress, shall revise the senate districts and the apportionment of Senators among those districts, subject to the following requirements:

(1) Each Senator shall represent, as nearly as may be, an equal number of inhabitants, the number of inhabitants that each Senator represents being determined for this purpose by dividing the population of the district that he represents by the number of Senators apportioned to that district;

(2) Each senate district shall at all times consist of contiguous territory;

(3) No county shall be divided in the formation of a senate district;

(4) When established, the senate districts and the apportionment of Senators shall remain unaltered until the return of another decennial census of population taken by order of Congress.

Sec. 4. *Number of Representatives.* The House of Representatives shall be composed of 120 Representatives, biennially chosen by ballot.

Sec. 5. *Representative districts; apportionment of Representatives.* The Representatives shall be elected from districts. The General Assembly, at the first regular session convening after the return of every decennial census of population taken by order of Congress, shall revise the representative districts and the apportionment of Representatives among those districts, subject to the following requirements:

(1) Each Representative shall represent, as nearly as may be, an equal number of inhabitants, the number of inhabitants that each Representative represents being determined for this purpose by dividing the population of the district he represents by the number of Representatives apportioned to that district;

(2) Each representative district shall at all times consist of contiguous territory;

(3) No county shall be divided in the formation of a representative district.

(4) When established, the representative districts and the apportionment of Representatives shall remain unaltered until the return of another decennial census of population taken by order of Congress.

§ 120-1. Senators. — For the purpose of nominating and electing members of the Senate in 1972 and every two years thereafter, senatorial districts are established and seats in the Senate are apportioned among those districts as follows:

District 1 shall consist of Beaufort, Bertie, Camden, Chowan, Currituck, Dare, Gates, Hertford, Hyde, Northampton, Pasquotank, Perquimans, Tyrrell, and Washington Counties and shall elect two Senators.

District 2 shall consist of Carteret, Craven, and Pamlico Counties and shall elect one Senator.

District 3 shall consist of Onslow County and shall elect one Senator.

District 4 shall consist of New Hanover and Pender Counties and shall elect one Senator.

District 5 shall consist of Duplin, Jones, and Lenoir Counties and shall elect one Senator.

District 6 shall consist of Edgecombe, Halifax, Martin, and Pitt Counties and shall elect two Senators.

District 7 shall consist of Franklin, Nash, Vance, Warren, and Wilson Counties and shall elect two Senators.

District 8 shall consist of Greene and Wayne Counties and shall elect one Senator.

District 9 shall consist of Johnston and Sampson Counties and shall elect one Senator.

District 10 shall consist of Cumberland County and shall elect two Senators.

District 11 shall consist of Bladen, Brunswick, and Columbus Counties and shall elect one Senator.

District 12 shall consist of Hoke and Robeson Counties and shall elect one Senator.

District 13 shall consist of Durham, Granville, and Person Counties and shall elect two Senators.

District 14 shall consist of Harnett, Lee, and Wake Counties and shall elect three Senators.

District 15 shall consist of Alleghany, Ashe, Caswell, Rockingham, Stokes, and Surry Counties and shall elect two Senators.

District 16 shall consist of Chatham, Moore, Orange, and Randolph Counties and shall elect two Senators.

District 17 shall consist of Anson, Montgomery, Richmond, Scotland, Stanly, and Union Counties and shall elect two Senators.

District 18 shall consist of Alamance County and shall elect one Senator.

District 19 shall consist of Guilford County and shall elect three Senators.

District 20 shall consist of Forsyth County and shall elect two Senators.

District 21 shall consist of Davidson, Davie, and Rowan Counties and shall elect two Senators.

District 22 shall consist of Cabarrus and Mecklenburg Counties and shall elect four Senators.

District 23 shall consist of Alexander, Catawba, Iredell, and Yadkin Counties and shall elect two Senators.

District 24 shall consist of Avery, Burke, Caldwell, Mitchell, Watauga, and Wilkes Counties and shall elect two Senators.

District 25 shall consist of Cleveland, Gaston, Lincoln, and Rutherford Counties and shall elect three Senators.

District 26 shall consist of Buncombe, Madison, McDowell, and Yancey Counties and shall elect two Senators.

District 27 shall consist of Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Polk, Swain, and Transylvania Counties and shall elect two Senators. (Code, s. 2844; Rev., s. 4398; 1911, c. 150; C. S., s. 6087; 1921, c. 161; 1941, c. 225; 1963, Ex. Sess., c. 1; 1966, Ex. Sess., c. 1, s. 1; 1971, c. 1177.)

§ 120-2. House apportionment specified. — For the purpose of nominating and electing members of the North Carolina House of Representatives in 1972 and every two years thereafter, the State of North Carolina shall be divided into 45 districts as follows:

District 1 shall consist of Camden, Chowan, Currituck, Dare, Pasquotank, Perquimans, Tyrrell and Washington Counties and shall elect two Representatives.

District 2 shall consist of Beaufort and Hyde Counties and shall elect one Representative.

District 3 shall consist of Craven, Jones, Lenoir and Pamlico Counties and shall elect three Representatives.

District 4 shall consist of Carteret and Onslow Counties and shall elect three Representatives.

District 5 shall consist of Bertie, Gates, Hertford, and Northampton Counties and shall elect two Representatives.

District 6 shall consist of Halifax and Martin Counties and shall elect two Representatives.

District 7 shall consist of Edgecombe, Nash and Wilson Counties and shall elect four Representatives.

District 8 shall consist of Greene and Pitt Counties and shall elect two Representatives.

District 9 shall consist of Wayne County and shall elect two Representatives.

District 10 shall consist of Duplin County and shall elect one Representative.

District 11 shall consist of Brunswick and Pender Counties and shall elect one Representative.

District 12 shall consist of New Hanover County and shall elect two Representatives.

District 13 shall consist of Caswell, Granville, Person, Vance and Warren Counties and shall elect three Representatives.

District 14 shall consist of Franklin and Johnston Counties and shall elect two Representatives.

District 15 shall consist of Wake County and shall elect six Representatives.

District 16 shall consist of Durham County and shall elect three Representatives.

District 17 shall consist of Chatham and Orange Counties and shall elect two Representatives.

District 18 shall consist of Harnett and Lee Counties and shall elect two Representatives.

District 19 shall consist of Bladen, Columbus and Sampson Counties and shall elect three Representatives.

District 20 shall consist of Cumberland County and shall elect five Representatives.

District 21 shall consist of Hoke, Robeson and Scotland Counties and shall elect three Representatives.

District 22 shall consist of Alamance and Rockingham Counties and shall elect four Representatives.

District 23 shall consist of Guilford County and shall elect seven Representatives.

District 24 shall consist of Randolph County and shall elect two Representatives.

District 25 shall consist of Moore County and shall elect one Representative.

District 26 shall consist of Anson and Montgomery Counties and shall elect one Representative.

District 27 shall consist of Richmond County and shall elect one Representative.

District 28 shall consist of Alleghany, Ashe, Stokes, Surry and Watauga Counties and shall elect three Representatives.

District 29 shall consist of Forsyth County and shall elect five Representatives.

District 30 shall consist of Davidson and Davie Counties and shall elect three Representatives.

District 31 shall consist of Rowan County and shall elect two Representatives.

District 32 shall consist of Stanly County and shall elect one Representative.

District 33 shall consist of Cabarrus and Union Counties and shall elect three Representatives.

District 34 shall consist of Caldwell, Wilkes and Yadkin Counties and shall elect three Representatives.

District 35 shall consist of Alexander and Iredell Counties and shall elect two Representatives.

District 36 shall consist of Mecklenburg County and shall elect eight Representatives.

District 37 shall consist of Catawba County and shall elect two Representatives.

District 38 shall consist of Gaston and Lincoln Counties and shall elect four Representatives.

District 39 shall consist of Avery, Burke and Mitchell Counties and shall elect two Representatives.

District 40 shall consist of Cleveland, Polk and Rutherford Counties and shall elect three Representatives.

District 41 shall consist of McDowell and Yancey Counties and shall elect one Representative.

District 42 shall consist of Henderson County and shall elect one Representative.

District 43 shall consist of Buncombe and Transylvania Counties and shall elect four Representatives.

District 44 shall consist of Haywood, Jackson, Madison and Swain Counties and shall elect two Representatives.

District 45 shall consist of Cherokee, Clay, Graham and Macon Counties and shall elect one Representative. (Code, s. 2845; Rev., c. 4399; 1911, c. 151; C. S., s. 6088; 1921, c. 144; 1941, c. 112; 1961, c. 265; 1966, Ex. Sess., c. 5, s. 1; 1971, c. 483.)

§ 163-201. Congressional districts specified. — For the purpose of nominating and electing members of the House of Representatives of the Congress of the United States in 1972 and every two years thereafter, the State of North Carolina shall be divided into 11 districts as follows:

First District: Beaufort, Bertie, Camden, Carteret, Chowan, Craven, Currituck, Dare, Gates, Greene, Hertford, Hyde, Jones, Lenoir, Martin, Pamlico, Pasquotank, Perquimans, Pitt, Tyrrell and Washington.

Second District: Caswell, Edgecombe, Franklin, Granville, Halifax, Nash, Northampton, Orange, Person, Vance, Warren and Wilson.

Third District: Bladen, Duplin, Harnett, Johnston, Lee, Onslow, Pender, Sampson and Wayne.

Fourth District: Chatham, Durham, Randolph and Wake.

Fifth District: Alleghany, Ashe, Davidson, Forsyth, Stokes, Surry and Wilkes.

Sixth District: Alamance, Guilford and Rockingham.

Seventh District: Brunswick, Columbus, Cumberland, Hoke, New Hanover and Robeson.

Eighth District: Anson, Cabarrus, Davie, Montgomery, Moore, Richmond, Rowan, Scotland, Stanly, Union and Yadkin.

Ninth District: Iredell, Lincoln and Mecklenburg.

Tenth District: Alexander, Burke, Caldwell, Catawba, Cleveland, Gaston and Watauga.

Eleventh District: Avery, Buncombe, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, McDowell, Macon, Madison, Mitchell, Polk, Rutherford, Swain, Transylvania and Yancey. (Rev., s. 4366; 1911, c. 97; C. S., s. 6004; 1931, c. 216; 1941, c. 3; 1961, c. 864; 1966, Ex. Sess., c. 7, s. 1; 1967, c. 775, s. 1; c. 1109; 1971, c. 257.)

NORM (IDEAL POPULATION)

The NORM, or IDEAL POPULATION, is the average number of people per Representative, Senator, or Congressman in the State. The NORM is obtained by dividing the total 1980 State population by the number of Representatives, Senators, or Congressmen in the State.

Examples:

N.C. House NORM: $$\frac{\text{1980 N.C. Population (5,842,110)}}{\text{Number of Representatives (120)}} = 48{,}684$$

N.C. Senate NORM: $$\frac{\text{1980 N.C. Population (5,842,110)}}{\text{Number of Senators (50)}} = 116{,}842$$

Congressional NORM: $$\frac{\text{1980 N.C. Population (5,842,110)}}{\text{Number of Congressmen from N.C. (11)}} = 531{,}101$$

POPULATION PER MEMBER:

To get the POPULATION PER MEMBER for a single district, divide the total population of the district by the number of members who represent the district.

Example:

Third State House District

Population per Member: $$\frac{\text{Third State House District 1980 Population (150,032)}}{\text{Number of Representatives from Third State House District (3)}} = 50{,}011$$

Note: Each Congressional district has one Member. The State House districts presently range from one to eight members, and the State Senate districts presently range from one to four members.

ABSOLUTE DEVIATION

The ABSOLUTE DEVIATION is the difference between the NORM and the POPULATION PER MEMBER in each district. The result is expressed as a positive number if the POPULATION PER MEMBER is greater than the NORM and as a negative number if the NORM is greater than the POPULATION PER MEMBER.

Examples:

ABSOLUTE DEVIATION for the Third House District:

Population per Representative	50,011
minus	
N.C. House NORM	-48,684
equals	
ABSOLUTE DEVIATION	+ 1,327

ABSOLUTE DEVIATION for the Fifteenth Senate District:

N.C. Senate NORM	116,842
minus	
Population per Senator	-113,999
equals	
ABSOLUTE DEVIATION	- 2,843

RELATIVE DEVIATION

The RELATIVE DEVIATION is obtained by dividing the ABSOLUTE DEVIATION by the NORM.

Examples:

RELATIVE DEVIATION for the Third State House District:

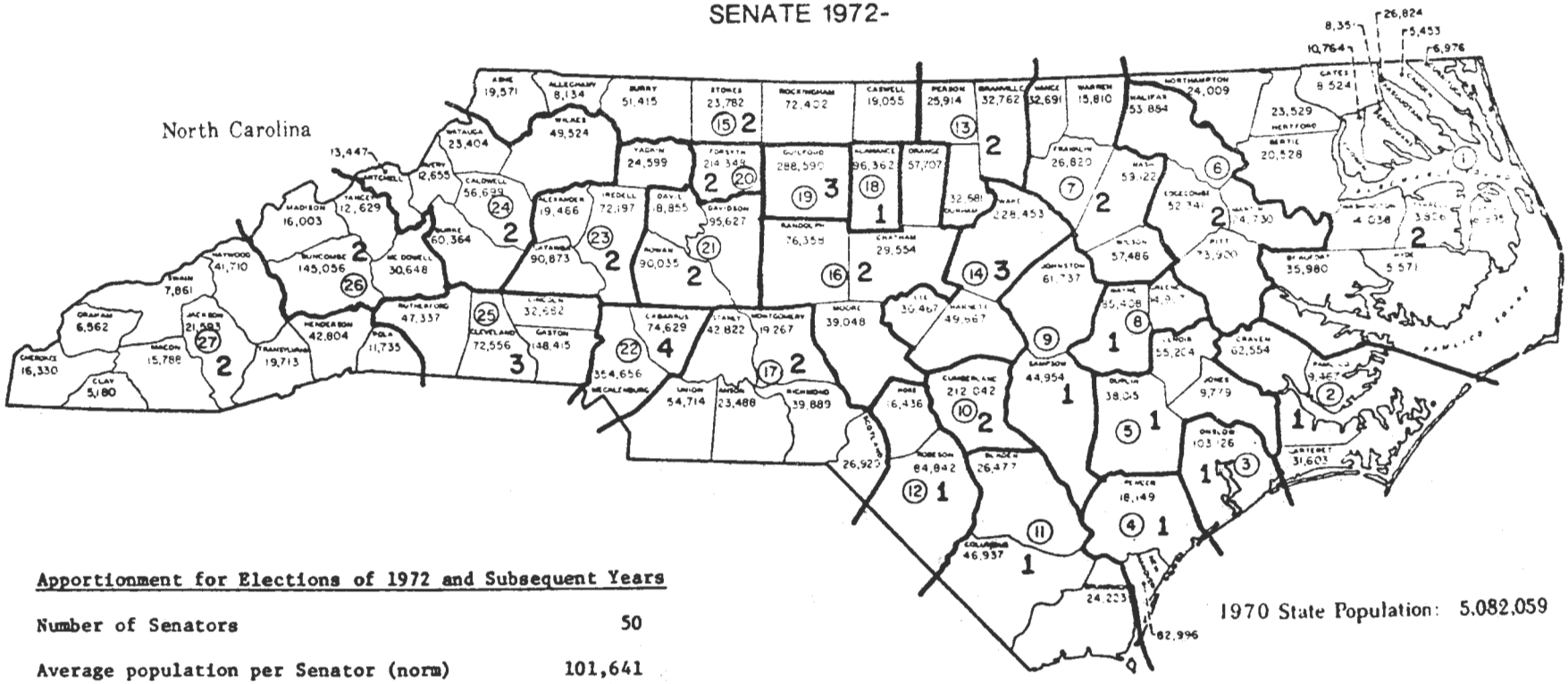
$$\frac{\text{ABSOLUTE DEVIATION } (+1,327)}{\text{Norm } (48,684)} = +.0273 = +2.73\%$$

RELATIVE DEVIATION for the Fifteenth Senate District:

$$\frac{\text{ABSOLUTE DEVIATION } (-2,843)}{\text{Norm } (116,842)} = -.0243 = -2.43\%$$

Figure 6

SENATE 1972-



Apportionment for Elections of 1972 and Subsequent Years

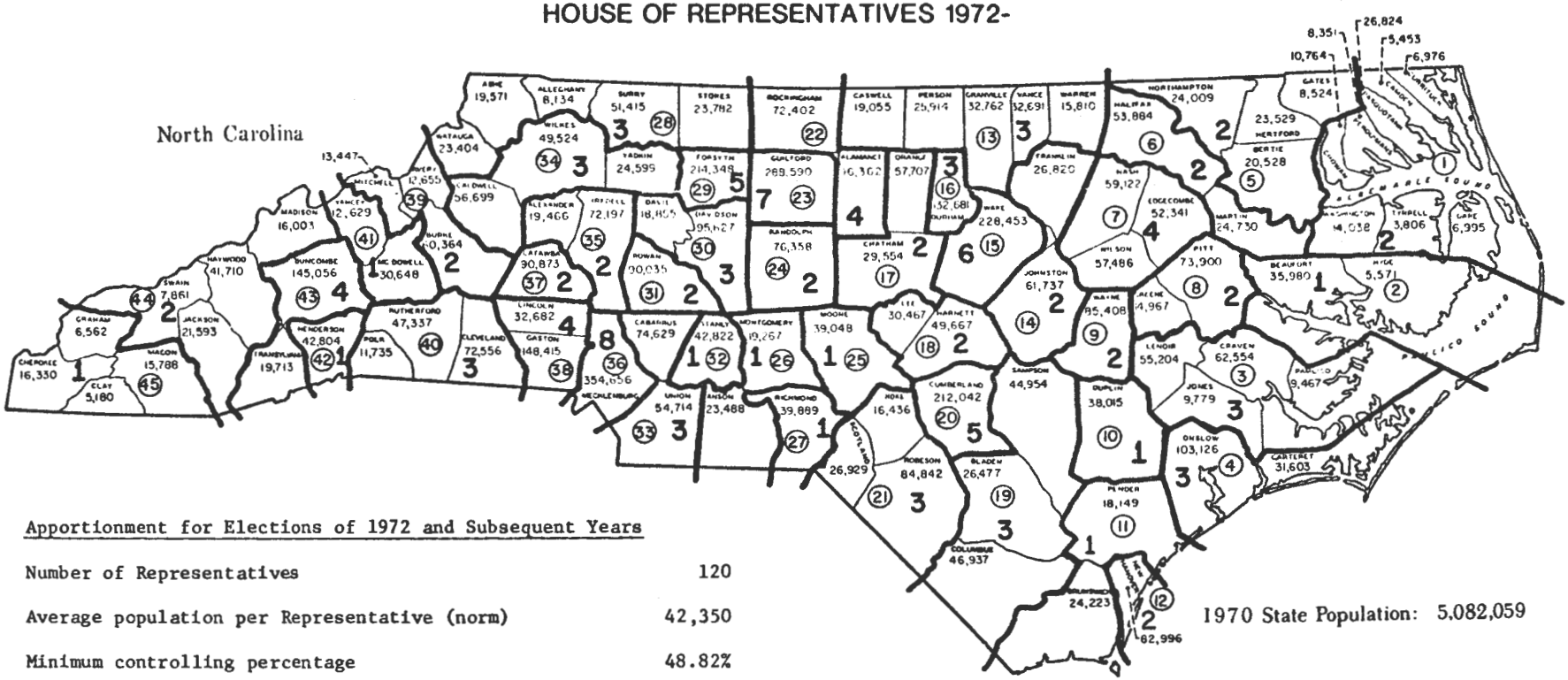
Number of Senators	50
Average population per Senator (norm)	101,641
Minimum controlling percentage	50.45%
Largest to smallest ratio	1.14 to 1
Range of deviation from norm	-6.89% to +6.30%
Average relative deviation per Senator	3.17%

1970 State Population: 5,082,059

Sess. Laws 1971, Ch. 1177

Figure 4

HOUSE OF REPRESENTATIVES 1972-



Apportionment for Elections of 1972 and Subsequent Years

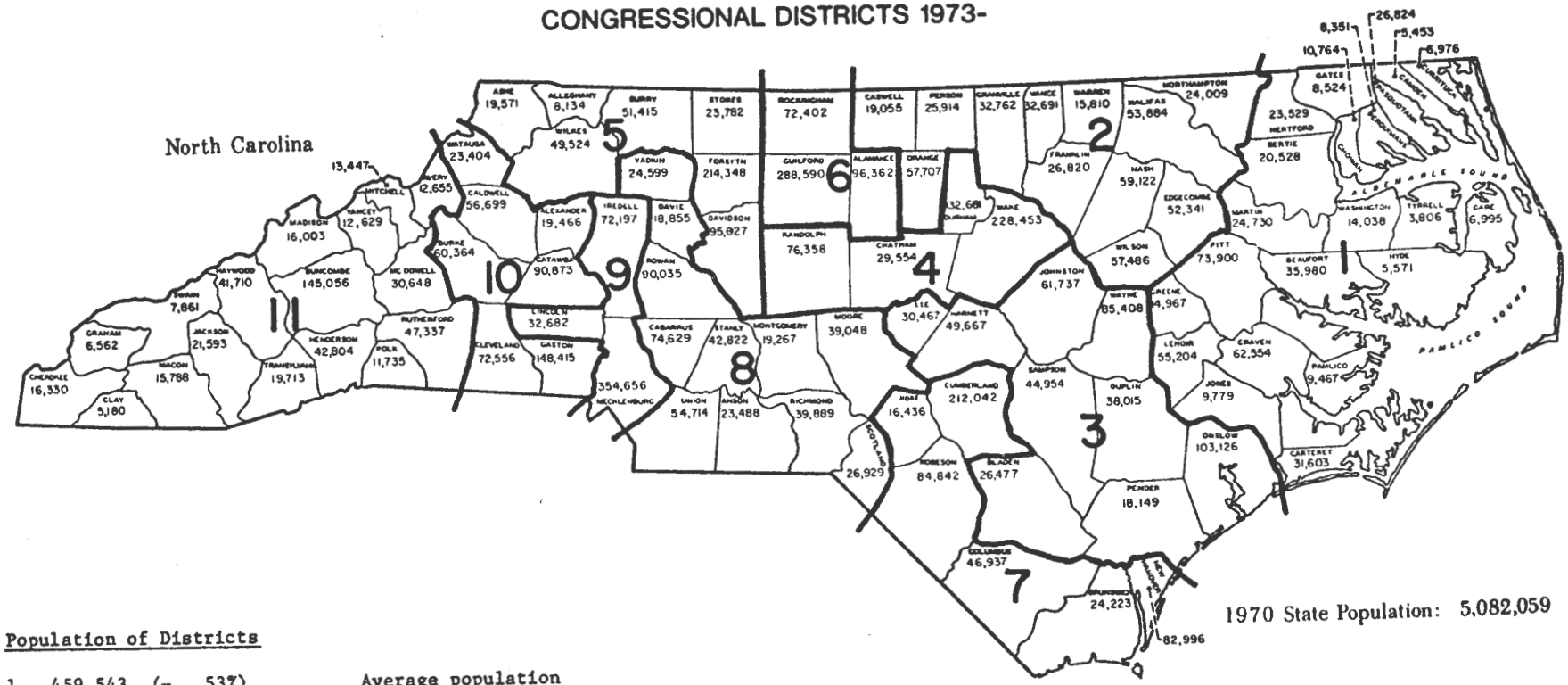
Number of Representatives	120
Average population per Representative (norm)	42,350
Minimum controlling percentage	48.82%
Largest to smallest ratio	1.21 to 1
Range of deviation from norm	- 10.24% to + 8.22%
Average relative deviation per Representative	4.07%

1970 State Population: 5,082,059

Sess. Laws 1971, Ch. 483

Figure 2

CONGRESSIONAL DISTRICTS 1973-



Population of Districts

1.	459,543	(- .53%)
2.	457,601	(- .95%)
3.	458,000	(- .87%)
4.	467,046	(+ 1.09%)
5.	462,401	(+ .09%)
6.	457,354	(- 1.01%)
7.	467,476	(+ 1.18%)
8.	454,275	(- 1.67%)
9.	459,535	(- .54%)
10.	471,777	(+ 2.12%)
11.	467,051	(+ 1.09%)
	5,082,059	

Average population per district (norm)	462,005
Range of deviation from norm	- 1.67% to + 2.12%
Average deviation from norm	1.01%
Largest to smallest ratio	1.04 to 1
Sess. Laws 1971, c. 257	

N. C. SENATE

LIST OF COUNTIES BY DISTRICT, PRELIMINARY POPULATION FIGURES, AND ALLOTMENT OF MEMBERS

AVERAGE POPULATION PER MEMBER (NORM) UNDER 1980 PRELIMINARY FIGURES: 116,842

Explanations:

* The number to the nearest thousandth of Senators the county or district would be entitled to under the 1980 preliminary population figures.

$ A positive figure means that the district has a greater population than is indicated by the NORM. A negative figure means that the district has less population than is indicated by the NORM.

DISTRICT (PRESENT NO. OF MEMBERS)	COUNTY	1980 PRELIMINARY POPULATION	NO. OF MEMBERS UNDER PRELIM.* POPULATION	PER MEMBER ABSOLUTE$ DEVIATION	PER MEMBER RELATIVE$ DEVIATION	DISTRICT ABSOL.$ DEV.	DISTRICT REL.$ DEV.
1st (2)	Beaufort	40,385	.346				
	Bertie	20,918	.179				
	Camden	5,820	.050				
	Chowan	12,497	.107				
	Currituck	11,084	.095				
	Dare	12,401	.106				
	Gates	8,813	.075				
	Hertford	23,109	.198				
	Hyde	5,725	.049				
	Northampton	22,289	.191				
	Pasquotank	25,150	.215				
	Perquimans	9,466	.081				
	Tyrell	3,969	.034				
	Washington	14,786	.127				
	Total	216,431	1.853	-8,627	-7.38%	-17,253	-7.38%
2nd (1)	Carteret	40,794	.349				
	Craven	70,631	.605				
	Pamlico	10,337	.088				
	Total	121,762	1.042			4,920	4.21%
3rd (1)	Onslow	112,165	.960			-4,677	-4.00%
4th (1)	New Hanover	102,779	.880				
	Pender	22,107	.189				
	Total	124,886	1.069			8,044	6.88%
5th (1)	Duplin	40,658	.348				
	Jones	9,673	.083				
	Lenoir	59,391	.508				
	Total	109,722	.939			- 7,120	-6.09%
6th (2)	Edgecombe	56,082	.480				
	Halifax	53,935	.462				
	Martin	25,735	.220				
	Pitt	88,521	.758				
	Total	224,273	1.920	-4,705	-4.03%	-9,411	-4.03%
7th (2)	Franklin	29,811	.255				
	Nash	66,338	.568				

	Vance	36,340	.311				
	Warren	16,217	.139				
	Wilson	62,723	.537				
	Total	211,429	1.810	-11,127	-9.52%	-22,255	-9.52%
8th	Greene	15,893	.136				
(1)	Wayne	96,513	.826				
	Total	112,411	.962			- 4,431	-3.79%
9th	Johnston	70,221	.601				
(1)	Sampson	49,243	.421				
	Total	119,464	1.022			2,622	2.24%
10th	Cumberland	246,522	2.110	6,419	5.49%	12,838	5.49
(2)							
11th	Bladen	30,069	.257				
(1)	Brunswick	35,349	.303				
	Columbus	51,015	.437				
	Total	116,433	.997			- 409	-0.35%
12th	Hoke	20,293	.174				
(1)	Robeson	101,401	.868				
	Total	121,694	1.042			4,852	4.15%
13th	Durham	150,035	1.284				
(2)	Granville	33,855	.290				
	Person	29,110	.249				
	Total	213,000	1.823	-10,342	-8.85%	-20,684	-8.85%
14th	Harnett	59,249	.507				
(3)	Lee	36,754	.315				
	Wake	298,753	2.557				
	Total	394,756	3.379	14,743	12.62%	44,230	12.62%
15th	Alleghany	9,570	.082				
(2)	Ashe	22,336	.191				
	Caswell	20,630	.177				
	Rockingham	83,164	.712				
	Stokes	32,968	.282				
	Surry	59,330	.508				
	Total	227,998	1.952	-2,843	-2.43%	-5,686	-2.43%
16th	Chatham	33,374	.286				
(2)	Moore	50,374	.431				
	Orange	76,603	.656				
	Randolph	91,187	.780				
	Total	251,538	2.153	8,927	7.64%	17,854	7.64%
17th	Anson	25,360	.217				
(2)	Montgomery	22,355	.191				
	Richmond	45,383	.388				
	Scotland	32,244	.276				
	Stanly	48,192	.412				
	Union	70,212	.601				
	Total	243,746	2.085	5,031	4.31%	10,062	4.31%
18th	Alamance	98,964	.847			-17,878	-15.30%

(1)							
19th	Guilford	314,839	2.695	-11,896	-10.18%	-35,687	-10.18%
(3)							
20th	Forsyth	242,581	2.076	4,449	3.81%	8,897	3.81%
(2)							
21st	Davidson	112,618	.964				
(2)	Davie	24,451	.209				
	Rowan	98,829	.846				
	Total	235,898	2.019	1,107	0.95%	2,214	0.95%
22nd	Cabarrus	85,513	.732				
(4)	Mecklenburg	400,586	3.428				
	Total	486,099	4.160	4,683	4.01%	18,731	4.01%
23rd	Alexander	24,774	.212				
(2)	Catawba	104,788	.897				
	Iredell	82,461	.706				
	Yadkin	28,367	.243				
	Total	240,390	2.058	3,353	2.87%	6,706	2.87%
24th	Avery	14,422	.123				
(2)	Burke	72,357	.619				
	Caldwell	67,874	.577				
	Mitchell	14,341	.123				
	Watauga	31,617	.271				
	Wilkes	58,323	.499				
	Total	258,478	2.212	12,397	10.61%	24,794	10.61%
25th	Cleveland	82,796	.709				
(3)	Gaston	161,288	1.380				
	Lincoln	42,484	.364				
	Rutherford	53,299	.456				
	Total	339,867	2.909	-3,554	-3.04%	-10,659	-3.04%
26th	Buncombe	160,265	1.372				
(2)	Madison	16,791	.144				
	McDowell	35,013	.300				
	Yancey	14,955	.128				
	Total	227,024	1.943	-3,330	-2.85%	-6,660	-2.85%
27th	Cherokee	18,940	.162				
(2)	Clay	6,593	.056				
	Graham	7,194	.062				
	Haywood	46,449	.398				
	Henderson	58,088	.497				
	Jackson	25,878	.221				
	Macon	20,138	.172				
	Polk	12,904	.110				
	Swain	10,240	.088				
	Transylvania	23,316	.200				
	Total	229,740	1.966	-1,972	-1.69%	-3,944	-1.69%
GRAND TOTAL		5,842,110					

N. C. HOUSE

LIST OF COUNTIES BY DISTRICT, PRELIMINARY POPULATION FIGURES, AND ALLOTMENT OF MEMBERS
AVERAGE POPULATION PER MEMBER (NORM) UNDER 1980 PRELIMINARY FIGURES: 48,684

Explanations:

* The number to the nearest thousandth of Representatives the county or district would be entitled to under the 1980 preliminary population figures.

$ A positive figure means that the district has a greater population than is indicated by the NORM. A negative figure means tha the district has less population than is indicated by the NORM.

DISTRICT (PRESENT NO. OF MEMBERS)	COUNTY	1980 PRELIMINARY POPULATION	NO. OF MEMBERS UNDER PRELIM.* POPULATION	PER MEMBER ABSOLUTE$ DEVIATION	PER MEMBER RELATIVE$ DEVIATION	DISTRICT ABSOL.$ DEV.	DISTRICT REL.$ DEV.
1st	Camden	5,820	.120				
(2)	Chowan	12,497	.257				
	Currituck	11,084	.228				
	Dare	12,401	.255				
	Pasquotank	25,150	.517				
	Perquimans	9,466	.194				
	Tyrrell	3,988	.082				
	Washington	14,786	.304				
	Total	95,192	1.957	-1,088	-2.23%	-2,176	-2.23%
2nd	Beaufort	40,385	.830				
(1)	Hyde	5,725	.118				
	Total	46,110	.948			-2,574	-5.29%
3rd	Craven	70,631	1.451				
(3)	Jones	[illegible]	.199				
	Lenoir	59,[illegible]	1.220				
	Pamlico	10,337	.212				
	Total	150,032	3.082	1,327	2.73%	3,980	2.73%
4th	Carteret	40,794	[illegible]				
(3)	Onslow	112,165	2.304				
	Total	152,959	3,142	2,302	4.73%	6,907	4.73%
5th	Bertie	20,918	.430				
(2)	Gates	8,813	.181				
	Hertford	23,109	.475				
	Northampton	22,289	.458				
	Total	75,129	1.544	-11,119	-22.84%	-22,239	-22.84%
6th	Halifax	53,935	1.108				
(2)	Martin	25,735	.529				
	Total	79,670	1.637	-8,849	-18.18%	-17,698	-18.18%
7th	Edgecombe	56,082	1.152				
(4)	Nash	66,338	1.363				
	Wilson	62,723	1.288				
	Total	185,143	3.803	-2,398	-4.93%	-9,593	-4.93%
8th	Greene	15,898	.327				

UNOFFICIAL PRELIMINARY FIGURES

(2)	Pitt	88,521	1.818				
	Total	104,419	2.145	3,526	7.24%	7,051	7.24%
9th (2)	Wayne	96,513	1.982	- 428	- .88%	- 855	- .88%
10th (1)	Duplin	40,658	.835			-8,026	-16.49%
11th	Brunswick	35,349	.726				
(1)	Pender	22,107	.454				
	Total	57,456	1.180			8,772	18.02%
12th (2)	New Hanover	102,779	2.111	2,706	5.56%	5,411	5.56%
13th	Caswell	20,630	.424				
(3)	Granville	33,855	.695				
	Person	29,110	.598				
	Vance	36,340	.746				
	Warren	16,217	.333				
	Total	136,152	2.796	-3,300	-6.78%	-9,900	-6.78%
14th	Franklin	29,811	.612				
(2)	Johnston	70,221	1.442				
	Total	100,032	2.054	1,332	2.74%	2,664	2.74%
15th (6)	Wake	[illegible]	6.137	1,108	2.28%	6,649	2.28%
16th (3)	Durham	150,035	[illegible],082	1,328	2.73%	3,983	2.73%
17th	Chatham	33,374	.686				
(2)	Orange	76,603	1.573				
	Total	109,977	2.259	6,305	12.95%	12,609	12.95%
18th	Harnett	59,249	1.217				
(2)	Lee	36,754	.755				
	Total	96,003	1.972	- 683	-1.40%	-1,365	-1.40%
19th	Bladen	30,069	.618				
(3)	Columbus	51,015	1.048				
	Sampson	49,243	1.011				
	Total	130,327	2.677	-5,242	-10.77%	-15,725	-10.77%
20th (5)	Cumberland	246,522	5.064	620	1.27%	3,102	1.27%
21st	Hoke	20,293	.417				
(3)	Scotland	32,244	.662				
	Robeson	101,401	2.083				
	Total	153,938	3.162	2,629	5.40%	7,886	5.40%
22nd	Alamance	98,964	2.033				
(4)	Rockingham	83,164	1.708				
	Total	182,128	3.741	[illegible],152	-6.47%	-12,608	-6.47%

23rd (7)	Guilford	314,839	6.467	-3,707	-7.61%	-25,949	-7.61%
24th (2)	Randolph	91,187	1.873	-3,091	-6.35%	- 6,181	-6.35%
25th (1)	Moore	50,374	1.035			1,690	3.47%
26th (1)	Anson	25,360	.521				
	Montgomery	22,355	.459				
	Total	47,715	.980			- 969	-1.99%
27th (1)	Richmond	45,383	.932			-3,301	-6.78%
28th (3)	Alleghany	9,570	.197				
	Ashe	22,336	.459				
	Stokes	32,968	.677				
	Surry	59,330	1.219				
	Watauga	31,611	.649				
	Total	155,815	3.201	3,254	6.68%	9,763	6.68%
29th (5)	Forsyth	242,581	4.983	- 168	-0.35%	- 839	-0.35%
30th (3)	Davidson	112,618	2.313				
	Davie	24,451	.502				
	Total	137,069	2.815	-2,994	-6.15%	-8,983	-6.15%
31st (2)	Rowan	98,829	2.030	731	1.50%	1,461	1.50%
32nd (1)	Stanly	48,192	.989			- 492	-1.01%
33rd (3)	Cabarrus	85,513	1.756				
	Union	70,212	1.442				
	Total	155,725	3.198	3,224	6.62%	9,673	6.62%
34th (3)	Caldwell	67,374	1.384				
	Wilkes	58,323	1.198				
	Yadkin	28,367	.583				
	Total	154,064	3.165	2,671	5.49%	8,012	5.49%
35th (2)	Alexander	24,774	.509				
	Iredell	82,461	1.694				
	Total	107,235	2.203	4,934	10.13%	9,867	10.13%
36th (8)	Mecklenburg	400,586	8.228	1,389	2.85%	11,114	2.85%
37th (2)	Catawba	104,788	2.152	3,710	7.62%	7,420	7.62%
38th (4)	Gaston	161,288	3.313				
	Lincoln	42,484	.873				
	Total	203,772	4.186	2,259	4.64%	9,036	4.64%

39th (2)	Avery	14,422	.296				
	Burke	72,357	1.486				
	Mitchell	14,391	.296				
	Total	101,170	2.078	1,901	3.90%	3,802	3.90%
40th (3)	Cleveland	82,796	1.701				
	Polk	12,904	.265				
	Rutherford	53,299	1.095				
	Total	148,999	3.061	982	2.02%	2,947	2.02%
41st (1)	McDowell	35,013	.719				
	Yancey	14,955	.307				
	Total	49,968	1.026			1,284	2.64%
42nd (1)	Henderson	58,088	1.193			9,404	19.32%
43rd (4)	Buncombe	160,265	3.292				
	Transylvania	23,316	.479				
	Total	183,581	3.771	-2,789	-5.73%	-11,155	-5.73%
44th (2)	Haywood	46,449	.954				
	Jackson	25,878	.532				
	Madison	16,791	.345				
	Swain	10,240	.210				
	Total	99,358	2.041	995	2.04%	1,990	2.04%
45th (1)	Cherokee	18,940	.389				
	Clay	6,593	.135				
	Graham	7,194	.148				
	Macon	20,138	.414				
	Total	52,865	1.086			4,181	8.59%
GRAND TOTAL		5,842,110					

N. C. CONGRESSIONAL DISTRICTS
LIST OF COUNTIES BY DISTRICT, PRELIMINARY POPULATION FIGURES, AND ALLOTMENT OF MEMBERS
AVERAGE POPULATION PER MEMBER (NORM), ASSUMING NORTH CAROLINA BEING ALLOCATED
11 U.S. REPRESENTATIVES, UNDER 1980 PRELIMINARY FIGURES: 531,101

Explanations:

* The number to the nearest thousandth of U.S. Representatives the county or district would be entitled to under the 1980 preliminary population figures.

$ A positive figure means that the district has a greater population than is indicated by the NORM. A negative figure means that the district has less population than is indicated by the NORM.

DISTRICT	COUNTY	1980 PRELIMINARY POPULATION	NO. OF MEMBERS UNDER PRELIM.* POPULATION	ABSOLUTE$ DEVIATION	RELATIVE$ DEVIATION
1st	Beaufort	40,385	.076		
	Bertie	20,918	.039		
	Camden	5,820	.011		
	Carteret	40,794	.077		
	Chowan	12,497	.024		
	Craven	70,631	.133		
	Currituck	11,084	.021		
	Dare	12,401	.023		
	Gates	8,813	.017		
	Greene	15,898	.030		
	Hertford	23,109	.044		
	Hyde	5,725	.011		
	Jones	9,673	.018		
	Lenoir	59,391	.112		
	Martin	25,735	.049		
	Pamlico	10,337	.020		
	Pasquotank	25,150	.047		
	Perquimans	9,466	.018		
	Pitt	88,521	.167		
	Tyrell	3,988	.008		
	Washington	14,786	.028		
	Total	515,122	.973	-15,979	-3.01%
2nd	Caswell	20,630	.039		
	Edgecombe	56,082	.106		
	Franklin	29,811	.056		
	Granville	33,855	.064		
	Halifax	53,935	.102		
	Nash	66,338	.125		
	Northampton	22,289	.042		
	Orange	76,603	.144		
	Person	29,110	.055		
	Vance	36,340	.068		
	Warren	16,217	.031		
	Wilson	62,723	.118		
	Total	503,933	.950	-27,168	-5.12%

3rd	Bladen	30,069	.057		
	Duplin	40,658	.077		
	Harnett	59,249	.112		
	Johnston	70,221	.132		
	Lee	36,754	.069		
	Onslow	112,165	.211		
	Pender	22,107	.042		
	Sampson	49,243	.093		
	Wayne	96,513	.182		
	Total	516,979	.975	-14,122	-2.66%
4th	Chatham	33,374	.063		
	Durham	150,035	.282		
	Randolph	91,187	.172		
	Wake	298,753	.563		
	Total	573,349	1.080	42,248	7.95%
5th	Alleghany	9,570	.018		
	Ashe	22,336	.042		
	Davidson	112,618	.212		
	Forsyth	242,581	.457		
	Stokes	32,968	.062		
	Surry	59,330	.112		
	Wilkes	58,[illegible]	.110		
	Total	537,[illegible]	1.013	6,525	1.25%
6th	Alamance	98,964	.186		
	Guilford	314,839	.593		
	Rockingham	83,164	.157		
	Total	496,967	.936	-34,134	-6.43%
7th	Brunswick	35,349	.067		
	Columbus	51,015	.096		
	Cumberland	246,522	.464		
	Hoke	20,293	.038		
	New Hanover	102,779	.194		
	Robeson	101,401	.191		
	Total	557,359	1.050	26,258	4.94%
8th	Anson	25,360	.048		
	Cabarrus	85,513	.161		
	Davie	24,451	.046		
	Montgomery	22,355	.042		
	Moore	50,374	.095		
	Richmond	45,383	.085		
	Rowan	98,829	.186		
	Scotland	32,244	.061		
	Stanly	48,192	.091		
	Union	70,212	.132		
	Yadkin	28,367	.053		
	Total	531,280	1.000	179	.03%
9th	Iredell	82,461	.155		
	Lincoln	42,484	.080		
	Mecklenburg	400,586	.754		
	Total	525,531	.989	-5,570	-1.05%
0th	Alexander	24,774	.047		

	Burke	72,357	.136		
	Caldwell	67,374	.127		
	Catawba	104,788	.197		
	Cleveland	82,796	.156		
	Gaston	161,288	.304		
	Watauga	31,611	.060		
	Total	544,988	1.027	13,887	2.61%
11th	Avery	14,422	.027		
	Buncombe	160,265	.302		
	Cherokee	18,940	.036		
	Clay	6,593	.012		
	Graham	7,194	.014		
	Haywood	46,449	.087		
	Henderson	58,088	.109		
	Jackson	25,878	.049		
	McDowell	35,013	.066		
	Macon	20,138	.038		
	Madison	16,791	.032		
	Mitchell	14,391	.027		
	Polk	12,904	.024		
	Rutherford	53,089	.100		
	Swain	10,044	.019		
	Transylvania	23,316	.044		
	Yancey	14,955	.028		
	Total	538,876	1.014	7,775	1.46%
	GRAND TOTAL	5,842,110			