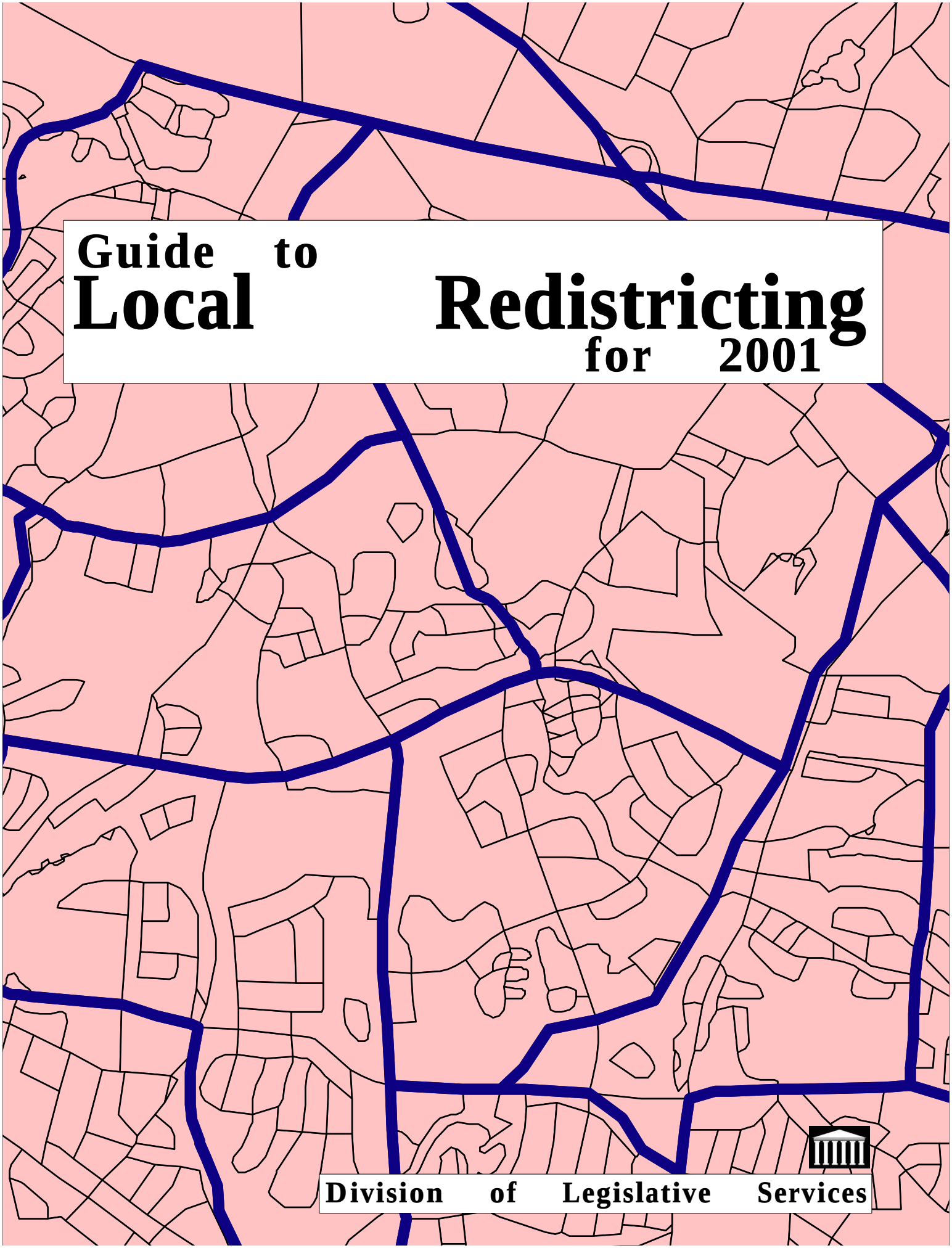

Guide to Local Redistricting for 2001

Division of Legislative Services

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Introduction

In November 1980 and 1990, the Division of Legislative Services provided *A Guide to Local Redistricting* to assist the localities that elected their governing bodies by election districts in their preparation for decennial redistricting. Even localities that did not redistrict were reviewing their precincts and wanted to be aware of the possible local impact of redrawn congressional and state legislative district lines.

This expanded and updated *Guide to Local Redistricting for 2001* reflects changes in the law, census data, and technology over the past decade.

Any description of the law and schedule for redistricting presents a dilemma. The law and schedule keep changing in response to new developments. Each locality must pay close attention to developments at the 2001 regular and special sessions of the General Assembly, on the national scene concerning the 2000 Census, and in case law.

With this caution in mind, the *Guide* outlines the basic components of the redistricting scene. The materials are organized and presented as follows:

I. Virginia Law Requirements: Redistricting in 2001
An explanation of the state constitutional and statutory provisions that govern redistricting in 2001.

II. Virginia Law Requirements: Precincts
A description of the statutory provisions that mandate how precincts are drawn and revised.

III. The 2000 Census
A description of the 2000 Census, the census products that will be used in redistricting, and the precinct data that will be included in the census reports.

IV. Two Sets of Census Numbers
A discussion of the possibility of two sets of 2000 Census population statistics.

V. Legal Standards Applicable to Redistricting Plans
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VI. The Voting Rights Act Preclearance Process
A description of the preclearance process for redistricting plans and precinct ordinances.

VII. Some Practical Suggestions: A Possible Timetable for Redistricting
A discussion of the timing for redistricting at the local level, a hypothetical timetable, and a checklist of steps to prepare for and complete redistricting.

VIII. The Impact of Redistricting on the Election Process
Some highlights of the work required for voter registrars and election officials to conduct elections in 2001, 2002, and 2003 from new districts and precincts.

IX. Developments in Technology
A brief discussion of the computer boom that has increased the volume of information and the types of technology that will be used in redistricting.

The Division of Legislative Services has received much help from general registrars and other local officials in the work done for the Census Bureau's programs for 2000 Census precinct population reports. The Joint Reapportionment Committee has overseen Virginia's participation in the census program and has recognized that the localities, as well as the state, face difficult timing problems and a complex redistricting task in 2001.

This *Guide* has been prepared in response to the concerns of the Committee and of local officials who have requested an update of the 1990 *Guide*.

Much has changed since the 1990s redistricting, and this *Guide* will highlight recent developments. A variety of changes come into play: new case law on racial gerrymandering, the prospect of two sets of census population counts, multiracial categories, the Internet as a source of maps and population numbers, elected school boards, revisions in Virginia's election laws, and more.

This *Guide* is only a starting point, and the redistricting process should be underway. Officials in localities should be working now with their planning departments and information systems staff, electoral boards, general registrars, and county and city attorneys to plan for redistricting and to complete the task in a timely fashion.

I. Virginia Law Requirements: Redistricting in 2001

A. The Virginia Constitution

Article VII, Section 5, provides that the governing bodies of counties, cities, and towns are to be popularly elected. The Constitution allows elections at large or by districts within the locality. If elections are by districts, the locality must redistrict each 10 years beginning in 1971. Section 5 provides in pertinent part:

> The governing body of each county, city, or town shall be elected by the qualified voters of such county, city, or town in the manner provided by law.
>
> If the members are elected by district, the district shall be composed of contiguous and compact territory and shall be so constituted as to give, as nearly as is practicable, representation in proportion to the population of the district. When members are so elected by district, the governing body of any county, city, or town may, in a manner provided by law, increase or diminish the number, and change the boundaries, of districts, and shall in 1971 and every ten years thereafter, and also whenever the boundaries of such districts are changed, reapportion the representation in the governing body among the districts in a manner provided by law. Whenever the governing body of any such unit shall fail to perform the duties so prescribed in the manner herein directed, a suit shall lie on behalf of any citizen thereof to compel performance by the governing body.

In essence, the Constitution provides:

1. That a county, city, or town, must redistrict in 2001 if it elects the governing body members from districts;
2. That the districts must be drawn "to give as nearly as is practicable representation in proportion to the population of the district," i.e., "one person-one vote";
3. That the districts must "be composed of contiguous and compact territory"; and
4. That any citizen of the locality can go to court to compel the governing body to redraw the lines if it fails to do so.

The requirement to redistrict in 2001 has been understood to require redistricting in advance of the November 2001 elections for districts electing representatives at that time. **The House of Delegates and counties with staggered terms face a tight timetable to redistrict in time for the November 2001 elections.** Cities with regular elections in 2002 and counties with regular elections for the entire board in 2003 must redistrict in 2001 but have the entire year to accomplish that task. Similarly, the General Assembly has more time in 2001 to redraw congressional and state Senate district lines.

> The 40 counties that elect their boards from districts for staggered terms are: Albemarle, Alleghany, Amelia, Amherst, Appomattox, Bedford, Botetourt, Campbell, Charlotte, Culpeper, Essex, Floyd, Fluvanna, Franklin, Frederick, Giles, Gloucester, Grayson,

Greene, Halifax, Henry, Isle of Wight, James City, Lancaster, Louisa, Lunenburg, Montgomery, Nelson, Northumberland, Patrick, Prince Edward, Roanoke, Rockingham, Shenandoah, Smyth, Stafford, Warren, Washington, Wise, and Wythe.

B. State Statutes

A number of sections in the Code of Virginia contain provisions that localities should review in preparation for redistricting. These Code sections are set out in Appendix A. **In addition, each city and town should review its charter provisions. Any county with a charter or an optional form of government should review its charter or the statutes applicable to its form of government for special provisions applicable to redistricting.**

Redistricting in 2001; equal population; compactness and contiguity; combinations of district types. Section 24.2-304.1 B repeats the constitutional requirements that local redistricting be done in 2001, that the districts shall "give as nearly as is practicable representation in proportion to the population of the district or ward," and that the districts must "be composed of contiguous and compact territory." See, also, § 24.2-305 A. These legal requirements are discussed in Part V below.

Section 24.2-304.1 A provides that the governing body has the power, absent a charter or general law restriction, to provide by ordinance for single-member districts, multi-member districts, at-large districts, or any combination of such districts. The most common pattern for counties is all single-member districts, but there are a number of at-large and multi-member districts or combination plans. Approximately half of the cities elect their councils at large while half of the cities elect the council from single-member districts or combination plans. Section 24.2-304.1 D restricts local redistricting at times other than the required decennial redistricting.

Section 15.2-1400 B provides that the governing body of any county, city, or town will consist of three to 11 members.

Use of census data. Section 24.2-304.1 C was amended in 2000 to require the use of unadjusted census population numbers in local redistricting. The 2000 Census and possible publication of both actual counts and adjusted counts are discussed in Parts III and IV below. Localities will need to follow developments concerning census data since these 2000 amendments to § 24.2-304.1 are a matter of ongoing litigation in November 2000.

Effective date of local redistricting measures; completion of terms. Section 24.2-311 B provides that a local redistricting measure takes effect immediately but does not operate to cut short the term of any governing body member. The governing body members in office on the effective date of the decennial redistricting ordinance complete their terms. The decennial redistricting ordinance becomes effective immediately for the purpose of preparing for the next election, but the governing body members in office serve out their full terms. The basic state policy is to maintain the regular election schedule for these offices. See, also, § 24.2-304.6.

For example, in a county with staggered terms, five members may be elected in November 2001 for four-year terms beginning January 1, 2002, and four members may be elected in November 2003 for four-year terms beginning January 1, 2004. The law provides that the 2001 elections for five seats will be conducted from the new districts. The four members elected in 1999 will complete their terms, and their successors will be elected from new districts in 2003. See § 24.2-219 C for staggered term provisions.

Under § 24.2-311 C and D, a vacancy occurring after the effective date of a decennial redistricting ordinance should be filled from the new district that "most closely approximates the district in which the vacancy occurred" and added seats should be filled at the next appropriate election.

Miscellaneous Provisions. Each locality should review the Code of Virginia sections in Appendix A. There are a number of requirements and provisions in addition to the ones described above. For example:

- Local election district boundaries must follow "clearly defined and clearly observable" lines. § 24.2-305. This requirement also applies to precincts and is discussed in Part II below.

- Localities are authorized to expend local funds to accomplish redistricting. § 24.2-304.2.

- Redistricting plans must be adopted by ordinance, include a description of the district boundaries and map, and be included in the minutes of the governing body. § 24.2-304.3.

- Copies of the ordinance, description, and map must be sent to the local electoral board, Secretary of the Commonwealth, State Board of Elections, and Division of Legislative Services. § 24.2-304.3.

- As provided in the Constitution, any citizen of a locality may bring suit to compel redistricting or to challenge a redistricting plan for violating equal population requirements. § 24.2-304.4.

- Localities must notify the Attorney General's office of any civil action filed to challenge election district boundaries or redistricting plans. § 24.2-304.5. See, also, § 2.1-121.1.

- Changes in local election districts and precincts must be enacted 60 or more days before a general election. Notice must be published for two successive weeks prior to enactment of the change. Notice of any election district or polling place change must be mailed to voters at least 15 days before the next general, special, or primary election. § 24.2-306.

- Counties are authorized to use magisterial districts for the election of supervisors and to redraw the magisterial district lines decennially. Alternatively, counties may retain magisterial district lines for historic and record purposes and establish a separate set of election districts for electing the board. Many counties have chosen to retain their historic magisterial districts and redraw a separate set of election district lines for the decennial redistricting. § 15.2-1211. The maps drawn by the Census Bureau will show either the historic magisterial district lines or current board of supervisors election district lines as directed by the county.

- Local governing bodies may apply to the circuit court for a legal enumeration to be paid for the locality. This provision does not relate directly to redistricting. § 15.2-1414.

C. Elected School Boards

In the last redistricting there were no elected school boards. Since 1992 numerous localities have approved the change from appointed to elected school boards. The general state law authorizing elected school boards is found in § 22.1-57.3. That section is not set out at length in Appendix A, but three key provisions in the section require the elections, terms, and election districts for school boards to mirror those for governing body members:

> Elections of school board members in a county, city, or town shall be held to coincide with the elections for members of the governing body of the of the county, city, or town at the regular general election in November or the regular general election in May, as the case may be. . . .
>
> The terms of the members of the elected school board for any county, city, or town shall be the same as the terms of the members of the governing body for the county, city, or town. In any locality in which both the school board and the governing body are elected from election districts, as opposed to being elected wholly on an at-large basis, the elections of the school board member and governing body member from each specific district shall be held simultaneously except as otherwise provided in § 22.1-57.3:1. . . .
>
> In any case in which school board members are elected from election districts, as opposed to being elected from the county, city, or town at large, the election districts

> for the school board shall be coterminous with the election districts for the county, city, or town governing body, except as may be specifically provided for the election of school board members in a county, city, or town in which the governing body is elected at large.

Not all localities have changed from appointed to elected school boards, but **most of the counties and cities that elect their governing bodies from districts will be redrawing those district lines for both their governing body and their school board.**

Again it is important that each locality should review any applicable charter provision, special law, or optional form of government provision that might apply to the redrawing of elected school board districts.

D. Miscellaneous Questions

Must redistricting be completed by a county with staggered terms in time for the 2001 elections? The answer is yes – absent an insurmountable barrier to getting the work done. The terms of some incumbents will expire as of January 1, 2002. If the county fails to redistrict in time for November 2001 elections from new districts for those members whose terms expire at the end of 2001, it will be subject to challenge in court. It will then face several possible outcomes: a court-drawn plan, a plaintiff's plan ordered into effect by the court, and delayed elections.

Should counties and cities not facing November 2001 elections try to complete local redistricting before the General Assembly redraws House of Delegates district lines? The answer is no. These counties and cities will want to proceed to redistrict but may have time to review the House of Delegates district lines, and possible state Senate and congressional district lines, before making final election district and precinct line revisions. They may be able to avoid split precincts and this topic is discussed in Part II below. Counties with staggered terms will be drawing district lines at the same time that the General Assembly is drawing House of Delegates district lines and may not be able to wait to see the House of Delegates lines. We cannot predict now how quickly the General Assembly will act to draw Senate and congressional district lines in 2001.

If a locality reviews the 2000 Census numbers and finds that its districts are balanced and meet population requirements, does it have to take any action in 2001? The answer is yes. The locality should review its districts and precincts and take public comment into account. It should also consider all applicable legal standards discussed in Part V, including Voting Rights Act implications. If the existing districts meet all applicable legal standards, they may be retained unchanged.

Where are special populations such as resident college students and prison inmates counted? The answer is the same for the 2000 Census as it was for the 1990 Census – at the college or prison. The pertinent Census Bureau residence rules have not changed and these groups are counted in the locality where the college or prison is located. Under § 24.2-304.1, localities must use the Census reports in redistricting. The implications for localities with large special populations (students, prisons, and military) should be reviewed with the local attorney. See, the discussion of this issue in the Brunswick County litigation at pages 22 and 23 below and *Hardy v. Board of Supervisors*, 387 F.Supp. 1252 (E.D. Va. 1975).

II. Virginia Law Requirements: Precincts

A. Reasons to Review Precincts

The precinct freeze and precinct review. All localities should review their voting precinct boundaries in 2001. Those boundaries have been frozen since September 1, 1998. The freeze ends May 15, 2001. § 24.2-309.1. The precinct boundaries were frozen so that the state could participate with the Census Bureau in the program to put voting precinct boundaries on the census maps and obtain 2000 population counts for each of Virginia's precincts. Localities have several reasons to review and possibly redraw precinct lines.

Precinct size requirements. Precincts may have grown too large or too small during the freeze period. They may have too many or too few registered voters to be efficient and cost effective. Section 24.2-307 provides that county precincts can be established with no more than 5,000 registered voters and no fewer than 100 registered voters. City precincts can be established with no more than 5,000 registered voters and no fewer than 500 registered voters. Section 24.2-307 also requires the general registrar to notify the governing body whenever more than 4,000 persons have voted in a precinct in a presidential election. The governing body must proceed within six months after receipt of that notice to revise the precinct boundaries to meet the size requirements set out above.

For applying these size requirements, "registered voters" means the voters on the registration system with active status and does not include inactive voters. § 24.2-101.

New local election district lines. State law requires that each precinct must be wholly contained in one local election district. § 24.2-307. A locality cannot split a precinct in drawing local election district lines. When a locality redraws local election district lines, it necessarily will be adjusting some precinct lines.

New state legislative and congressional district lines. Each locality will want to review its precincts to avoid splits by new state legislative and congressional district lines to the extent feasible. A split precinct in which voters may be voting in different House of Delegates, state Senate or congressional contests creates confusion for voters and headaches for election officials.

State law gives localities the authority to create precincts smaller than the required minimum size to avoid split precincts. There is also a backup provision that the State Board of Elections shall set procedures to conduct elections in split precincts. §24.2-309. State legislative and congressional district lines drawn in 1991 split a substantial number of local precincts. Technical bills that adjusted state-drawn lines in the 1992 and 1993 sessions eliminated a number of these split precinct problems. Localities also adjusted precincts in those years to eliminate a number of split precincts. We can anticipate similar post-redistricting technical bills in 2002 and 2003.

B. Precinct Boundary Requirements and Problems

Compact and contiguous precincts; "clearly defined and clearly observable boundaries." State law requires localities to draw precincts that are compact and contiguous. § 24.2-305 A. A precinct should consist of one geographic unit and not contain separated parts.

Precinct boundaries should have "clearly defined and clearly observable boundaries." Section 24.2-305 B defines the phrase "clearly observable boundary" to include roads, rivers and other permanent physical features recognized on official maps. Invisible property lines or cross-country lines are generally not acceptable. Localities should review new precinct boundaries to comply with this requirement.

Virginia adopted this requirement in the 1980s so that (i) precinct boundaries can be readily identified by voters, candidates, and those administering elections and (ii) census population counts can be reported for each individual precinct. The Census Bureau will not give a population count for a precinct unless the boundaries of the precinct meet the Bureau's standards for census blocks and can be used as the boundary of a census tabulation block. Generally, a census block or precinct boundary must follow visible, identifiable features so that census enumerators can know where the boundary is and what people live in the block and the precinct.

In preparing for the 2000 Census, the state worked with the Census Bureau to draw Virginia's 2,196 active precinct boundaries on the census maps. General registrars and local personnel worked with the Division of Legislative Services to identify precinct boundaries.

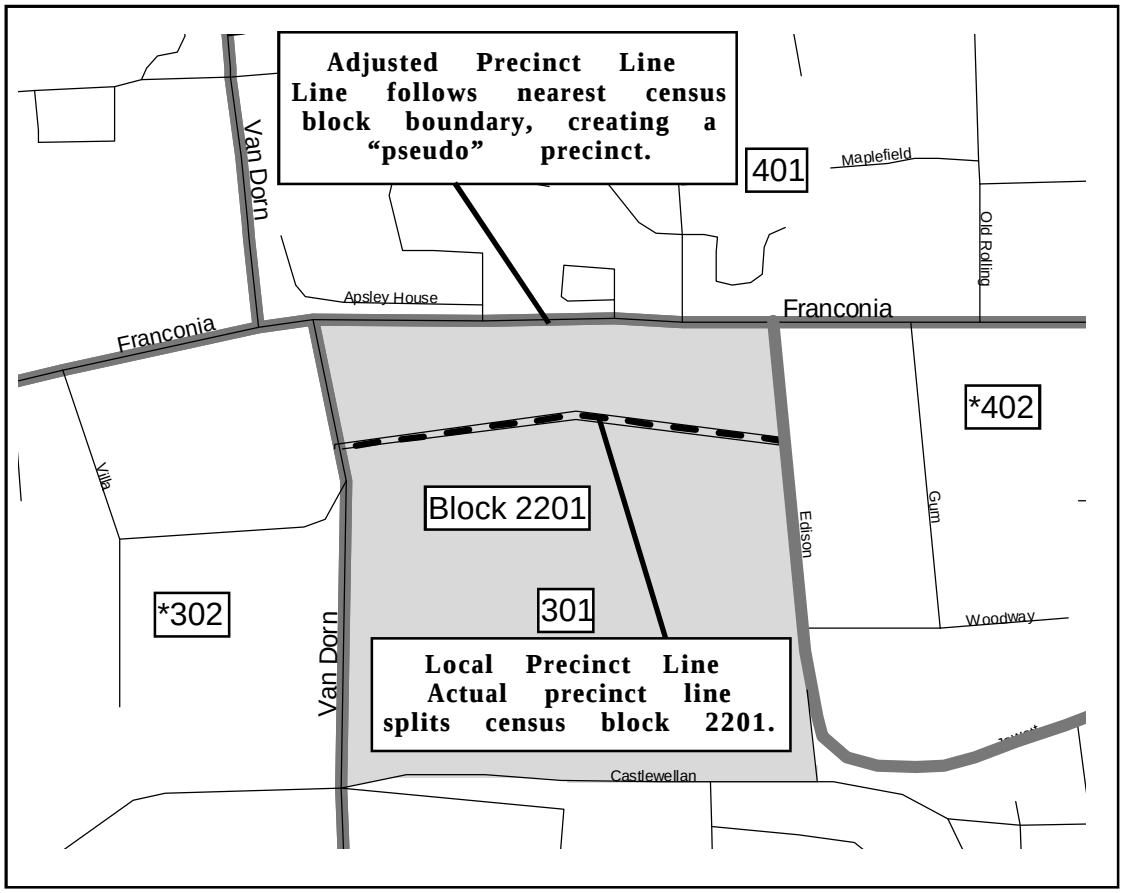


Figure 1: Adjusted, or "pseudo," precinct. (Precinct lines on this map are for illustrative purposes only.) Precincts 301 and 401 are "pseudo," or adjusted, precincts. Precincts *302 and *401 are actual precincts.

Actual and "pseudo" or false precincts. Approximately 1,500 or 68 percent of the Commonwealth's 2,196 precincts now in effect have boundaries that meet the requirements for census block boundaries and § 24.2-305. The 2000 Census maps and population tables will show these precincts with an asterisk to indicate that precinct is an "actual" precinct and the same as the locality's legal precinct.

Approximately 690 or 32 percent of the precincts have boundaries that do not fully meet these requirements. A part of the precinct's boundary may follow an invisible line and divide one or more census blocks. In these cases, the Division of Legislative Services worked with the Census Bureau and "adjusted" the precinct line for census purposes to follow the nearest census block line. The 2000 Census maps and population tables will show these "psuedo" precincts without the asterisk. In 1991 approximately 40 percent of Virginia's precincts were adjusted to meet census requirements for block boundaries. **Figure 1** illustrates a local precinct line that splits a census block and the "psuedo" precinct line that has been adjusted to follow the nearest census block boundary.

Note: These "psuedo" precincts are used only for census purposes and to obtain census statistics for precincts. The precincts used to conduct elections are **not** changed by these technical census-related adjustments. The precincts used to conduct elections are the precincts described in the locality's precinct ordinance.

Combined precincts. In approximately 70 instances, the local precinct could not be adjusted to follow a census block because there was no visible physical feature near the line described in the local precinct ordinance. In these cases, the census maps and population reports will show a combined precinct with the total population for the combined precincts.

Summary. The majority of the precincts shown on the census maps will be actual precincts (the same as described in the local precinct ordinance). Approximately 32 percent of the census map precincts will be "pseudo" or adjusted precincts (drawn to follow census block boundaries where the real precinct boundary splits a census block). The census maps will show some 30 combinations for 70 precincts where no reasonable adjustment could be drawn to follow census block boundaries.

The General Assembly will be using precincts as shown on the census maps – actual, "pseudo" and combined precincts – in drawing state legislative and congressional election districts when a district line divides localities. The General Assembly may split precincts in drawing state legislative and congressional district lines.

Local precinct review. Each locality should review the precinct boundaries shown on the census maps. "Actual" precincts should be reviewed to be sure that the boundaries shown are correct. "Pseudo" precincts should be reviewed to see if the precinct can be redrawn to meet state law requirements to follow "clearly observable" features. In most cases the changes needed to conform to state law are minor and do not affect substantial numbers of voters. It is in the locality's interest to follow the state law requirements so that precincts follow observable lines and to obtain census reports in the future that will give population statistics for the locality's actual precincts.

C. Polling Place Requirements

The requirements for polling places are spelled out in §§ 24.2-310 and 24.2-310.1. There must be one polling place for each precinct. The polling place for a county or city precinct must (i) be located in the precinct or within 1,500 yards of the precinct boundary, (ii) meet accessibility requirements, and (iii) be located in a public building whenever practicable. It is important to consider the availability of appropriate polling place facilities in drawing local election district and precinct boundaries.

III. The 2000 Census

A. General Background

April 1, 2000, was the official census day for the twenty-second decennial census or count of the United States' population. The Census Bureau, a part of the United States Department of Commerce, conducts the census. The results of the census will affect states and localities throughout this decade. Virginia's number of congressmen is determined by the census. Experts predict that Virginia will continue to hold eleven seats in the House of Representatives. The Bureau has been working during 2000 to compile the reports it will issue on the country's April 1, 2000, population.

The General Assembly will redraw state legislative and congressional district boundaries based on the 2000 Census results beginning in March and April 2001. Localities will use the census data to redraw election districts for local governing bodies. § 24.2-304.1 C.

Formulas based on the 2000 population counts will determine the flow of funds under numerous federal and state programs. The Census Bureau will produce a continuous flow of statistical reports and studies during the coming decade based on information gathered during the 2000 Census. Planners and prognosticators in the public and private sectors will have volumes of information to cull and interpret.

Past censuses have generated heated debates and litigation, and the 2000 Census follows this pattern. The main controversy concerns the possible statistical adjustment of the numbers produced by the actual count of the population. The Bureau acknowledges that the census is not perfect. The 1990 Census undercounted some segments of the population. Some argue that the actual count is still the most reliable count. Others advocate a statistical adjustment to improve the count and reduce the undercount. This debate remains unresolved. At this point in time, the Bureau indicates that it may release two sets of census counts for use in redistricting – an actual count and a statistically modified count. This possibility is discussed in Part IV below.

B. Redistricting Data—PL 94-171 Data

By December 31, 2000, the Census Bureau will report to the President of the United States the official population for each of the 50 states for the purpose of apportioning seats in the House of Representatives. In January 2001, states will be informed officially of the number of congressional seats assigned to each state. The United States Supreme Court ruled last year that the federal Census Act (13 U.S.C. § 1 *et seq.*) prohibits the use of statistically adjusted numbers to apportion the congressional seats among the states. *Department of Commerce v. United States House of Representatives*, 525 U.S. 316 (1999). The numbers released December 31, 2000, will be total state population numbers without any breakdown to the locality, precinct, or census block level.

The first major report produced by the Census Bureau will be the information needed by the states and localities to redraw the boundaries of congres-

sional, state legislative, and local election districts. Under current federal law, the Bureau must report this redistricting data to the 50 states by April 1, 2001. Congress passed this law in 1975 (Public Law 94-171) so that the states would be able to redistrict as promptly as possible after the decennial census. The 2000 Census information that the localities will be using to redistrict in 2001 is known as the PL 94-171 or redistricting data. It is the same data that the General Assembly will be using to redraw congressional and state legislative districts. This data gives total and voting age population counts and Hispanic and racial data for each geographic unit (state, locality, precinct, tract, and block). The PL 94-171 data does not give information on housing or income. Those reports will be issued later.

There are two basic pieces of information needed to redraw local election district lines: maps and population data. The Census Bureau will provide both items. A major development for the 2000 Census is the use of the Internet to distribute both maps and data.

C. Census Geography and Maps

New developments. There was no Internet in the 1991 round of redistricting. Now and in 2001, the Census Bureau will be providing access to maps and data through the Internet. The website for the Bureau is http://www.census.gov. This site provides a wealth of information.

TIGER/Line Files. The Census Bureau has created a digital database it calls TIGER, which supports mapping functions. It does not contain statistical reports. [TIGER stands for the Bureau's Topologically Integrated Geographic Encoding and Referencing database of geographic information.] TIGER/Line files were used in redistricting in 1991, and the Bureau has been editing and updating these files continuously.

These files contain a digital database of geographic features for the entire United States — features such as streets, highways, railroads, rivers, political boundaries, census statistical boundaries, and more. The database contains information about these features such as their location in latitude and longitude, the name, the type of feature, address ranges for most streets, the geographic relationship to other features, and other related information. TIGER was developed at the Census Bureau to support the mapping and related geographic activities required by the decennial census and other programs.

These files are not graphic images of maps. They contain digital data describing geographic features. To use these data, a user must have mapping or Geographic Information System (GIS) software that can import TIGER/Line files. The Census Bureau does not provide these files in any vendor-specific format. With the appropriate software a user can produce maps ranging in detail from a neighborhood street map to a map of the United States. To date, many local governments have used the TIGER data in applications requiring digital street maps. Software companies have created products for the personal computer that allow consumers to produce their own detailed maps. Localities will want to work with their planning departments and local planning commissions to use TIGER. Information about TIGER can be found on the Bureau's website at http://www.census.gov/geo/www/tiger/index.html.

Paper and electronic maps. Each locality should examine the variety of map products that will be available from the Bureau. Appendix B shows the variety of maps that will be available and sets out extracts from the Bureau's October 20, 2000, flyer on geographic products. The Bureau will release the Census 2000 TIGER/Line Files for redistricting on the Internet in January-February 2001 and then in DVD format. There will be a later version, (March-May 2001) Census 2000 TIGER/Line Files, with more ZIP code information and address range information.

The Bureau will provide Census 2000 County Block Maps for each county and city. The maps will be available in a variety of formats ranging from paper maps (size 36" x 33") beginning in January-February 2001 and including Internet versions available in April-May 2001. See Appendix B.

Geographic units. There are a number of geographic units that will be shown on the census maps:

- The county or city.
- VTDs or voting districts – these are the precincts. Each precinct will be coded with a six-digit number representing the census locality census code and the State Board of Elections precinct code. For example, Accomack County's Chincoteague Precinct will be coded as 001101. The code for Accomack is 001 and the Chincoteague Precinct is number 101. An asterisk after the VTD code indicates that the precinct is a "true" or actual precinct as opposed to a "pseudo" precinct. See Part II above for a discussion of these terms.
- Minor civil divisions – these will be county magisterial or election districts.
- Census tracts – these are census statistical areas averaging about 4,000 people. The tracts tend to remain the same from one census to the next.
- Census block groups – these are sets of census blocks within a tract and identified by the same first digit.
- Census blocks – these are the smallest census geographic areas. A block may be as small as one city block defined by four streets or as large as several square miles in rural areas. The average population for a block nationwide is 100 people. Blocks are identified by a four-digit number, unique within a 2000 Census tract. The 2000 census blocks are numbered differently than the 1990 blocks.
- State legislative and congressional districts. For the first time, the 2000 Census maps will show these districts on the census maps as the districts exist in 2000.

More detailed maps. Census maps for 1980 showed approximately 73,000 blocks in Virginia. There were roughly 150,000 blocks on the 1990 census maps for the Commonwealth. Virginia expects the 2000 Census maps to show about 210,000 blocks. Population statistics will be given for each geographic unit. In addition to the geographic units from counties and cities to census blocks, the maps will show and name the roads, rivers, railroads and other visible features that the Census Bureau uses to define block boundaries.

D. Population Data

Data for each geographic unit. The Census Bureau will publish population statistics for each geographic unit described above down to the level of each census block. The Census 2000 Redistricting Data Summary File will provide the population counts down to the block level and be available on the Internet and CD-ROM in March 2001. The Bureau will place the population data on the Internet using its American FactFinder and is promoting use of the Internet to retrieve information in lieu of distributing voluminous paper reports. Localities will be able to retrieve population data directly from the Bureau via the Internet.

Total population and voting age population. In 1991 the Bureau reported the total population for each geographic unit and, for the first time, the voting age population for each geographic unit. Voting age population numbers will be reported again in 2001. The Bureau also reports the total and voting age population numbers for each racial category listed below and for persons of Hispanic/Non-Hispanic origin.

New racial categories and multi-race responses. More detailed information will be provided in the 2000 Census than ever before as the result of changes in the reporting of racial data. In the early 1990s, the federal Office of Management and Budget reviewed the policy that guided the reporting of racial data in the census and other federal programs. That policy was first issued in 1977 and is known as Directive 15. It provided that federal data on race, including census data, would use five categories: white, black, American Indian/Alaska Native, Asian/Pacific Islander, and other race. It also allowed a separate question on Hispanic ethnicity.

This OMB review was prompted by indications that a growing number of people would prefer to respond to the census or other federal questionnaires that they were multi-racial. After several years of hearings and research, OMB issued a revised Directive 15 in October 1997. The results of these revisions on the 2000 Census questionnaire were:

- To divide the Asian/Pacific Islander category into two categories: (i) Asian and (ii) Native Hawaiian and Other Pacific Islander.

- To report on the basis of six categories: African American or Black, American Indian and Alaska Native, Asian, Native Hawaiian and Other Pacific Islander, White, and other race.

- To provide that respondents must be allowed to mark one or more than one of the six racial categories and have the opportunity to indicate a multi-racial background.

- To provide a separate question, before the race question, to allow respondents to indicate whether or not they identify themselves as Hispanic or Latino.

Detailed statistics on race. In September 1999, the Bureau announced that the 2000 Census PL 94-171 data reports will include the full range of racial detail: the six racial categories plus the 57 possible categories for persons who choose more than one race (ranging from two races to all six racial categories). Thus 63 racial numbers will be given for each geographic unit from the state level to the census block level. These 63 numbers will be cross-tabulated by Hispanic/Non-Hispanic origin and given for the total population and the voting age population. There can be 252 numbers for any geographic unit. The Bureau reported in its "Strength in Numbers" guide to Census 2000 redistricting data that its decision to provide the full range of racial detail will "provide users the maximum flexibility for analyzing these new data for any area. This flexible design also met the needs of the Department of Justice for enforcement of civil rights programs."

In developing redistricting plans and reports, it will be necessary to aggregate and allocate these multi-race numbers to a manageable number. The Statistical Policy Office of the OMB issued Bulletin 00-02 on March 9, 2000. One approach suggested by the OMB Bulletin would be to consolidate the information as follows:

- Report each of the six single race categories: African American or Black, American Indian and Alaska Native, Asian, Native Hawaiian and Other Pacific Islander, White, and other race.

- Allocate any combination of white and one other race category to the minority race category.

- If any combination of minority race categories is greater than one percent of the population, allocate that number to the most populous minority race category in the combination.

- Report one number for the balance of multiple minority race categories.

The addition of these four categories will equal 100 percent of the total population. This approach reduces the 63 items of racial data to a more manageable number of items.

The Department of Justice may also issue guidance on this issue but has not done so as of November 2000.

IV. Two Sets of Census Numbers

A. Background

Accuracy and undercounts. The census cannot be 100 percent accurate. According to the Census Bureau, the 1990 Census was the first census less accurate than its predecessor. There was an overall undercount of 1.6 percent nationwide. That undercount was not uniform, and the census missed a disproportionate number of racial and ethnic minorities. According to the Bureau's numbers, the nationwide undercount was 4.4 percent for African Americans, 5 percent for Hispanics, and 12.2 percent for American Indians living on reservations. For Virginia, the Bureau reported a 2.0 percent undercount of total population, including 1.5 percent for whites, 3.8 percent for African Americans, and 6.6 percent for Hispanics.

Statistically adjusted census numbers. In 1997, the Census Bureau outlined procedures to statistically adjust the 2000 actual count as a way to reduce the differential undercount. That plan was controversial and challenged in court. As noted above, the United States Supreme Court ruled last year that the federal Census Act (13 U.S.C. § 1 *et seq.*) prohibits the use of statistically adjusted numbers to apportion the congressional seats among the states. *Department of Commerce v. United States House of Representatives,* 525 U.S. 316 (1999). Debate continues on the issue whether statistically adjusted numbers can be used for redrawing congressional, state legislative, and local election district lines. The possible use of statistically adjusted numbers for applying funding formulas has generated less controversy.

Actual and adjusted census data. In 1997, Congress passed an appropriations act for a number of federal agencies including the Department of Commerce and the Census Bureau (Public Law 105-119). Section 209 (j) of that act requires the Bureau to release actual counts for the PL 94-171 redistricting data.

The Census Bureau has said that it will report two sets of population numbers for redistricting in 2001 – the numbers produced by the actual enumeration and the numbers resulting from statistical adjustments based on a post-enumeration survey. The Bureau has said that it expects the adjusted numbers to be more accurate than the actual counts. However, it also has stated that it will review the adjusted numbers and release them only if its review shows that the adjusted numbers are more accurate than the actual numbers. It will decide this question and release the actual numbers, with or without the adjusted numbers, by April 1, 2001, the federal law deadline for providing redistricting data.

B. Virginia's Law Requiring Use of "Actual" Numbers

Chapter 884, 2000 Acts of Assembly. The 2000 General Assembly enacted legislation (Chapter 884) requiring the General Assembly and local governing bodies to use the actual numbers for redistricting and prohibiting the use of statistically modified numbers in redistricting. The

requirement that localities use the actual counts in redistricting is set out in Subsection C of § 24.2-304.1. See Appendix A.

Commonwealth v. Reno. The Commonwealth filed suit in the federal District Court of the District of Columbia asking for preclearance of Chapter 884 under § 5 of the Voting Rights Act. The suit asked the Court to find that Chapter 884 did not require preclearance because it does not change Virginia's past practice of using actual population numbers or, alternatively, to preclear Chapter 884 because it does not dilute minority voting strength. The Commonwealth also asked the Court to rule that the Department of Justice should use actual counts to review redistricting plans under § 5. The Department of Justice argued that the suit was premature because Census Bureau has not made a final decision to release the statistically adjusted numbers. On October 17, 2000, the Court agreed with the Department and dismissed the Commonwealth's suit as premature. The Commonwealth has filed its notice of appeal to the United States Supreme Court and is proceeding with the appeal.

Current status. As of this moment, Virginia state law requires the use of actual population counts, and the Commonwealth expects to receive those counts in March 2001. Whether the state will also receive statistically adjusted counts depends on future happenings and the outcome of the Commonwealth's appeal in *Commonwealth v. Reno*. Whether the Department of Justice will review redistricting plans using actual numbers or statistically modified numbers or both is now unknown. If two sets of numbers are released, the differences between the actual and modified numbers may not be great, but the amount of difference is now unknown. If two full sets of numbers are released, the volume of statistical data described above in Part III will be doubled.

Localities should remain alert to developments in this area—one of the most unsettled aspects of the 2001 redistricting scene.

V. Legal Standards Applicable to Redistricting Plans

States and localities will redistrict in 2001 to meet federal and state constitutional equal population requirements outlined in section A below. Section B covers Virginia's constitutional compactness and contiguity standards. Sections C through E discuss the issues involved in drawing racially fair plans that comply with §§ 2 and 5 of the Voting Rights Act and new case law standards prohibiting racial gerrymandering under the Equal Protection Clause. Section F reviews "traditional redistricting criteria" and other factors that affect redistricting – valid policy considerations that may be considered but are not constitutionally required. Section G gives some practical suggestions on how to balance these often competing legal standards.

A. Equal Population— One Person/One Vote

Basic law. Equal representation is the key objective in redrawing district lines under the federal and Virginia constitutions. Decennial redistricting has become the norm because the new census reveals shifts in populations among districts. Uneven growth in a locality through the 1990s will create population imbalances among local election districts.

The Virginia Constitution (as discussed in Part I) and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution cover local redistricting plans. The principle of one person/one vote has evolved since 1962. Case law during the 1990s did not produce changes in this area of redistricting law and confirmed past legal developments on equal population requirements.

In 1962, the Supreme Court held that state legislative redistricting plans can be challenged in court under the Equal Protection Clause. *Baker v. Carr,* 369 U.S. 186.

In 1964, the Court held that equality of population is the standard for judging redistricting plans. The "overriding objective must be substantial equality of population among the various districts." *Reynolds v. Sims*, 377 U.S. 533, 579.

In 1968, the Court extended the equal population standard to local governing bodies:

> . . . the Constitution permits no substantial variation from equal population in drawing districts for units of local government having general governmental powers. . . . *Avery v. Midland County*, 390 U.S. 474, 484-85.

In a 1989 local redistricting case, the Court reaffirmed that "both state and local elections are subject to the general rule of population equality between electoral districts." *Board of Estimate of the City of New York v. Morris*, 489 U.S. 688, 692-93.

How much equality; permitted deviations. The Equal Protection Clause requires substantial

equality among local districts, but not exact equality. Since the 1960s, case law has developed statistical measures of equality and guidelines on what departure or "deviation" from exact equality is permissible.

The boxed illustrations on pages 18 and 19 describe a hypothetical redistricting plan for a locality with seven single-member districts. Definitions for the terms used in measuring population equality are stated and illustrated with examples.

The law has reached the point where local redistricting plans that contain a total deviation under 10 percent are presumed to be valid. Here are the highlights of the case law.

Congressional districts within a state must be drawn with precisely equal populations to meet the requirements of Article I, Section 2 of the United States Constitution. Any population deviation can be challenged and must be justified. *Wesberry v. Sanders,* 376 U.S. 1 (1964); *Karcher v. Daggett,* 462 U.S. 725 (1983).

The Equal Protection Clause, applicable to state legislative and local election district plans, permits states and localities more leeway in drawing those plans than congressional district plans. *Gaffney v. Cummings,* 412 U.S. 735 (1973) (state legislative districts); *Abate v. Mundt,* 403 U.S. 182 (1971) (local districts).

State and local district plans with a total deviation under 10 percent are presumed to be valid. Speaking for a unanimous Court in 1993, Justice O'Connor confirmed that a less than 10 percent total deviation in a state legislative plan is presumptively acceptable and quoted from a past opinion that:

> "Our decisions have established as a general matter, that an apportionment plan with a maximum population deviation under 10% falls within this category of minor deviations. A plan with larger disparities in population, however, creates a prima facie case of discrimination and therefore must be justified by the State." *Voinovich v. Quilter,* 507 U.S. 146, 161.

There are instances where a total deviation in excess of 10 percent has been upheld. *Abate; Mahan v. Howell,* 410 U.S. 315 (1973); *Brown v. Thomson,* 462 U.S. 835 (1983). **But** the body that drew the plan will have the burden to show a rational public policy necessitates the higher deviation. The only policy found valid to date, as in the cited cases, has been the preservation of political subdivisions and the avoidance of splitting counties, cities, or towns.

Case law suggests that localities should draw redistricting plans with the goal of substantial population equality among districts and a less than +5% to –5% deviation range.

Combination Plans. Some localities have a combination of multi-member and single-member districts. Several jurisdictions combine at-large and district seats on the governing body or elected school board.

The deviation standards for redistricting plans with these combinations are essentially the same as stated above for single-member district plans.

Multi-member districts. Deviations for multi-member districts are measured in terms of the ideal per governing body or school board member. For example, in the hypothetical county of 35,000 and seven supervisors, assume one three-member district and one four-member district. Assume the three-member district has a population of 16,000 and four-member district has a population of 19,000. To calculate the deviation:

1. The ideal population per member is 5,000 (35,000 divided by 7).

2. Next, find the population per member for the three-member district. Divide 16,000 by 3. The population per member is 5,333.

3. Next, calculate the deviation per member: 5,333 – 5,000 = 333; and 333 divided by 5,000 = 6.7% deviation per member.

How to Measure Equal Population

Example of a district plan: The following illustrations are based on a hypothetical county of 35,000 people with seven single-member election districts.

Election District	District Population	District % Deviation
A	4,750	–5.0
B	5,000	0.0
C	5,250	+5.0
D	4,900	–2.0
E	4,800	–4.0
F	5,175	+3.5
G	5,125	+2.5
7	35,000	–

Definitions:

$$\textbf{Ideal District Population} = \frac{\text{Total Population}}{\text{Number of Districts}}$$

***Example*:**

$$\frac{35{,}000 \text{ (Total Population)}}{7 \text{ (Number of Districts)}} = \textbf{5,000 (Ideal District Population)}$$

4. Finally, find the population per member and the deviation for the four-member district by following steps 2 and 3. (In this example, the deviation is –5% for each member in the four-member district and the total deviation for the plan is 11.7%. This deviation would be subject to challenge under the case law discussed above.)

At-large and single-member districts. In this type of combination plan, the at-large seats are considered in measuring deviations. *Board of Estimate of the City of New York v. Morris,* 489 U.S. 688 (1989). Again, in the hypothetical county of 35,000 and seven supervisors, assume two members elected at large and five members elected from single-member districts. The deviation is calculated on the basis of all seven seats. Assume the five single-member districts have populations of 7,000, 7,000, 7,000, 7,500, and 6,500. The deviation for the 7,500 population district is +4.9% and for the 6,500 population is –5.2%.

The calculation to obtain the deviation for the district with 7,500 population is done as follows:

1. Divide the district population (7,500) by the total county population (35,000) = 21.4%.

2. Calculate the number of members elected by the district: One member from the district plus 21.4% of one at-large member and 21.4% of the second at-large member for a total of 1.43 representatives elected by the district. The

How to Measure Equal Population

Deviation (a percentage) = $\frac{\text{Actual District Population} - \text{Ideal District Population}}{\text{Ideal District Population}}$

***Example*:**

5,250 (Actual) – 5,000 (Ideal) = $\frac{250}{5{,}000\text{ (Ideal)}}$ = **+5% Deviation**

Total Deviation = Sum of Deviations of Largest and Smallest Districts, Disregarding + or – signs

***Example*:**

Largest District (+ 5% Deviation) + Smallest District (–5% Deviation) = **10% Total Deviation**

Average Deviation (a percentage) = $\frac{\text{Sum of Deviations, Disregarding + or – signs}}{\text{Number of Districts}}$

***Example*:**

$\frac{(5.0 + 0.0 + 5.0 + 2.0 + 4.0 + 3.5 + 2.5)}{7} = \frac{22}{7}$ = **3.14% Average Deviation**

Deviation Range: Range is expressed as **"+ 5% to – 5%"**

population of the district (7,500) divided by the population of the county (35,000) equals 21.4%.

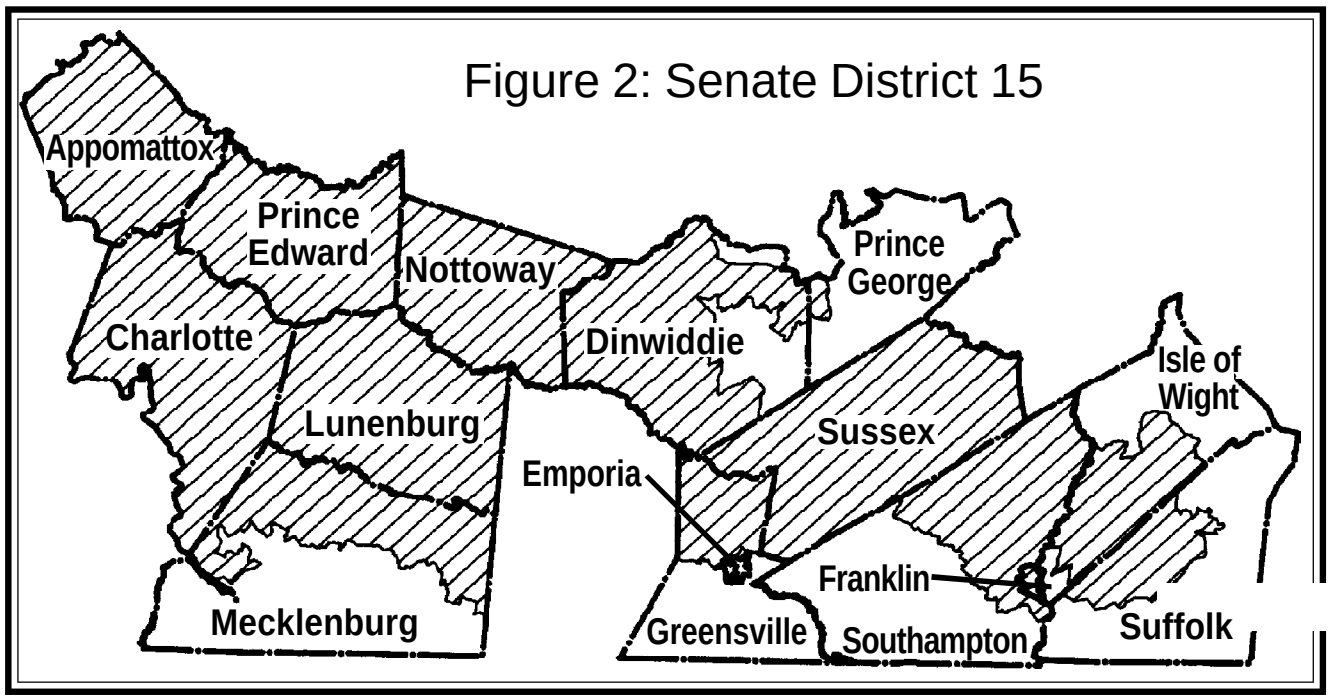
3. Divide the district population (7,500) by the total number of representatives elected by the district (1.43). The result is 5,245, which is the population per representative.

4. Then, calculate the deviation per representative: 5,245 – 5,000 = 245; and 245 divided by 5,000 = +4.9% deviation per member.

This method of calculating the at-large and district combination deviation was recognized by the Supreme Court in the *Morris* case. Including all seven seats in the calculation lessens the size of the deviation. If the deviation is calculated only for the five single-member districts, the deviation for the 7,500 and 6,500 population districts would be +7.1% and –7.1%, respectively. The actual district population (7,500) minus the ideal district population (7,000 per district for five single-member districts) equals 500. Then divide 500 by the ideal population of 7,000, and the result is a +7.1% deviation.

B. Compactness and Contiguity

Article VII, Section 5, of the Virginia Constitution provides that local election districts "shall be composed of contiguous and compact territory." In 1992, the Virginia Supreme Court reviewed the "contiguous and compact territory" requirement in a challenge to two Senate districts created by the 1991 General Assembly. See Figures 2 and 3. In a five-to-two decision, the Court upheld the districts and ruled that the compactness requirement applies only to the shape of a district and not to the content of the district. The Court advised that

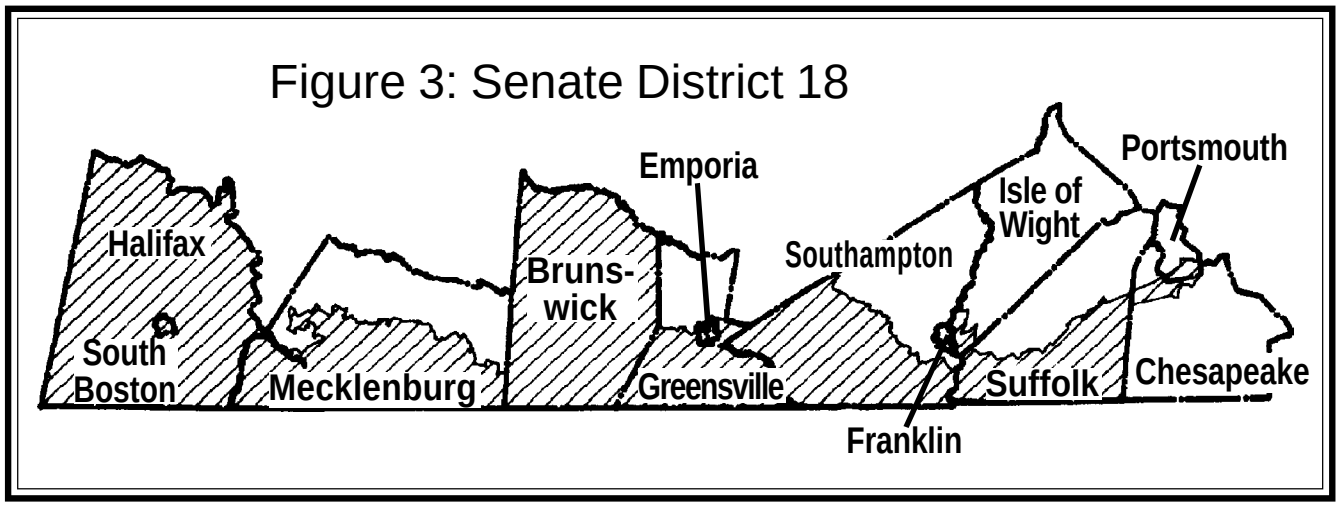


combining different communities of interest (such as urban and rural communities) in a district was a policy matter and not a factor to be weighed in applying compactness requirements. The Court gave "proper deference to the wide discretion accorded the General Assembly in its value judgment of the relative degree of compactness required when reconciling the multiple concerns of apportionment." *Jamerson v. Womack,* 244 Va. 506, 517.

The Court referred to the resolution setting out criteria to be applied in redistricting that the Senate Committee on Privileges and Elections had adopted in 1991. With respect to compactness, that resolution stated:

> Districts shall be reasonably compact. Irregular district shapes may be justified because the district line follows a political subdivision boundary or significant geographic feature.

There are several statistical methods to measure the comparative compactness of districts. These measures may produce different results and are offered by expert witnesses in litigation. The courts have not agreed on one single measure of



compactness and have often relied on the appearance of a district – a visual or "eyeball" evaluation.

Note: Compactness also is a factor in evaluating claims of vote dilution under § 2 of the Voting Rights Act as noted in section C below, and it is a "traditional redistricting criteria" relevant in racial gerrymandering cases as discussed in sections D and E below.

The contiguity requirement simply means that a district must be composed of one geographic area and not two or more separate pieces. The lower court in the *Jamerson* case ruled that an intervening body of water or wetlands will not defeat contiguity. Buggs Island Lake connected two parts of Senate District 18. *Jamerson v. Womack*, Case HB-880, Circuit Court, City of Richmond (1992).

C. Compliance with the Voting Rights Act— § 2

Section 2. All states and localities are subject to § 2 of the Voting Rights Act as amended in 1982. 42 U.S.C. § 1973 (a) and (b) (1982). Section 2 prohibits any state or locality from imposing a voting qualification or procedure that results in the denial or abridgment of the right to vote on account of race, color or status as a member of a language minority group. The plaintiff in a § 2 case may show a violation of § 2

> . . . if based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a [protected] class of citizens . . . in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.

Minority group members filing a § 2 challenge do not need to prove an intent to discriminate. The legal standard under § 2 to prove a violation is based on a "results" test. The court determines, based on the "totality of the circumstances," whether the plaintiffs have an equal opportunity "to participate in the political process and to elect representatives of their choice."

Thornburg v. Gingles. In 1986, the Supreme Court upheld the 1982 amendments to § 2 and the "results" test. 478 U.S. 30. The Court's opinion stressed the fact-intensive nature of a § 2 case. *Gingles* spelled out three "preconditions" to a § 2 claim:

> . . . the minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district.
> . . . the minority group must be able to show that it is politically cohesive . . . [that it has] . . . distinctive minority group interests.
> . . . the minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it – in the absence of special circumstances, such as the minority candidate running unopposed . . . usually to defeat the minority's preferred candidate. 478 U.S. at 50-51 (citations omitted).

The Court upheld the lower court's ruling that the multi-member districts being challenged violated § 2 with the exception of one district in which black candidates had been elected in proportion to their population over several past elections.

Once a plaintiff meets the three *Gingles'* preconditions, the court will still examine other facts and the "totality of the circumstances." Other facts reviewed by the courts include:

- election successes by minority candidates and minority-preferred candidates;
- racially polarized voting patterns;
- the use of potentially dilutive mechanisms such as at-large districts or staggered terms;
- racial appeals in campaigns;
- candidate selection procedures;
- a past history of official discrimination;

- continuing adverse effects on minority groups of past discrimination;
- responsiveness of elected officials to minority concerns; and
- the policies justifying the challenged law or practice.

Expert evidence is frequently offered to prove or disprove a history of racially polarized voting and whether the majority votes as a bloc to the detriment of the minority. Evidence on racial bloc voting patterns is directed at proving or disproving the proposition that minority voters vote for minority candidates and white voters vote for white candidates – that racial voting patterns make it more difficult for minority groups to elect the candidates of their choice. There are a number of methods used to evaluate racial bloc voting patterns and they can be complicated. One method looks at "homogeneous precincts" – how precincts in all white and all minority areas vote. A second statistical method is called "bivariate regression" analysis. It analyzes how voting patterns change with the racial makeup of the precincts. Additional forms of statistical analysis have evolved during the 1990s.

Smith v. Brunswick County. This case illustrates how complicated Voting Rights Act litigation can be. In 1991, plaintiffs filed a challenge to the redistricting plan adopted by the Brunswick County board of supervisors on July 31, 1991, (the July plan) on grounds that the plan violated the Voting Rights Act and the federal constitution. Plaintiffs were three black voters, the NAACP and the ACLU. Brunswick County had a 58 percent black population under the 1990 census. The July plan created five single-member districts with the following black population percentages: 42.5, 67.5, 51.9, 64.1, and 62.7. The federal district court for the eastern district in Virginia enjoined the November 1991 election for the board pending Justice Department action on the county's § 5 submission of the plan. The Justice Department precleared the plan on January 29, 1992. The district court ordered a special election under the July plan for April 7, 1992. The court proceeded with the trial of the § 2 challenge prior to the special election and post-trial briefs were filed after the special election on April 16, 1992.

The special election resulted in the defeat of three African American candidates, including two incumbents, in head-to-head races with white opponents and the first all-white board in the county since 1974. The district court issued its opinion in June 1992. 801 F.Supp. 1513. The court reviewed the three *Gingles* preconditions, evaluated expert testimony on bloc voting patterns, and other factors pertinent to "the totality of the circumstances." One factor considered by the court was the impact of the non-voting college students at St. Paul's College on one district's minority population percentage. The court found that subtraction of that non-voting population reduced the black percentage in that district from 62.7 to 55.1 and that this "level assures that black voters will have no meaningful opportunity to select candidates of their choice." 801 F.Supp. at 1518. The court ordered the county to submit a new plan and approved a second plan on August 10, 1992. The approved plan created five single-member districts with the following black population percentages: 41.66, 63.91, 50.73, 64.06, and 68.12. The court ordered a second special election for November 3, 1992.

The county appealed to the Fourth Circuit Court of Appeals. The Circuit Court stayed the order for the second special election. On February 1, 1993, the Court overruled the district court and held that the July plan did not violate § 2. The Court found that the district court had gone beyond assuring the plaintiffs equal access to the polls and that its ruling sought, instead, to assure electoral success. The Court stated:

> In summary, we hold that when black voters have equal access to the polls and in fact represent a majority of those eligible to vote in a majority of the election districts relevant to the governmental body at issue, the rights afforded by the Fifteenth Amendment and the Voting Rights Act are satisfied. Under such circumstances, judicial inquiry into the electoral success of black candidates begins

> an inappropriate process of affirmatively establishing quotas to assure results and concomitantly denying other classes of persons equal access to the political system. 984 F.2d 1393, 1402.

Majority-minority districts; influence districts. The cases do not specify an exact percentage required to constitute a majority-minority district as required in a *Gingles* analysis. The courts conduct a fact-specific inquiry and weigh the facts concerning total population, voting age population, and other factors. No single percentage can be said to be the number needed to create a majority-minority district. The Supreme Court has rejected the proposition that a redistricting plan must "maximize" the number of majority-minority districts in § 2 cases. *Johnson v. De Grandy*, 512 U.S. 997 (1994).

A related issue involves minority influence districts. The Supreme Court has not ruled on the question whether the Voting Rights Act can be used to require the creation or preservation of an influence district. The precise definition of an influence district remains unclear. Lower courts have split on the issue of whether § 2 reaches an influence claim. See, for example, *DeBaca v. County of San Diego*, 794 F.Supp. 990 (S.D. Cal 1992) aff'd, 5 F.3d 535 (9th Cir. 1993). Compare, *Armour v. Ohio*, 775 F.Supp. 1044 (ND Ohio 1991); *Rural West Tennessee African American Affairs Council Inc. v. McWherter,* 877 F.Supp. 1096 (WD Tenn. 1994), aff'd 516 U.S. 801 (1995) (mem).

Summary. Redistricting plans that are precleared under § 5 can still be challenged under § 2 of the Voting Rights Act. Plaintiffs in § 2 cases have the burden to prove the violation. The trial involves a fact-intensive inquiry. This litigation can be costly and complex.

D. Compliance with the Voting Rights Act — § 5

Section 5 preclearance. This provision of the Voting Rights Act covers only certain jurisdictions that have been determined to have a history of past discriminatory practices. Virginia and all of its political subdivisions are covered by § 5 with the exception of several localities that have "bailed out" of § 5 coverage.

> Fairfax City, Frederick County and Shenandoah County have "bailed out" from coverage pursuant to § 4 of the Voting Rights Act by showing a ten-year record of compliance with the Voting Rights Act and meeting defined requirements. The United States consented to the declaratory judgment in each of those cases. These Virginia localities are the first jurisdictions nationwide to bail out successfully. Additional Virginia localities are pursuing this process.

When Congress adopted the 1982 amendments to the Voting Rights Act, it continued the § 5 preclearance procedure to 2009. Section 5 will expire in 2009 unless a future Congress takes action to continue the preclearance process beyond that date.

Under § 5, Virginia and its covered political subdivisions cannot implement any redistricting plan or other change in voting laws and practices until the plan or change is "precleared." **Each redistricting plan, precinct revision, and polling place change must be precleared before it can be put into effect to conduct an election.**

The state or locality must submit the change to the Department of Justice (or alternatively to the District Court for the District of Columbia) and obtain a ruling that the plan meets § 5 standards. In most instances, a covered jurisdiction files its submission with the Department of Justice, rather than filing suit with the district court, to save time and money. If the Department of Justice denies preclearance, the jurisdiction may still file suit for a declaratory judgment and seek preclearance in the district court. The preclearance process is discussed more fully in Part VI below.

Preclearance standard – retrogression. The legal standard to show compliance with § 5 is proof that the plan or 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."

With respect to the "effect" of a change, the Supreme Court has enunciated a "non-retrogression" standard.

In *Beer v. United States,* the Court upheld preclearance of a redistricting plan for New Orleans that increased from one to two the number of African American majority districts. The Department of Justice had denied preclearance and the District of Columbia District Court subsequently precleared the plan. The Supreme Court stated that

> . . . the purpose of § 5 has always been to insure that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise. 425 U.S. 130, 141 (1976).

In *City of Lockhart v. United States,* the Court broadened the retrogression standard to cover a plan that did not offer any improvement in minority voting strength. The Supreme Court held:

> Since the new plan did not increase the degree of discrimination against blacks, it was entitled to § 5 preclearance. . . .Although there may have been no improvement in [minority] voting strength, there has been no retrogression either. 460 U.S. 125, 134-35 (1983).

During the 1991 round of redistricting, the Department of Justice refused to preclear a number of plans citing the possible violation of § 2 standards and the possibility of creating additional majority-minority districts. Before 1998 Department regulations provided that a plan must comply with § 2 to gain § 5 preclearance. The Department has repealed that regulation in light of Supreme Court rulings.

In 1997, the Supreme Court held that the Department of Justice had exceeded its § 5 authority by denying preclearance on the grounds of a § 2 violation. *Reno v. Bossier Parish School Board,* 520 U.S. 471. This year, a closely divided Court held that both the purpose and effect prongs of § 5 were subject to a retrogression test. Justice Scalia wrote for the five-member majority and described the "limited meaning that we have said preclearance has in the vote-dilution context":

> It does *not* represent approval of the voting change; it is nothing more than a determination that the voting change is no more dilutive than what it replaces, and therefore cannot be stopped in advance under the extraordinary burden-shifting procedures of § 5, but must be attacked through the normal means of a § 2 action. *Reno v. Bossier Parish School Board,* 120 S.Ct. 866, 875 (2000).

A comparative analysis — the benchmark or baseline to judge retrogression. The determination whether retrogression has occurred requires a comparative analysis. The new plan must be compared to the existing plan. The locality must look at the existing plan and its 2000 Census population data. Then it compares that plan to the new plan and its 2000 Census population data. There are several comparisons involved. Does the new plan have the same number or more majority-minority districts? Is the minority percentage in each new district greater or less than the minority percentage in each existing district? How has the population shifted among the districts? How has the racial population of the jurisdiction changed? Does the election history of the locality indicate that the percentage needed to create an effective majority-minority district in 2001 may be greater or less than that required in 1991?

The retrogression standard sounds simple, but its application to concrete redistricting plans may present some very hard questions in the coming round of redistricting.

Justice Scalia's opinion in the 2000 *Bossier Parish* case referred to the baseline concept. The Court held that the challenge to the 1992 plan was not moot simply because no further regular elections would be conducted under that plan:

> [I]n at least one respect the 1992 plan will have a probable continuing effect: Absent a successful subsequent challenge under § 2, it, rather than the 1980 predecessor plan – which contains quite different voting districts – will serve as the baseline against which

> appellee's next voting plan will be evaluated for the purposes of preclearance. 120 S.Ct. 866, 871 (2000).

This quotation raises one problem relevant to the application of the retrogression standard in 2001: what happens if an existing plan that serves as the baseline was never challenged under the *Shaw* case law, discussed in Section E below, but could have been challenged. The problem for some jurisdictions under § 5 in 2001 will be how to deal with a baseline plan vulnerable to a *Shaw* challenge because it stretched the bounds of compactness to create majority-minority districts and, simultaneously, prove that its new plan retains minority voting strength and avoids impermissible § 5 retrogression. This conundrum will not be resolved before the next round of redistricting litigation.

E. Shaw v. Reno — New Law on Race-Based Redistricting

Shaw v. Reno. Prior to 1993, the concept of racial gerrymandering surfaced in cases of discrimination against minority groups. Examples of impermissible racial gerrymandering under the federal constitution or § 2 of the Voting Rights Act included "packing" minority voters into one minority-populated district to prevent them from having an effective voice in more than one district; or "cracking" a concentration of minority voters into several districts to prevent their effective control of one district. Challenges to "packing" and "cracking" will continue to be part of the racial gerrymandering picture but only a part of that picture.

In 1993, the Supreme Court held that plaintiffs could challenge the North Carolina congressional plan as an impermissible racial gerrymander under the Equal Protection Clause of the Fourteenth Amendment. *Shaw v. Reno,* 509 U.S. 630 (1993). The *Shaw* plaintiffs were residents of the challenged district but did not sue as members of a minority or protected class. Racial gerrymandering took on a whole new meaning.

In a five-to-four decision, the Court observed that the redistricting plan in question was racially neutral on its face, but so "bizarre" that it was "unexplainable on grounds other that race." The Court explained that

> the Fourteenth Amendment requires state legislation that expressly distinguishes among citizens because of their race to be narrowly tailored to further a compelling government interest. 509 U.S. at 643-44.

In a series of cases since 1993, the Supreme Court has spoken to a number of the questions raised by *Shaw.*

Standing. To challenge a race-based redistricting plan, the plaintiff must be a resident of the challenged district or demonstrate a special harm caused to him by the redistricting.

> Where a plaintiff resides in a racially gerrymandered district, however, the plaintiff has been denied equal treatment because of the legislature's reliance on racial criteria, and therefore has standing to challenge the legislature's action. *United States v. Hays,* 515 U.S. 737, 744-45. (1995).

Race may be considered. The Court has recognized that race may be considered in the redistricting process and that the Voting Rights Act requires consideration of race. In 1993 in *Shaw*, the Court indicated that race-conscious redistricting is not necessarily unconstitutional.

> [T]his Court never has held that race-conscious state decision making is impermissible in *all* circumstances. . . . . redistricting differs from other kinds of state decision making in that the legislature always is *aware* of race when it draws district lines, just as it is aware of . . . a variety of other demographic factors. That sort of race consciousness does not lead inevitably to impermissible discrimination. 509 U.S. at 642 and 646.

Race cannot predominate. In a *Shaw* challenge, plaintiffs have the burden to prove race predominated in the legislature's actions.

> The distinction between being aware of racial considerations and being motivated by them may be difficult to make. This evidentiary difficulty, together with the sensitive nature of redistricting and the presumption of good faith that must be accorded legislative enactments, requires courts to exercise extraordinary caution in adjudicating claims that a State has drawn district lines on the basis of race. The plaintiff's burden is to show, either through circumstantial evidence of a district's shape and demographics or more direct evidence going to legislative purpose, that race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district. To make this showing, a plaintiff must prove that the legislature subordinated traditional race-neutral districting principles, including but not limited to compactness, contiguity, respect for political subdivisions or communities defined by actual shared interests, to racial considerations. Where these or other race-neutral considerations are the basis for redistricting legislation, and are not subordinated to race, a State can "defeat a claim that a district has been gerrymandered on racial lines." *Miller v. Johnson*, 515 U.S. 900, 916 (1995) (citations omitted).

Examples of evidence used to show that race predominated have included the shape of the district, the configuration of the computer system used to draw plans, statements made by the jurisdiction in preclearance submissions, and testimony of participants in the redistricting process. See *Moon v. Meadows*, 952 F.Supp. 1141 (ED.Va. 1997).

Strict scrutiny and plans narrowly tailored to serve a compelling state interest. If a plaintiff shows that race predominated in the drawing of a district, the plan will be subject to strict scrutiny and the defendant must show that the plan was narrowly drawn to serve a compelling state interest.

The Supreme Court discussed both the strict scrutiny test and what constitutes a compelling state interest in *Bush v. Vera*, 517 U.S. 952 (1996). The Court upheld the lower court's decision to invalidate three Texas congressional districts, applied the strict scrutiny standard, and rejected the state's proffered compelling reasons for its actions. Those reasons included compliance with the Voting Rights Act, politics, and incumbency protection. Justice O'Connor, who wrote the plurality opinion, took the unusual step of filing a separate concurring opinion in the case to set out rules to guide states and localities in their task of reconciling the *Shaw* case law and Voting Rights Act. Here is her advice:

> Today's decisions, in conjunction with the recognition of the compelling state interest in compliance with the reasonably perceived requirements of § 2, present a workable framework for the achievement of these twin goals. I would summarize that framework, and the rules governing the States' consideration of race in the districting process, as follows.
>
> First, so long as they do not subordinate traditional districting criteria to the use of race for its own sake or as a proxy, States may intentionally create majority-minority districts, and may otherwise take race into consideration, without coming under strict scrutiny. . . . Only if traditional districting criteria are neglected *and* that neglect is predominantly due to the misuse of race does strict scrutiny apply. . . .
>
> Second, where voting is racially polarized, § 2 prohibits States from adopting districting schemes that would have the effect that minority voters "have less opportunity than other members of the electorate to . . . elect representatives of their choice." § 2(b). That principle may require a State to create a majority-minority district where the three *Gingles* factors are present—viz., (i) the minority group "is sufficiently large and geographically compact to constitute a majority in a single member district," (ii) "it is politically cohesive," and (iii) "the white majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate," . . . .
>
> Third, the state interest in avoiding liability under VRA § 2 is compelling. . . . If a

> State has a strong basis in evidence for concluding that the *Gingles* factors are present, it may create a majority-minority district without awaiting judicial findings. Its "strong basis in evidence" need not take any particular form, although it cannot simply rely on generalized assumptions about the prevalence of racial bloc voting.
>
> Fourth, if a State pursues that compelling interest by creating a district that "substantially addresses" the potential liability. . .and does not deviate substantially from a hypothetical court-drawn § 2 district *for predominantly racial reasons*, . . . its districting plan will be deemed narrowly tailored. . . . .
>
> Finally, however, districts that are bizarrely shaped and noncompact, and that otherwise neglect traditional districting principles and deviate substantially from the hypothetical court drawn district, for predominantly racial reasons, are unconstitutional. 517 U.S. at 993-94 (citations omitted).

The record for developing a redistricting plan must show how the jurisdiction balances "traditional redistricting criteria" and the need to comply with the Voting Rights Act.

F. Traditional Redistricting Criteria

Post-*Shaw* case law has recognized a number of "traditional redistricting criteria." These racially neutral criteria should be balanced with considerations of racial fairness and Voting Rights Act compliance. The record of the redistricting process should show that real consideration was given to these criteria – to the extent that racial considerations do not predominate the redistricting process. Courts have recognized a number of traditional criteria:

- Population equality;
- Compactness;
- Contiguity;
- Avoiding splits of political subdivisions and precincts;
- Preserving communities of interest;
- Preserving the basic shape of existing districts;
- Protecting incumbents and avoiding the pairing of incumbents;
- Political fairness or competitiveness; and
- Voter convenience and effective administration of elections.

One criterion not mentioned in case law but suggested by Virginia's past experience is the use of whole census blocks to avoid population estimates. The census block is the smallest unit for which the census gives population counts. If a district line splits a block, the population on each side of the line must be estimated. Use of whole blocks provides integrity in the population counts for the district and helps assure that district lines follow identifiable features.

Political issues and competitiveness will be part of the mix in considering traditional redistricting criteria, but challenges based on political gerrymandering are unlikely. The Supreme Court ruled in *Bandmer v. Davis*, 478 U.S. 109 (1986) that political gerrymandering can be challenged in court. However, the Court set a very high burden of proof for plaintiffs to show a substantial long-term negative effect on the plaintiff political party. No plan has been overturned to date on grounds of political gerrymandering. In *Republican Party of Virginia v. Wilder*, 774 F.Supp. 400 (WD Va. 1991), plaintiffs claimed that the pairing of 15 Republican and one independent incumbent members in eight districts constituted impermissible political gerrymandering. The district court refused to enjoin the 1991 House of Delegates election, and plaintiffs did not pursue the case after the 1991 election.

G. Balancing Competing Legal Requirements

Localities and states in 2001 will walk a tightrope between competing legal requirements. Traditional redistricting requirements must be considered. Race can be considered in conjunction with traditional criteria, but cannot predominate redistricting deliberations. The Voting Rights Act must be taken into account.

Jurisdictions covered by § 5 of the Voting Rights Act will carry the burden to show that the position of minority voters has not "retrogressed" when a new redistricting plan is submitted for preclearance.

Some lessons learned during the litigation of the 1990s include:

- The redistricting process should incorporate consideration of multiple factors.
- Traditional criteria such as compactness, respect for communities of interest, and incumbency should be given substantial weight in the drawing and discussing plans, designing reports on the plans, and designing the computer programs used to develop plans.
- Racial demographics can be considered but only as one aspect of the process.
- Evidence concerning racial bloc voting patterns and the minority's opportunity to elect representatives of its choice is particularly important—in evaluating §§ 2 and 5 of the Voting Rights Act and in navigating the racial gerrymandering standards of the *Shaw* case law.
- The submission of a plan for § 5 preclearance should demonstrate the consideration of both traditional redistricting criteria and racial demographics.
- Submission requirements as outlined in Part VI emphasize racial factors, but submission documentation can be used for more than § 5 preclearance purposes.
- As part of the redistricting record, the submission may become evidence in post-*Shaw* litigation.

VI. The Voting Rights Act Preclearance Process

A. Preliminary Points

Here are some initial points to bear in mind about the § 5 preclearance process:

1. Preclearance requirements under § 5 apply to Virginia and to every locality in Virginia except those localities that have "bailed out" from § 5 coverage.

2. Every redistricting ordinance, precinct ordinance, and change in polling places must be precleared before it can be implemented or used to conduct elections.

3. There are two routes to obtain preclearance: submission of the change to the Department of Justice or a suit for declaratory judgment in the District Court for the District of Columbia. Submission to the Department has been the more usual choice because of cost and time factors. A locality retains the option to file suit in the District Court even after the Department denies preclearance.

4. The locality has the burden to prove that the proposed redistricting plan or other change meets § 5 standards.

The regulations governing the preclearance process are lengthy and complicated. They are set out in 28 CFR Part 51 (7/1/2000). The text of the regulations is on the Internet at http://www.usdoj.gov/crt/voting/28cfr/51/28cfr51.htm. The outline of the regulations given below is only an outline.

Local counsel and officials should review the preclearance regulations now. These officials should lay the groundwork in advance so that a complete submission can be filed with the Department promptly after the adoption of the plan or change. A prompt submission is particularly important for counties with staggered terms and elections in November 2001.

Submissions will vary in length and content depending in part on the type of change and minority population in the locality. Submissions should be kept brief and to the point – especially when it is obvious that there is no impact on minority voting rights. Where there are significant minority populations and concerns, submissions should be complete and address the factors set out in the regulations.

B. Preclearance Standards

The basic standard under § 5 requires the government making the change or adopting new district lines to show that the change "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group." 28 CFR § 51.52.

The regulations cover the retrogression standard and the benchmark to be used in comparing an existing plan with a submitted plan.

> In determining whether a submitted change is retrogressive the Attorney General will *normally* compare the submitted change to the voting practice or procedure in effect at the time of the submission. . . . The Attorney General will make the comparison based on the conditions existing at the time of the submission. 28 CFR § 51.54. Emphasis supplied.

Note: As is often true of the regulations, the regulation and phrase "will normally compare" give the Attorney General some discretion in the implementation of § 5.

The retrogression standard is discussed in Section D of Part V above. As noted above, Department regulations prior to 1998 provided that a plan must comply with § 2 to gain § 5 preclearance. The Department has repealed that regulation in light of Supreme Court rulings.

However, the regulations continue to list numerous other factors that the Department considers in reviewing changes. 28 CFR §§ 51.57 through 51.59. These regulations have not been revised to take into account the Supreme Court's rulings in the 1990s that appear to limit the role of § 5 review to the retrogression issue. It is not known at this time whether the Department will reduce the scope of its review. At present the regulations cover the following factors that may be considered:

- **Purpose.** Is there a reasonable and legitimate justification of the change?
- **Objective guidelines.** Did the jurisdiction follow objective guidelines and fair procedures in adopting the change?
- **Minority participation.** Did minority group members participate in the decision-making process?
- **Minority concerns.** Were minority concerns considered in making the change?
- **Background and historical factors.** Have minorities participated meaningfully in the political process in the jurisdiction? Have they had influence in elections and in making official decisions? Has there been a history of racially polarized voting or segregated political activities? Have minority group members been less apt to register or vote as the result of past discrimination?
- **Redistricting factors.** Seven specific items are listed: (i) mal-apportionment; (ii) reduced minority voting strength; (iii) fragmenting or cracking minority population concentrations; (iv) over-concentrating or packing minority populations; (v) consideration given alternative plans; (vi) departures from rational criteria such as compactness or natural boundaries; and (vii) departures from the jurisdiction's stated redistricting criteria.

Note: The standards do not spell out any numerical criteria. There are no specific guidelines on such issues as the percentage of minority population necessary to create an effective voting majority in a district. The Department commentary on the regulations in 1987 was explicit that there can be no "mechanical" application of § 5 preclearance guidelines. 52 Fed. Reg. 486 (1/6/87).

C. Preclearance Process

The following is an outline of the submission process. The outline is based on several provisions in 28 CFR Part 51. **Note:** Again, it is important for local counsel and officials to review the Department of Justice regulations in full before redistricting begins.

- **Who files?** The "chief legal officer or other appropriate official" of the locality.
- **When to file.** "As soon as possible" after the ordinance is final and before it is implemented.
- **Where to file.** By mail addressed to Chief, Voting Section, Civil Rights Division, Department of Justice, P.O. Box 66128, Washington, DC 20035-6128 or by delivery to Chief, Vot-

ing Section, Civil Rights Division, Department of Justice, 320 First Street, NW, Room 818A, Washington, DC 20001. The regulations also cover electronic submissions.

- **Required contents of submission.** These lists are too detailed to outline here. Contents range from basic information (a copy of the ordinance) to explanatory information (impact of change on minority group members) to background information (preclearance of prior districts and any pending litigation). For redistricting ordinances, there are special requirements for district maps and information on total and voting age populations before and after the submitted redistricting. One approach is to prepare the submission with the regulations at hand and to address each item listed in the regulations. Two issues remain unresolved: how to submit population data if both actual and statistically adjusted data are released by the Census Bureau (see Part IV above) and how to aggregate the population data for multiple race categories (see Part III above).

- **Supplemental contents.** The regulations state that review of the submission "will be facilitated" by submitting additional "pertinent" information on population, maps, election returns over the past 10 years, publicity and participation in the process of adopting the change, public notices of the availability of the submission, and minority group contacts.

- **Timing.** The Department has 60 days from the date of receipt of a submission to object to the change. It may request additional information within that 60 days. The Department then will have a new 60-day period from the date of receipt of the additional information in which to object to the change.

- **Expedited consideration.** A locality may request expedited consideration of a submission in writing, stating its reasons for the request. Granting the request is within the discretion of the Attorney General. It is rare to gain expedited preclearance. Expedited preclearance is most apt to occur when the Department has filed an initial objection and the jurisdiction is submitting a second plan reflecting negotiations with the Department.

VII. Some Practical Suggestions: A Possible Timetable for Redistricting

The precise timetable for redistricting will unfold in the next few months. Only a general idea of the time constraints can be outlined now, in November 2000. The schedule will be particularly difficult for the General Assembly to redraw House of Delegates district lines and for counties with staggered terms to redraw supervisors' districts. Plans must be drawn, enacted, and precleared to be implemented in time for 2001 primaries and the November election. Counties without staggered terms and cities will have more leeway to redistrict in 2001 but will need to start the process now.

The calendar that follows may change with developments. It is offered only to give an indication of the jobs to be done and the time constraints known at this time. Localities should follow developments concerning the primary date, the release of census data, new case law, possible new Department of Justice guidelines, and actions by the 2001 General Assembly.

The calendar is based on three assumptions:

1. The 1990 Census redistricting data will be released in March 2001. In 1991, Virginia received redistricting data on January 22. All indications from the Census Bureau now point to receipt of the 2000 Census redistricting data in March 2001.

2. Redistricting plans and precinct and polling place changes will be submitted to the Department of Justice for preclearance. The locality may seek preclearance through the District Court of the District of Columbia, but it is rare to choose this option.

3. Primaries will be delayed as authorized by Chapter 908 of the 2000 Acts of Assembly. Under Chapter 908, the State Board of Elections is authorized to delay the June 12, 2001, primary and the filing schedules for the House of Delegates, constitutional officers and members of county governing bodies and school boards to a date no later than September 11, 2001, if it appears that redistricting will not be completed and precleared in time to hold June primaries. The law does not apply to statewide offices, and the June 12 primary date remains in effect for those offices. The Board must vote to delay the primary on or before May 12, 2001. The calendar is based on the assumption that the delayed primary date will be September 11, 2001. It could be an earlier date.

This calendar provides only a rough outline of how redistricting might proceed at the local level. It also sets out a list of items that localities should consider as the time to redistrict nears. An important consideration is to plan ahead for complete submissions to the Department of Justice. Incomplete submissions may trigger a request by the Department for additional information and more than double the time period for preclearing the proposed change.

Note: In 1991, the General Assembly waited until November to adopt new congressional district lines, and it may wait to draw those lines until later in 2001. Any locality that is split by a congressional district line will want to make an immediate check to see if the lines split any local precincts. Localities may be able to reduce the chance of precincts being split by congressional district lines by filing any 2001 precinct changes with the Division of Legislative Services. By promptly filing maps and precinct ordinances with the Division, the General Assembly may be able to take the new precinct lines into account in drawing congressional district lines.

Redistricting Calendar

2000

November and December

Preparations for redistricting:

- Identify local personnel to be involved in the redistricting process – governing body members, school board members, county or city attorney, general registrar, electoral board, planners, and administrators.
- Review the budget and any need for outside consultants or counsel. Plan for staff, space and equipment needs to draw plans, use computers, store maps, and work on redistricting plans.
- Review requirements for submitting redistricting plans, precinct revisions, and polling place changes to the Department of Justice for preclearance under § 5 of the Voting Rights Act.
- Review the locality's past submission of its existing districts and precincts.
- Identify the local official who will officially submit plans and changes to the Department of Justice.
- Outline a schedule for the local redistricting process. Make note of hearing and notice requirements for redistricting and precinct ordinances.
- Begin to collect documentation for § 5 submissions. Some work can be done in advance: for example, collecting election returns history and developing minority contacts information. Plan to maintain a complete legislative history on redistricting plans. Prepare for public participation in the redistricting process.
- Review existing precincts and polling place locations.

Redistricting Calendar

2000

November and December (*continued*)

- Review the nuts and bolts of drawing district plans, using census maps and data, and using computer assistance. Review the resources available through the Census Bureau, planning districts, and other sources.

- Review laws applicable to the local governing body structure and local redistricting to anticipate any changes that might be needed in advance of redistricting. If any change is needed that requires General Assembly action (a change in a charter or other state statute), prepare the change in advance of the 2001 Regular Session. **Note**: any charter change or optional form of government change must be introduced on the first day of the session, January 10, 2001.

2001

January and February

Continued preparations for redistricting:

- Keep informed on actions at the 2001 Regular Session of the General Assembly that may affect redistricting.

- Submit any desired charter or optional form of government bills to a member in time for introduction no later than January 10, 2001, the first day of the session and the deadline for introduction of local bills. Submit any other desired change in state law to a member well in advance of the session for prefiling.

- Keep informed on developments with respect to pending litigation concerning the use of actual census counts as required in Chapter 884 of the 2000 Acts of Assembly and Subsection C of § 24.2-304.1.

- Obtain and review census maps expected to be released in January or February. Review precincts as shown on the maps and become familiar with actual and "pseudo" precincts as shown on the census maps.

- Analyze racial bloc voting data and past elections if there are Voting Rights Act concerns affecting minority populations.

Redistricting Calendar

2001

March and April

Adoption of redistricting plans:

- Prepare for receipt of the 2000 redistricting (PL 94-171) data and possible receipt of two sets of data.
- Begin work on local redistricting plans. Describe and analyze existing election districts using the 2000 redistricting data.
- Provide for public comment and participation by publicizing existing district information and proposed redistricting plans and by holding public hearings. Publicize the process and document minority participation.

Counties with staggered terms should adopt redistricting plans and precinct and polling place changes in final form during this period. Precinct ordinances can provide that the effective date for the ordinance is May 15, 2001, the end of the 1998-2001 precinct freeze, or an appropriate later date.

Counties with staggered terms should file all § 5 submissions with the Department of Justice as promptly as possible.

File copies of final election district maps and ordinances with the Secretary of the Commonwealth, State Board of Elections, and Division of Legislative Services.

Cities and counties without staggered terms should determine whether any precinct and polling place changes should be made to conduct the 2001 elections for the House of Delegates and other offices. Precinct ordinances should provide an effective date on or after May 15, 2001, which is the end of the 1998-2001 precinct freeze.

Cities and counties without staggered terms should file § 5 submissions for any precinct and polling place changes with the Department of Justice as promptly as possible.

Cities and counties without staggered terms may decide to continue work on redistricting plans and take final action after House of Delegates district lines have been drawn so that those lines may be considered when revising precincts.

Redistricting Calendar

2001 May and June	Counties with staggered terms await Department of Justice notification on preclearance decisions and begin preparations for 2001 elections. Cities and counties without staggered terms continue work on redistricting plans, file § 5 submissions, and wait for preclearance decisions. Keep informed on developments concerning General Assembly district lines in case of changes made during the preclearance process.
May 12	Deadline for State Board of Elections to announce whether the June 12, 2001, primary date will be delayed for the House of Delegates, constitutional offices, and county board elections. **Note**: the State Board must announce the delay by May 12, but may wait to announce the delayed primary date and revised filing schedule. It must give 30 days' notice of the new date – that is by August 12, 2001, if the delayed primary date is September 11, 2001.
June 12	Primary date for statewide offices.
July, August, and September	Cities and counties without staggered terms should complete redistricting plans and accompanying precinct and polling place changes and promptly file § 5 submissions. Keep informed on developments with respect to a delayed primary and revised filing deadlines. Watch for information on requirements to notify voters of new precincts and districts.
September 11	Last day authorized for delayed primary under Chapter 908 of the 2000 Acts of Assembly.
November 6	Elections for statewide offices, House of Delegates, constitutional officers, and boards of counties with staggered terms.

VIII. The Impact of Redistricting on the Election Process

Redistricting creates practical problems for registrars and election officials. The schedule is difficult and the work involved is sizeable.

Local governing bodies that make the final redistricting decisions should look to the practical aspects of implementing new plans, precinct and polling place changes, and revised election schedules. This part focuses on the work of the State Board of Elections and local registrars and election officials – the work needed to carry out elections from new districts and precincts in 2001 under a tight timetable.

A. State Law Requirements

As discussed in Part II, precincts and polling place locations must be reviewed. Precincts have been frozen since 1998 and may need to be adjusted to accommodate a reasonable number of registered voters. The law allows new precincts with no fewer than 100 registered voters in a county, no fewer than 500 voters in a city, and no more than 5,000 registered voters in either case. Common sense suggests that new precincts with 2,500 or fewer registered voters will allow for population growth.

Other state law requirements are set out in Part II above.

B. Voting Rights Act — § 5 Preclearance

As noted in detail in Parts II and VI above, precinct and polling place changes must be submitted for preclearance by the Department of Justice in time for conducting elections.

C. Work Required After Redistricting

The State Board must update the Virginia voter registration system working with local registrars. The Board will not enter district, precinct, and polling place changes into the system in final form until the Department of Justice has precleared them.

In preparation for 2001 elections, local registrars must:

- Place registered voters in the proper precinct and House of Delegates district. In counties with staggered terms, the voter must also be assigned to the proper supervisor district. Some preparatory work can be done before preclearance of district and precinct changes.
- Update their registration records.

- Notify voters by mail of precinct and district changes at least 15 days before the next primary, special, or general election. § 24.2-306. This would be by August 27, 2001, if the primary is delayed until September 11, 2001.

In preparation for the 2001 elections, local electoral boards must recruit officers of election for each precinct and polling place taking into account revisions in precinct boundaries and the possibility of two primaries as well as the general November election.

D. Schedule

The State Board of Elections will be working with the general registrars to schedule the large volume of work that must be completed to conduct orderly elections in 2001. Local officials involved in the redistricting process should keep in mind the time and resource requirements of local election officials who are responsible for notifying voters of the practical effects of the redistricting process – new districts and new precincts for conducting elections.

IX. Developments in Technology

The computer technology explosion in the 1980s and 1990s has changed, and continues to change, the redistricting process for the state and for every locality.

A. More Information for Everyone

Every locality will have access to computer-drawn maps and more detailed maps. Every locality will have a greater volume of computer-generated redistricting data. There will be more blocks on the census maps. There will be more population data reported by the Census Bureau for every block. There will be total and voting age population numbers, Hispanic/non-Hispanic data, and more racial data including multi-race population counts.

The types of maps and population reports and formats for those reports are outlined in Part III on the 2000 Census and in Appendix B.

The Internet constitutes the technological development of the 1990s likely to have the greatest impact on redistricting. The Census Bureau will use the Internet to distribute geographic and population data as described in Part III. The state will use the Internet to distribute information about redistricting plans.

Each locality will be evaluating the products and technology appropriate for its use in redistricting and in other local government activities.

B. More Technology for Everyone

The General Assembly moved from paper maps and pocket calculators to a computer-assisted mapping and redistricting system for drawing plans and analyzing population data in 1991. It will use computers to display maps and calculate data in 2001. Information about state-level redistricting plans will be available on the Internet. Work on the system that will be used for redistricting in 2001 is underway.

Most localities have already decided how much investment to make in computer assistance for redistricting. Most localities have become accustomed to geographic information systems and the use of the Internet for a variety of local governmental purposes.

Parties interested in the redistricting process will have better access to redistricting data and maps because of developments in technology and the Internet.

Appendix A:
State Statutes Applicable to Redistricting

Note: Both Titles 15.1 and 24.1 were recodified during the 1990s, and a number of provisions were shifted from the local government title to the elections title.

Title 2.1. Administration of Government. [One provision.]

§ 2.1-121.1. Legal service in certain redistricting proceedings.

Upon notification by a county, city or town of a pending civil action challenging the legality of its election district boundaries as required by § 24.2-304.5, the Attorney General shall review the papers in the civil action and may represent the interests of the Commonwealth in developing an appropriate remedy that is consistent with requirements of law, including but not limited to Article VII, Section 5 of the Constitution of Virginia or Chapter 3 (§ 24.2-300 et seq.) of Title 24.2.

Title 15.2. Counties, Cities and Towns. [Miscellaneous provisions.]

§ 15.2-1211. Boundaries of magisterial and election districts.

A. County magisterial district boundary lines and names shall be as the governing bodies may establish. Subject to the provisions of § 24.2-304.1, whenever the boundaries of a county have been altered, the governing body shall, as may be necessary, redistrict the county into magisterial districts, change the boundaries of existing districts, change the name of any district, or increase or diminish the number of districts.

B. Whenever redistricting of magisterial or election districts is required as a result of annexation, the governing body of such county shall, within a reasonable time from the effective date of such annexation, not to exceed ninety days, commence the redistricting process which shall be completed within a reasonable time thereafter, not to exceed twelve months.

C. A county may by ordinance provide that the magisterial districts of the county shall remain the same, but that representation on the governing body shall be by election districts, in which event all sections of this Code providing for election or appointment on the basis of magisterial districts shall be construed to provide for election or appointment on the basis of election districts, including appointment to a school board as prescribed by §§ 22.1-36 and 22.1-44.

§ 15.2-1414. Governing bodies may have a legal enumeration of the population.

Any locality wishing to have a legal enumeration of the population of the locality, or part thereof, may make application therefor to the circuit court for the locality. When the application is made, the judge shall forthwith divide the locality, or part thereof, into such districts, with well-defined boundaries, as may appear advisable and shall appoint for each of the districts one enumerator. Before entering on their duties, such appointees shall take an oath before a notary public or other officer qualified to administer oaths under the laws of this Commonwealth, for the faithful discharge of their duties. The enumerators shall at once proceed to enumerate the actual bona fide inhabitants of their respective districts. They shall report to the judge the result of their enumeration and a list of the persons enumerated by them within a reasonable time after their appointment, and a copy of the list of persons so enumerated by them shall be furnished by the enumerators to the clerk of the court, who shall receive the list and keep it open to public inspection. Upon evidence produced before him, the judge may add to the list the name of any person improperly omitted and may strike from the list the name of any person improperly listed. If it appears advisable to the judge, he may order that the enumeration for any or all of the districts be retaken under all the provisions of this section by other enumerators, who shall be forthwith appointed by him. The judge shall cause to be tabulated and consolidated the lists and return to the governing body the results thereof, in accordance with the application of the governing body. The judge shall allow each enumerator a reasonable fee for each day actually employed by him in making the enumeration. He shall certify the allowance and costs to the governing body for payment out of the local treasury, and the allowance shall be a legal charge upon

the governmental unit requesting the enumeration.

§ 15.2-1400. Governing bodies. [In part.]

A. The qualified voters of every locality shall elect a governing body for such locality. The date, place, number, term and other details of the election shall be as specified by law, general or special. Qualification for office is provided in § 15.2-1522 et seq.

B. The governing body of every locality shall be composed of not fewer than three nor more than eleven members. . . .

Title 24.2. Elections. Chapter 1. General Provisions and Administration. Article 1 [in part].

§ 24.2-101. Definitions. [In part.]

As used in this title, unless the context requires a different meaning: . . . .

"Registered voter" means any person who is maintained on the Virginia voter registration system. All registered voters shall be maintained on the Virginia voter registration system with active status unless assigned to inactive status by a general registrar in accordance with Chapter 4 (§ 24.2-400 et seq.) of this title. For purposes of applying the precinct size requirements of § 24.2-307, calculating election machine requirements pursuant to Article 3 (§ 24.2-625 et seq.) of Chapter 6 of this title and determining the number of signatures required for candidate and voter petitions, "registered voter" shall include only persons maintained on the Virginia voter registration system with active status. . . .

"Virginia voter registration system" or "voter registration system" means the automated central record-keeping system for all voters registered within the Commonwealth which is maintained as provided in Article 2 (§ 24.2-404 et seq.) of Chapter 4 of this title.

Title 24.2. Elections. Chapter 2. Federal, Commonwealth, and Local Offices. Article 5 [in part].

§ 24.2-219. Alternative for biennial county supervisor elections and staggered terms.

A. The governing body of any county may by ordinance provide that the county board of supervisors be elected biennially for staggered four-year terms.

In lieu of an ordinance by the board of supervisors, the registered voters of the county may file a petition with the circuit court of the county requesting that a referendum be held on the question of whether the county board of supervisors should be elected biennially for staggered four-year terms. The petition shall be signed by registered voters equal in number to at least ten percent of the number registered in the county on the January 1 preceding its filing.

The court pursuant to §§ 24.2-682 and 24.2-684 shall order the election officials on a day fixed in the order to conduct a referendum on the question. The clerk of the court shall publish notice of the referendum in a newspaper having general circulation in the county once a week for four consecutive weeks and shall post a copy of the notice at the door of the courthouse of the county. The question on the ballot shall be:

"Shall the members of the county board of supervisors be elected biennially for staggered four-year terms?

[] Yes

[] No"

The referendum shall be held and the results certified as provided in § 24.2-684.

B. If a majority of the voters voting in the referendum voted for biennial election of the members of the board of supervisors for staggered four-year terms, or if the governing body has so provided by ordinance, then the terms of supervisors elected at the next general election for supervisors shall be as follows:

1. If the number of supervisors elected in the county is an even number, half of the successful candidates shall be elected for terms of four years and half of the successful candidates shall be elected for terms of two years; or

2. If the number of supervisors in the county is an odd number, the smallest number of candidates which creates a majority of the elected supervisors shall be elected for terms of four years and all other successful candidates shall be elected for terms of two years.

The electoral board of the county shall assign the individual terms of members by lot at its meeting on the day following the election and immediately upon certification of the results. However, the electoral board may assign individual terms of members by election district in a drawing at a meeting held prior to the last day for a person to qualify as a candidate, if the governing body of the county so directs by ordinance or resolution adopted at least thirty days prior to the last day for qualification and members are elected by district. In all elections thereafter all successful candidates shall be elected for terms of four years.

In any county where the chairman of the board is elected from the county at large pursuant to § 15.2-503 or § 15.2-802, the provisions of this section shall not affect that office. The chairman of the board shall be elected for a term of four years in 1995 and every four years thereafter.

C. If the representation on the board of supervisors among the election districts is reapportioned, or the number of districts is diminished or the boundaries of the districts are changed, elections shall be held in each new district at the general election next preceding the expiration of the term of the office of the member of the board representing the predecessor district of each new district. If the number of districts is increased, the electoral board shall assign a two-year or four-year term for each new district so as to maintain as equal as practicable the number of members to be elected at each biennial election.

Title 24.2. Elections. Chapter 3. Election Districts, Precincts, and Polling Places. Articles 2.1, 3, and 4 [in part].

Article 2.1. Reapportionment of Local Election Districts.

§ 24.2-304.1. At-large and district elections; reapportionment of districts or wards; limits.

A. Except as otherwise specifically limited by general law or special act, the governing body of each county, city, or town may provide by ordinance for the election of its members on any of the following bases: (i) at large from the county, city, or town; (ii) from single-member or multi-member districts or wards, or any combination thereof; or (iii) from any combination of at-large, single-member, and multi-member districts or wards. A change in the basis for electing the members of the governing body shall not constitute a change in the form of county government.

B. If the members are elected from districts or wards and other than entirely at large from the locality, the districts or wards shall be composed of contiguous and compact territory and shall be so constituted as to give, as nearly as is practicable, representation in proportion to the population of the district or ward. In 1971 and every ten years thereafter, the governing body of each such locality shall reapportion the representation among the districts or wards, including, if the governing body deems it appropriate, increasing or diminishing the number of such districts or wards, in order to give, as nearly as is practicable, representation on the basis of population.

C. For the purposes of reapportioning representation in 2001 and every ten years thereafter, the governing body of a county, city, or town shall use the most recent decennial population figures for such county, city, or town from the United States Bureau of the Census, which figures are identical to those from the actual enumeration conducted by the United States Bureau of the Census for the apportionment of representatives in the United States House of Representatives, except that the census data for this apportionment purpose will not include any population figure which is not allocated to specific census blocks within the Commonwealth, even though that population may have been included in the apportionment population figures of the Commonwealth for the purpose of allocating United States House of Representatives seats among the states.

D. Notwithstanding any other provision of general law or special act, the governing body of a county, city, or town shall not reapportion the representation in the governing body at any time other than that required following the decennial census, except as (i) provided by law upon a change in the boundaries of the county, city, or town which results in an increase or decrease in the population of the county, city, or town of more than one percent, (ii) the result of a court order, (iii) the result of a change in the form of government, or (iv) the result of an increase or decrease in the number of districts or wards other than at-large districts or wards. The foregoing provisions notwithstanding, the governing body subsequent to the decennial redistricting may adjust district or ward boundaries in order that the boundaries might coincide with state legislative or congressional district boundaries; however, no adjustment shall affect more than five percent of the population of a ward or district or 250 persons, whichever is lesser. If districts created by a reapportionment enacted subsequent to a decennial reapportionment are invalid under the provisions of this subsection, the immediately pre-existing districts shall remain in force and effect until validly reapportioned in accordance with law.

§ 24.2-304.2. Governing body authorized to expend funds for reapportionment.

The governing body of each county, city, or town is authorized to expend funds and employ persons as it may deem necessary to carry out

the responsibilities relating to reapportionment provided by law.

§ 24.2-304.3. Recording reapportionment ordinance; notice requirements.

A copy of the ordinance reapportioning representation in the governing body of a county, city, or town, including a description of the boundaries and a map showing the boundaries of the districts or wards, shall be recorded in the official minutes of the governing body.

The clerk of the county, city, or town shall send a certified copy of the ordinance, including a description of the boundaries and a map showing the boundaries of the districts or wards, to the local electoral board, Secretary of the Commonwealth, State Board of Elections, and Division of Legislative Services.

§ 24.2-304.4. Mandamus action for failure to reapportion districts or wards.

Whenever the governing body of any county, city or town fails to perform the duty of reapportioning the representation on the governing body among the districts or wards of the county, city, or town, or fails to change the boundaries of districts or wards, as prescribed by law, mandamus shall lie in favor of any citizen of such county, city, or town, to compel the performance of such duty.

Whenever the governing body of any county, city or town changes the boundaries, or increases or diminishes the number of districts or wards, or reapportions the representation in the governing body as prescribed by law, the action shall not be subject to judicial review, unless it is alleged that the representation is not proportional to the population of the district or ward. If such allegation is made in a bill of complaint filed in the circuit court for the county, city or town, the court shall determine whether the action of the governing body complies with the constitutional requirements for redistricting and reapportionment. Appeals from the court's decision shall be as in any other suit.

§ 24.2-304.5. Notification of certain civil actions.

Any county, city, or town made a defendant in any civil action challenging the legality of its election district boundaries shall immediately notify the Attorney General of the pending civil action for review pursuant to § 2.1-121.1.

§ 24.2-304.6. Effect of reapportionment on appointments and terms of local officers, school board and planning commission members.

County, city, or town officers, including members of the school board or planning commission, in office on the effective date of a reapportionment or redistricting ordinance, shall complete their terms of office, regardless of loss of residency in a particular district due to reapportionment or redistricting.

Article 3. Requirements for Election Districts, Precincts, and Polling Places.

§ 24.2-305. Composition of election districts and precincts.

A. Each election district and precinct shall be composed of compact and contiguous territory and shall have clearly defined and clearly observable boundaries.

B. A "clearly observable boundary" shall include (i) any named road or street, (ii) any road or highway which is a part of the federal, state primary, or state secondary road system, (iii) any river, stream, or drainage feature forty feet or more in width, or (iv) any other natural or constructed or erected permanent physical feature which is shown on the official county, city, or town map issued by the Virginia Department of Transportation or on a United States Geological Survey topographical map. No property line or subdivision boundary shall be used as a precinct boundary unless it appears as a block boundary on the United States Bureau of the Census maps for the 1990 Census.

§ 24.2-306. Changes not to be enacted within sixty days of general election; notice requirements.

A. No change in any local election district, precinct, or polling place shall be enacted within sixty days next preceding any general election. Notice shall be published prior to enactment in a newspaper having general circulation in the election district or precinct once a week for two successive weeks. The published notice shall state where descriptions and maps of proposed boundary and polling place changes may be inspected.

B. Notice of any adopted change in any election district or polling place shall be mailed to all registered voters whose election district or polling place is changed at least fifteen days prior to the next general, special, or primary election.

C. Each county, city, and town shall comply with the applicable requirements of law, including §§ 24.2-301 and 24.2-304.3, and send copies of enacted changes to the local electoral board, the

State Board, and the Division of Legislative Services.

§ 24.2-307. Requirements for county and city precincts.

The governing body of each county and city shall establish by ordinance as many precincts as it deems necessary. Each governing body is authorized to increase or decrease the number of precincts and alter precinct boundaries subject to the requirements of this chapter.

At the time any precinct is established, it shall have no more than 5,000 registered voters. The general registrar shall notify the governing body whenever the number of voters who voted in a precinct in an election for President of the United States exceeds 4,000. Within six months of receiving the notice, the governing body shall proceed to revise the precinct boundaries, and any newly established or redrawn precinct shall have no more than 5,000 registered voters.

At the time any precinct is established, each precinct in a county shall have no fewer than 100 registered voters and each precinct in a city shall have no fewer than 500 registered voters.

Each precinct shall be wholly contained within any election district used for the election of one or more members of the governing body or school board for the county or city.

The governing body shall establish by ordinance one polling place for each precinct.

§ 24.2-308. Requirements for town precincts.

There shall be one precinct for each town unless the council by ordinance establishes more than one precinct.

Each town precinct shall be wholly contained within any election district used for the election of one or more council or school board members.

The council shall establish by ordinance one polling place for each precinct.

§ 24.2-309. Establishment of precinct with less than minimum number of voters; conduct of elections where all voters do not have same choice of candidates.

A precinct may be established with fewer than the minimum number of registered voters required by this article if a larger precinct cannot be established in which all persons are voting at any general election for the same candidates for the governing body and school board of the county or city, House of Delegates, state Senate, and United States House of Representatives. The governing body may select a polling place within one mile of the boundaries of that precinct if a suitable polling place is not available within that precinct.

The State Board shall make regulations setting procedures by which elections may be conducted in precincts in which all voters do not have the same choice of candidates at a general election.

§ 24.2-309.1. Election precincts; prohibiting precinct changes for specified period of time.

No county, city, or town shall create, divide, abolish, or consolidate any precincts, or otherwise change the boundaries of any precinct, effective during the period from September 1, 1998, to May 15, 2001, except as (i) provided by law upon a change in the boundaries of the county, city, or town, (ii) the result of a court order, (iii) the result of a change in the form of government, or (iv) the result of an increase or decrease in the number of local election districts other than at-large districts.

If a change in the boundaries of a precinct is required pursuant to clause (i), (ii), (iii), or (iv) above, the county, city, or town shall comply with the applicable requirements of law, including §§ 24.2-301 and 24.2-304.3, and send copies of the ordered or enacted changes to the State Board of Elections and the Division of Legislative Services.

This section shall not prohibit any county, city, or town from adopting an ordinance revising precinct boundaries or submitting that ordinance to the United States Department of Justice in accordance with § 5 of the United States Voting Rights Act of 1965, as amended, before May 15, 2001. However, no revisions in precinct boundaries shall be implemented in the conduct of elections prior to May 15, 2001.

§ 24.2-310. Requirements for polling places.

A. The polling place for each precinct shall be located within the county or city and either within the precinct or within 1,500 yards of the precinct boundary. The polling place for a county precinct may be located within a city if the city is wholly contained within the county election district served by the precinct. The polling place for a town precinct may be located within 1,000 yards of the precinct and town boundary.

B. The governing body of each county, city, and town shall provide funds to enable the electoral board to provide adequate facilities at each

polling place for the conduct of elections. Each polling place shall be located in a public building whenever practicable. If more than one polling place is located in the same building, each polling place shall be located in a separate room or separate and defined space.

C. Polling places shall be accessible to qualified voters as required by the provisions of the Virginians with Disabilities Act (§ 51.5-1 et seq.), the Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C. § 1973ee et seq.), and the Americans with Disabilities Act relating to public services (42 U.S.C. § 12131 et seq.). The State Board shall provide instructions to the local electoral boards and general registrars to assist the localities in complying with the requirements of the Acts.

D. If an emergency makes a polling place unusable or inaccessible, the electoral board shall provide an alternative polling place and give notice of the change in polling place, subject to the prior approval of the State Board.

§ 24.2-310.1. Polling places; additional requirement.

The requirement stated in this section shall be in addition to requirements stated in §§ 24.2-307, 24.2-308, and 24.2-310, including the requirement that polling places be located in public buildings whenever practical. No polling place shall be located in a building which serves primarily as the headquarters, office, or assembly building for any private organization, other than an organization of a civic, educational, religious, charitable, historical, patriotic, cultural, or similar nature, unless the State Board has approved the use of the building because no other building meeting the accessibility requirements of this title is available.

Article 4. Effective Dates of Redistricting Measures.

§ 24.2-311. Effective date of decennial redistricting measures; elections following decennial redistricting.

A. Legislation enacted to accomplish the decennial redistricting of congressional and General Assembly districts required by Article II, Section 6 of the Constitution of Virginia shall take effect immediately. Members of Congress and the General Assembly in office on the effective date of the decennial redistricting legislation shall complete their terms of office. The elections for their successors shall be held at the November general election next preceding the expiration of the terms of office of the incumbent members and shall be conducted on the basis of the districts set out in the legislation to accomplish the decennial redistricting.

B. Ordinances adopted by local governing bodies to accomplish the decennial redistricting of districts for county, city, and town governing bodies required by Article VII, Section 5 of the Constitution of Virginia shall take effect immediately. Members of county, city, and town governing bodies in office on the effective date of a decennial redistricting measure shall complete their terms of office. The elections for their successors shall be held at the general election next preceding the expiration of the terms of office of the incumbent members and shall be conducted on the basis of the districts set out in the measures to accomplish the decennial redistricting.

C. If a vacancy in any such office occurs after the effective date of a decennial redistricting measure and a special election is required by law to fill the vacancy, the vacancy shall be filled from the district in the decennial redistricting measure which most closely approximates the district in which the vacancy occurred.

D. If a decennial redistricting measure adopted by a local governing body adds one or more districts and also increases the size of the governing body, an election for the additional governing body member or members to represent the additional district or districts for the full or partial term provided by law shall be held at the next November general election in any county or in any city or town that regularly elects its governing body in November pursuant to § 24.2-222.1, or at the next May general election in any other city or town, which occurs at least 120 days after the effective date of the redistricting measure.

E. In the event of a conflict between the provisions of a decennial redistricting measure and the provisions of the charter of any locality, the provisions of the redistricting measure shall be deemed to override the charter provisions to the extent required to give effect to the redistricting plan.

§ 24.2-312. Effective date of other redistricting measures; elections following annexation.

A. Any redistricting, other than the decennial redistricting, of any county, city, or town shall be effective at midnight December 31 of the year in which the redistricting occurs.

B. Members of county, city, and town gov-

erning bodies in office when any such redistricting measure is adopted shall complete their terms of office. The elections for their successors shall be held at the general election next preceding the expiration of the terms of office of the incumbent members and shall be conducted on the basis of the districts set out in the measures to accomplish the redistricting.

C. When a county has been redistricted as a result of annexation and the redistricting occurs in the year of a regularly scheduled November general election for members of the county's board of supervisors, the November general election shall be conducted from the newly established districts so long as the redistricting measure has been adopted prior to March 15 of the year of the election.

D. When a city or town has been redistricted as a result of annexation and the redistricting occurs prior to a regularly scheduled May general election for members of the city's or town's governing body, the May general election shall be conducted from the newly established districts so long as the redistricting measure has been adopted prior to the November 15 immediately preceding the election.

Appendix B:
Census 2000 Geographic Product Highlights
http://www.census.gov/geo/www/geo_flyer.pdf

CENSUS 2000
COUNTY BLOCK MAPS
(P.L. 94-171 Redistricting Product)
Paper available: January-February 2001
DVD available: March 2001
PDF files available: April-May 2001
County Block Maps are essentially the same type of map as the Census 2000 Block Maps described above except that they are created for each county unit and they have the voting district boundaries. The maps show the boundaries, names and codes for American Indian areas/Alaska Native areas/Hawaiian home lands, county divisions, places, voting districts, census tracts, block groups and census blocks. Media: DVD, Internet (PDF), CD-ROM (custom order only) and paper.

CENSUS 2000
BLOCK MAPS
Paper available: May 2001
HP-GL files available: June 2001
PDF files available: July 2001
The Census Bureau's block maps show the greatest detail and most complete set of geographic information. These large-scale maps depict the smallest geographic entities for which the Census Bureau presents data—the census blocks—by displaying the features that form block boundaries and the numbers that identify them. The intent of this map series is to produce a map for each governmental unit (e.g. American Indian areas/Alaska Native areas/Hawaiian home lands, county, place and functioning minor civil division) on the smallest possible number of map sheets at the maximum practical scale. Lowest level of geography: Census Block. Media: DVD, Internet (PDF), CD-ROM (custom order only) and paper.
[Formats: PDF, HP-GL; SIZE: 36" x 33"]
[Formats: PDF, HP-GL; SIZE: 36" x 33"]

CENSUS 2000 TIGER/LINE FILES
Internet available: April-May 2001
This is the public version of the Census Bureau's digital database of geographic features for the United States and the U.S. Island Areas. The database is called TIGER which is the source of all Census Bureau geographic products. The TIGER/Line files include the January 1, 2000 governmental unit boundaries, Census 2000 statistical area boundaries, Census 2000 tabulation block numbers, address range enhancements, feature updates from Census 2000 enumeration and ZIP Code Tabulation Areas (ZCTAs). Record Media: DVD, Internet and CD-ROM (custom order only). [Format: ASCII]
layouts available now on web site at URL: http://www.census.govt/geo/www/tiger/index.html.

REDISTRICTING
CENSUS 2000 TIGER/Line Files
Internet: March 2001
The first release of the Census 2000 TIGER/Line files is specifically intended to support the needs of the redistricting community. Because of the timing of this release, it will **NOT** include the ZIP Code Tabulation Areas (ZCTAs) nor all of the final Census 2000 address range information. The following areas will not be included in this release: American Samoa, Guam, Northern Mariana Islands, the Minor Outyling Areas (Midway) and the Virgin Islands.
DVD available: April 2001
(custom order only). [Format: ASCII]
Media: DVD, Internet and CD-ROM

URL for sample maps:
http://www.census.gov/ftp/pub/geo/DR/dr_geopr.html

CENSUS 2000
CENSUS TRACT OUTLINE MAPS
Paper available: January-February 2001
DVD available: March 2001
PDF files available: April-May 2001
These county maps show the boundaries and numbers of the census tracts, and name the features underlying the boundaries. They also show the boundaries, names, and codes for American Indian areas/ Alaska Native areas/Hawaiian home lands, counties, county subdivisions, and places.
Media: DVD, Internet (PDF), CD-ROM (custom order only) and paper.
[Formats: PDF, HP-GL; SIZE: 36" x 33"]

CENSUS 2000 VOTING DISTRICT/STATE LEGISLATIVE DISTRICT OUTLINE MAPS
(P.L. 94-171 Redistricting Product)
Paper available: January-February 2001
DVD available: March 2001
PDF files available: April-May 2001
These county-based maps show the boundaries and codes for Voting Districts as delineated by the participating States in Phase 2, Voting District Project, of the Redistricting Data Program; the features underlying these boundaries; and the names of these features. Additionally, for States that submitted the information, these maps show the boundaries and codes for State legislative districts and their underlying features. These maps also show the boundaries and names of American Indian areas/Alaska Native areas/Hawaiian home lands, counties, county subdivisions, and places. The maps will be available only for those states and counties where information was provided under the Voting District Project.
Media: DVD, Internet (PDF), CD-ROM (custom order only) and paper.
[Formats: PDF, HP-GL; SIZE: 36" x 33"]