

HJR

44

HFIN

FILE

adopted
3/3/98 as amended
pg 5

0-LS0528U
Glover
3/3/98

CS FOR HOUSE JOINT RESOLUTION NO. 44(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES PORTER AND MULDER, Dyson, Green

A RESOLUTION

1 Proposing amendments to the Constitution of the State of Alaska relating to
2 redistricting and reapportionment of the legislature; repealing obsolete language
3 setting out the apportionment schedule used to elect members of the first state
4 legislature; and providing for an effective date.

5 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

6 * Section 1. Article VI, sec. 1, Constitution of the State of Alaska, is amended to read:

7 Section 1. House [ELECTION] Districts. Members of the house of
8 representatives shall be elected by the qualified voters of the respective house
9 [ELECTION] districts. The boundaries of the house districts shall be set under this
10 article after each decennial census of the United States [UNTIL
11 REAPPORTIONMENT, ELECTION DISTRICTS AND THE NUMBER OF
12 REPRESENTATIVES TO BE ELECTED FROM EACH DISTRICT SHALL BE
13 AS SET FORTH IN SECTION 1 OF ARTICLE XIV].

14 * Sec. 2. Article VI, sec. 2, Constitution of the State of Alaska, is amended to read:

15 Section 2. Senate Districts. Members of the senate shall be elected by the
16 qualified voters of the respective senate districts. The boundaries of the senate

1 districts shall be set under this article after each decennial census of the United
2 States [SENATE DISTRICTS SHALL BE AS SET FORTH IN SECTION 2 OF
3 ARTICLE XIV, SUBJECT TO CHANGES AUTHORIZED IN THIS ARTICLE].

4 * Sec. 3. Article VI, sec. 3, Constitution of State of Alaska, is amended to read:

5 Section 3. Reapportionment of House and Senate. The Redistricting Board
6 [GOVERNOR] shall reapportion the house of representatives and the senate
7 immediately following the official reporting of each decennial census of the United
8 States. Reapportionment shall be based upon the [CIVILIAN] population within each
9 house and senate [ELECTION] district as reported by the census.

10 * Sec. 4. Article VI, sec. 4, Constitution of the State of Alaska, is amended to read:

11 Section 4. Method of Redistricting. The Redistricting Board shall
12 establish forty house districts, with each house district to elect one member of the
13 house of representatives. The board shall establish twenty senate districts, each
14 composed of two house districts, with each senate district to elect one senator
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16 PROPORTIONS, EXCEPT THAT EACH ELECTION DISTRICT HAVING THE
17 MAJOR FRACTION OF THE QUOTIENT OBTAINED BY DIVIDING TOTAL
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19 * Sec. 5. Article VI, sec. 6, Constitution of the State of Alaska, is amended to read:

20 Section 6. District Boundaries [REDISTRICTING]. The Redistricting
21 Board shall establish [GOVERNOR MAY FURTHER REDISTRIBUTE BY
22 CHANGING] the size and area of house [ELECTION] districts, subject to the
23 limitations of this article. Each house [NEW] district [SO CREATED] shall be formed
24 of contiguous and compact territory containing as nearly as practicable a relatively
25 integrated socio-economic area. Each shall contain a population as near as
26 practicable [AT LEAST EQUAL] to the quotient obtained by dividing the [TOTAL
27 CIVILIAN] population of the state by forty. Each senate district shall be composed
28 as near as practicable of two contiguous house districts. Consideration may be
29 given to local government boundaries. Drainage and other geographic features shall
30 be used in describing boundaries wherever possible.

31 * Sec. 6. Article VI, sec. 8, Constitution of the State of Alaska, is amended to read:

1 Section 8. Redistricting [REAPPORTIONMENT] Board. (a) The chief
2 justice of the supreme court [GOVERNOR] shall appoint a redistricting
3 [REAPPORTIONMENT] board, subject to the provisions of this section [TO ACT
4 IN AN ADVISORY CAPACITY TO HIM]. It shall consist of five members, all of
5 whom shall be residents of the state and none of whom may be public employees
6 or officials at the time of and during the tenure of appointment. Board members
7 shall be appointed as provided in (b) of this section [. AT LEAST ONE MEMBER
8 EACH SHALL BE APPOINTED FROM THE SOUTHEASTERN, SOUTH-CENTRAL,
9 CENTRAL, AND NORTHWESTERN SENATE DISTRICTS. APPOINTMENTS
10 SHALL BE MADE WITHOUT REGARD TO POLITICAL AFFILIATION]. Board
11 members shall be compensated.

12 (b) Members of the Redistricting Board shall be appointed between
13 January 1 and January 16 of the year following a decennial census. At least one
14 board member shall be appointed from each judicial district. Board members
15 serve until a final plan for redistricting and proclamation of redistricting has been
16 adopted and all challenges to it brought under Section 11 of this article have been
17 resolved after final remand or affirmation.

18 (c) A person who was a member of the Redistricting Board at any time
19 during the process leading to final adoption of a redistricting plan under Section
20 10 of this article may not be a candidate for the legislature in the general election
21 following the adoption of the final redistricting plan.

22 * Sec. 7. Article VI, sec. 9, Constitution of the State of Alaska, is amended to read:

23 Section 9. Board Actions [ORGANIZATION]. [THE BOARD SHALL
24 ELECT ONE OF ITS MEMBERS CHAIRMAN AND MAY EMPLOY TEMPORARY
25 ASSISTANTS.] Concurrence of three members of the Redistricting Board is
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27 number may conduct hearings [OR OTHERWISE ACT FOR THE BOARD]. The
28 board shall employ or contract for services of independent legal counsel.

29 * Sec. 8. Article VI, sec. 10, Constitution of the State of Alaska, is amended to read:

30 Section 10. Redistricting [REAPPORTIONMENT] Plan and Proclamation.
31 (a) Within thirty days after the release of the decennial census population data

1 or thirty days after being duly appointed, whichever occurs last, the board shall
2 adopt one or more proposed redistricting plans. The board shall hold public
3 hearings on the proposed plan, or, if no single proposed plan is agreed on, on all
4 plans proposed by the board. No later than ninety days after the board has been
5 appointed and the decennial census population data has been released, the board
6 shall adopt a final redistricting plan and [WITHIN NINETY DAYS FOLLOWING
7 THE OFFICIAL REPORTING OF EACH DECENNIAL CENSUS, THE BOARD
8 SHALL SUBMIT TO THE GOVERNOR A PLAN FOR REAPPORTIONMENT AND
9 REDISTRICTING AS PROVIDED IN THIS ARTICLE. WITHIN NINETY DAYS
10 AFTER RECEIPT OF THE PLAN, THE GOVERNOR SHALL] issue a proclamation
11 of [REAPPORTIONMENT AND] redistricting. [AN ACCOMPANYING
12 STATEMENT SHALL EXPLAIN ANY CHANGE FROM THE PLAN OF THE
13 BOARD.] The final plan shall set out boundaries of house and senate districts and
14 [REAPPORTIONMENT AND REDISTRICTING] shall be effective for the election
15 of members of the legislature until sixty days after adoption and final adjudication
16 of the succeeding redistricting plan and proclamation of redistricting.

17 (b) Adoption of a final redistricting plan shall require the affirmative
18 votes of three members of the Redistricting Board [UNTIL AFTER THE
19 OFFICIAL REPORTING OF THE NEXT DECENNIAL CENSUS].

20 * Sec. 9. Article VI, sec. 11, Constitution of the State of Alaska, is amended to read:

21 **Section 11. Enforcement.** Any qualified voter may apply to the superior
22 court to compel the Redistricting Board [GOVERNOR], by mandamus or otherwise,
23 to perform its [HIS REAPPORTIONMENT] duties under this article or to correct any
24 error in redistricting [OR REAPPORTIONMENT]. Application to compel the board
25 [THE GOVERNOR] to perform [HIS REAPPORTIONMENT DUTIES] must be filed
26 not later than [WITHIN] thirty days following [OF] the expiration of the ninety-day
27 period specified in [EXPIRATION OF EITHER OF THE TWO NINETY-DAY
28 PERIODS SPECIFIED IN] this article. Application to compel correction of any error
29 in redistricting [OR REAPPORTIONMENT] must be filed within thirty days following
30 the adoption of the final redistricting plan and proclamation by the board
31 [PROCLAMATION]. Original jurisdiction in these matters is [HEREBY] vested in

1 the superior court. On appeal from the superior court, the cause shall be reviewed
 2 by the supreme court on [UPON] the law and the facts. Notwithstanding Section 15
 3 of Article IV, all dispositions by the superior court and the supreme court under
 4 this section shall be expedited and shall have priority over all other matters
 5 pending before the respective court. Upon a final judicial decision that a plan is
 6 invalid, the matter shall be returned to the board for correction and development
 7 of a new plan.

8 * **Sec. 10.** Article XI, sec. 3, Constitution of the State of Alaska, is amended to read:

9 **Section 3. Petition.** After certification of the application, a petition containing
 10 a summary of the subject matter shall be prepared by the lieutenant governor for
 11 circulation by the sponsors. If signed by qualified voters, equal in number to ten per
 12 cent of those who voted in the preceding general election and resident in at least two-
 13 thirds of the house [ELECTION] districts of the State, it may be filed with the
 14 lieutenant governor.

15 * **Sec. 11.** Article XV, Constitution of the State of Alaska, is amended by adding a new
 16 section to read:

17 **Section 29. Effective Date and Applicability of Amendments Providing for**
 18 **Redistricting of the Legislature.** (a) The 1998 amendments relating to redistricting
 19 of the legislature (art. VI and art. XIV), and relating to filing of initiative petitions (art.
 20 XI, sec. 3) take effect January 1, 2001.

21 (b) Notwithstanding Section 10 of Article VI, the proclamation of redistricting
 22 in effect on December 31, 2000, is effective for election of members of the legislature
 23 until sixty days after adoption and final adjudication of the succeeding redistricting
 24 plan and proclamation of redistricting under Article VI.

25 * **Sec. 12.** Article VI, secs. 5 and 7, and Article XIV, Constitution of the State of Alaska,
 26 are repealed.

27 * **Sec. 13.** The amendments proposed by this resolution shall be placed before the voters
 28 of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the
 29 State of Alaska, and the election laws of the state.

*delete
Sec 11*

Adopted
31~~st~~ 198

A

AMENDMENT 1

OFFERED IN THE HOUSE
TO: CSHJR 44(FIN)
0-LS0528V

Page 3, Line 3

After "section"

Insert "and as may be provided by law"

Adopted
no job

314198

AMENDMENT 2

OFFERED IN THE HOUSE
TO: CSHJR 44(FIN)
0-LS0528\I

Page 3, Lines 12-13

After "appointed"

Delete "between January 1 and January 16"

Insert "by September 1"

Page 3, Line 13

After "of the year"

Delete "following"

Insert "in which"

Page 3, Line 13

After "decennial census"

Insert "is taken"

AMENDMENT

3

Adopted
3/4/98

C

OFFERED IN THE HOUSE
TO: CSHJR 44(FIN)
0-LS0528I

Page 3, Line 14

After "shall be"

Delete "appointed"

Insert "a resident"

Page 3, Line 14

After "judicial district"

Insert "that existed on January 1, 1999"

AMENDMENT

\$4

w/d

OFFERED IN THE HOUSE

TO: CSHJR 44(FIN), Draft Version "I"

- 1 Page 5, line 20:
- 2 Delete "2001"
- 3 Insert "2000"

- 4 Page 5, lines 22 - 24:
- 5 Delete all material.
- 6 Insert "in effect on the date that the lieutenant governor certifies that a majority of the
- 7 voters voting on the question have approved the 1998 amendments to Article VI, remains in
- 8 effect for election of members of the legislature until sixty days after adoption and final
- 9 adjudication of the succeeding redistricting plan and proclamation of redistricting under
- 10 Article VI, as amended by the 1998 amendments."

- 11 Page 5, line 26, following "repealed":
- 12 Insert "January 1, 2000"

3/5/98

adopted N/D
AMENDMENT #6

#6

OFFERED IN THE HOUSE
TO: CSHJR 44(FIN)
0-LS0528\1

Page 4, Lines 15 - 19

After "legislature"

Delete "until sixty days after adoption and final adjudication of the succeeding redistricting plan and proclamation of redistricting."

Insert "until after the official reporting of the next decennial census."

Relocate subsection (b) to appropriate lines.

HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: February 18, 1998

FURTHER REFERRALS:

Date of Committee Action: 3/5/98

The FINANCE Committee considered:

HJR 44

HOUSE JOINT RESOLUTION NO. 44

REAPPORTIONMENT BOARD & REDISTRICTING

Proposing amendments to the Constitution of the State of Alaska relating to redistricting of the legislature.

recommends it be replaced with the following committee substitute CS HJR 44 (FIN) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

fiscal note(s) _____

fiscal note(s) view 2/18/98

zero fiscal note(s) _____

zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Gene Herrigault</i>	Therriault	X			
<i>Mark Hanley</i>	Hanley	X			
<i>Alan Mulder</i>	Mulder	X			
<i>George Martin</i>	Martin			X	
<i>Eric Kohring</i>	Kohring		X		
<i>John Davies</i>	J. Davies		X		
<i>Ben Grossindorf</i>	Grossindorf		X		
<i>John A. Davis</i>	A. Davis			X	
<i>Pete Kelly</i>	Kelly	✓			
<i>R. Foster</i>	Foster	X			

CHAIR'S SIGNATURE *Gene Herrigault* *Mark Hanley*
 Therriault Hanley

FISCAL NOTE

No: 1

**STATE OF ALASKA
1998 LEGISLATIVE SESSION**

Bill version: CSHJR 44 (JUD)
(H) Publish Date: 2/18/98

Revision Date (Note if correction) _____	Dept. Affected <u>Office of the Governor</u>
Title <u>Const. Amend Relating to redistricting</u>	BRU <u>Elective Operations</u>
of the legislature _____	Component <u>Elections</u>
Sponsor <u>Representatives Porter and Mulder</u>	
Requester <u>House Judiciary Committee</u>	Component Serial No. <u>#21</u>

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual	3.0					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	3.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
1002 Federal Receipts						
1003 GF Match						
1004 GF	3.0					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	3.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This figure includes the cost of providing information about this issue in the Official Election Pamphlet, as required by AS 15.58, and the programming costs for counting votes cast on the measure. However, only four measures can be printed on a single ballot card. If this measure requires printing an additional ballot card, the costs will increase by \$56.0.

Prepared by <u>Gail Fenwick</u>	Phone <u>465-3935</u>
Division <u>Division of Elections</u>	Date <u>2/12/98</u>
Approved by C <u>Lt. Governor Fran Ulmer</u>	Date <u>2/12/98</u>
Agency <u>Office of the Lieutenant Governor</u>	

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FISCAL NOTE

Bill Version: CSHJR 44 (JUD)
 (H) Publish Date: 2/18/98

STATE OF ALASKA
 1998 LEGISLATIVE SESSION

Revision Date (Note if correction)	Dept Affected	Law
Title: Proposing amendments to the Constitution of the	BRU	Civil Division
State of Alaska relating to redistricting and reapportionment ...	Component	Governmental Affairs
Sponsor: Representative Porter	Component Serial No	2207
Requester: House Judiciary Committee		

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services	20.1	9.4				
Travel	0.1	0.0				
Contractual	43.2	1.5				
Supplies	0.3	0.2				
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	63.7	11.1	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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ANALYSIS: (Attach a separate page if necessary)

CS HJR 44 (JUD), Workdraft M, would amend the Alaska Constitution to change the method of redistricting legislative election districts, and create a Reapportionment Board appointed by the legislature to do the redistricting.

Passage of the resolution itself would have no cost to the Department of Law. However, if the constitutional amendment were adopted by the people of the State of Alaska, the new law would require preclearance by the United States Department of Justice (DOJ) before implementation because it changes a voting law. The preclearance process would require the Department of Law to document and present the state's position to the DOJ. We anticipate that 3 months of in-house attorney time would be required for preclearance, 20 hours of paraprofessional time, and \$40,000 for expert opinions, assuming that the process remains an administrative one. Should the new law be challenged, and referred to a

Prepared by: Joan M. Kasson
 Division: Attorney General's Office
 Approved by Commissioner: Bruce M. Botelho, Attorney General
 Agency: Department of Law

Phone: 465-5370
 Date: 2/13/98
 Date: 2/13/98

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COMMITTEE COPY

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

Workdraft M
BILL NO. CSHJR 44 (JUD)

ANALYSIS CONTINUATION

three-judge panel in the District of Columbia Circuit, costs would increase dramatically. The department has not included those speculative costs in this fiscal note, and would request a supplemental appropriation should that eventuality occur.

In-house costs are based on the department's FY98/99 standard attorney cost schedule (\$92.72/hour per for attorney time and \$71.94/hour for paraprofessionals). The schedule includes clerical support, lease costs, communications, and other standard overhead costs. Expert fees and costs are added separately. If the resolution passes this session, preclearance would begin 30 days after certification of the 1998 election, the next general election. The department is assuming that most of the work can be completed in FY99, and has included two months of in-house costs, and all expert costs, during that year, with the remaining one month of in-house costs to be incurred in FY00.

COST SUMMARY

Attorney				
	FY99	\$92.72	240.0 hrs	\$22,253
	FY00	\$92.72	120.0 hrs	\$11,126
Paraprofessional				
	FY99	\$71.94	20.0 hrs	\$1,439
Expert Costs				
FY99				\$40,000
Total				
	FY99			\$63,692
	FY00			\$11,126

0-LS0528VI

Glover

3/3/98

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Sub 1 (b) **Members of the Redistricting Board shall be appointed** ^{b-1} **between** **January 1 and January 16** ^{as such} **of the year** ^{initial} **following a decennial census.** **At least one board member shall be appointed from each judicial district.** **Board members serve until a final plan for redistricting and proclamation of redistricting has been adopted and all challenges to it brought under Section 11 of this article have been resolved after final remand or affirmation.**

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 25 [THE GOVERNOR] to perform [HIS REAPPORTIONMENT DUTIES] must be filed
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 27 period specified in [EXPIRATION OF EITHER OF THE TWO NINETY-DAY
 28 PERIODS SPECIFIED IN] this article. Application to compel correction of any error
 29 in redistricting [OR REAPPORTIONMENT] must be filed within thirty days following
 30 the adoption of the final redistricting plan and proclamation by the board
 31 [PROCLAMATION]. Original jurisdiction in these matters is [HEREBY] vested in

1 the superior court. On appeal from the superior court, the cause shall be reviewed
 2 by the supreme court on [UPON] the law and the facts. Notwithstanding Section 15
 3 of Article IV, all dispositions by the superior court and the supreme court under
 4 this section shall be expedited and shall have priority over all other matters
 5 pending before the respective court. Upon a final judicial decision that a plan is
 6 invalid, the matter shall be returned to the board for correction and development
 7 of a new plan.

8 * **Sec. 10.** Article XI, sec. 3, Constitution of the State of Alaska, is amended to read:

9 **Section 3. Petition.** After certification of the application, a petition containing
 10 a summary of the subject matter shall be prepared by the lieutenant governor for
 11 circulation by the sponsors. If signed by qualified voters, equal in number to ten per
 12 cent of those who voted in the preceding general election and resident in at least two-
 13 thirds of the **house** [ELECTION] districts of the State, it may be filed with the
 14 lieutenant governor.

15 * **Sec. 11.** Article XV, Constitution of the State of Alaska, is amended by adding a new
 16 section to read:

17 **Section 29. Effective Date and Applicability of Amendments Providing for**
 18 **Redistricting of the Legislature.** (a) The 1998 amendments relating to redistricting
 19 of the legislature (art. VI and art. XIV), and relating to filing of initiative petitions (art.
 20 XI, sec. 3), take effect January 1, 2001. (2001)

21 (b) Notwithstanding Section 10 of Article VI, the proclamation of redistricting
 22 in effect on ^{the date this takes effect} December 31, 2000, is effective for election of members of the legislature
 23 until sixty days after adoption and final adjudication of the succeeding redistricting
 24 plan and proclamation of redistricting under Article VI.

25 * **Sec. 12.** Article VI, secs. 5 and 7, and Article XIV, Constitution of the State of Alaska,
 26 are repealed.

27 * **Sec. 13.** The amendments proposed by this resolution shall be placed before the voters
 28 of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the
 29 State of Alaska, and the election laws of the state.

Amended

FEB-09-1998 18:06 FROM NAT'L CONF. OF ST. LEGIS. TO 819074654316-12200 P.02:15

For the very reason that intent proof is difficult and courts may tend now to be satisfied with any "quite equal" redistricting plan, no matter how badly gerrymandered in actual result, it becomes all the more important that equality of political opportunity (which also can be called fairness or neutrality) be considered in the process of constructing the plan. It may be the first and last chance. Of course Justice White did offer a provocative line in *Gaffney* on the intent issue when he said:

[A] politically mindless approach may produce, whether intended or not, the most grossly gerrymandered results; and, in any event, it is most unlikely that the political impact of such a plan would remain undiscovered by the time it was proposed or adopted, in which event the results would be both known and, if not changed, intended" (emphasis added).

We may well hear more of this warning in the litigation that will follow the 1980 census-induced redistrictings. But it would be unwise to place sole reliance on it as a safeguard for representative fairness.

Districting Standards

Contiguity

The contiguity requirement—that no part of one district be completely separated from any other part of the same district—has been universally accepted and poses no enforcement problem or serious challenge to districting flexibility in pursuit of other fair representation values.

Compactness

The requirement of compactness specifies that the boundaries of each district shall be as short as practicable. Although there is no federal constitutional requirement of compactness,²² such a requirement may present a certain restraint on gerrymandering and may seem innocuous on its face. Rigid adherence to a compactness, however phrased, should be avoided. A district pattern of symmetrical squares, although conceivable, well can operate to submerge a significant element of the electorate. As a practical matter, absolute compactness (districts forming perfect circles that are even shorter lines than squares) is an impossibility. Furthermore, a benign gerrymander, in the sense of some asymmetrical districts, may well be required to assure representation of submerged elements within a larger area. Shape requirements focus on form rather than the substance of effective political representation.

Lexington Books, 1982
ed. Bernard Grofman

Following Political Boundaries

The requirement of honoring political subdivision boundaries insofar as possible under the population equality requirements responds to a traditional and even instinctive sense of community as a significant basis for representation. It was mentioned by Chief Justice Warren in *Reynolds v. Sims*. The extent to which political subdivision boundaries may be honored is, of course, an inverse corollary of the degree of population stringency required. The Supreme Court's population equality stringency in *Kirkpatrick v. Preister* and *White v. Weiser* had the effect of badly trampling any political subdivision policy for congressional districting.

Population Deviation

A 2 percent maximum deviation rule leaves some room for following political subdivision lines, without any demonstrable cost to any principle of fair and effective representation of which I am aware. In *Weiser* in 1973 the court voided an official state plan with a maximum deviation of 2.43 percent, under the force of the *Kirkpatrick* rule. The alternative plaintiffs' plan adopted by the Court cut eighteen more county lines than did the rejected state plan. I have already noted above that three members of the *Weiser* Court said they were disenchanted with this extremely stringent rule and two additional members had at least opposed the rule at its inception in 1969.

Incumbent Protection

Various groups (most notably Common Cause, 1977b), have advocated a flat prohibition on the consideration of addresses of incumbents in the drawing of district lines. In practice this prohibition may be no more enforceable than Prohibition itself, but I will lay that aside. From the standpoint of constitutional law, the Supreme Court said in *Weiser*, as it had earlier, that: "The fact that district boundaries may have been drawn in a way that minimized the number of contests between present incumbents does not in and of itself establish invidiousness."²³ On the question whether the prohibition is sound policy, persons will differ. There are virtues in having some continuity in office for the sake of experience, stability, and relations with constituents. There also are virtues in turnover, which is probably far better achieved—if we are at all serious about it—by limiting legislators to a specified number of terms.

Congressional Redistricting: Comparative and Theoretical Perspectives

GLOSSARY

Additional Member System (AMS). The proportional system used in Germany. Half the members are elected by first-past-the-post voting in single-member constituencies. The other half are allocated to party lists in such a way that the seats in the full assembly are proportionate to the votes cast in the country as a whole (subject to certain threshold rules).

Affirmative action. A policy to ensure proportionate, or more than proportionate, representation for hitherto underrepresented minorities.

Aggregate fairness. The extent to which any local deviations from balanced redistricting cancel out so that, as a whole, no party or grouping is disadvantaged.

Alabama paradox. Under the formula used for the allocation of seats to states from 1910 to 1940 it was possible for a seat that gained in population to lose representation. This occurrence is known as the Alabama paradox.

Alternative vote (AV). Preferential voting within single-member constituencies. For the Australian lower house, for example, every elector is required to number all the candidates in order of preference; the candidate with fewest first preferences is eliminated and higher second preferences are counted instead; the process continues until one candidate has a clear majority.

Apportionment. The process of allocating congressional districts across states.

At-large. When one or several members are elected by the whole of a state or by the whole area of a local authority they are described as being elected at-large.

Bipartisanship. Occurs when the rival parties agree on the procedure and substance of redistricting. It is possible to have a "bipartisan gerrymander" when the parties mutually agree to preserve or increase the safety of the seats of incumbent representatives.

Blindfold redistricting. The drawing of boundaries by some general formula which has no regard to specific party or incumbent interests.

Building block. The basic minimum unit used in drawing up boundaries. It could be as large as a county but is now usually a census district or even a census tract.

Census block; Census tract. Areas designated by the Census for the collection and presentation of data.

Commission. A statutory and independent body charged with researching or implementing policy. Boundary commissions have been used widely in the English-speaking world so that constituencies can be delineated without direct political interference.

Community. A geographic grouping of the population with common interests dictated, for instance, by local government boundaries, transport or school facilities, ethnicity, language, or simply tradition.

Compactness. Having the minimum distance between all the parts of a constituency (a circle or a hexagon is the most compact district). Compactness is seen as one of the main defenses against gerrymandering.

Competitive seats. A seat where the margin of victory is small enough to make a change of control possible. See *Marginal seats*.

Constituency. The most common term for the geographic areas into which a country is divided for electoral purposes. A constituency may send one or several members to the legislature. Other terms include district (United States), riding (Canada), circonscription (France), electorate (Australia and New Zealand), and division (U.K.).

Contiguity. All parts of a district being connected at some point with the rest of the district.

MacMillan Publishing Co.¹⁵⁶, 1992
David Butler and Bruce Cain

All of this political and demographic information makes redistricting a highly quantitative exercise. A typical system in a large state stores this information on a tape or disk in a computer. Usually redistricters only work with a subset of the data—population, racial and ethnic percentages, and a few critical political measures. The rest of the information is retrieved and presented when requested by the courts, or incumbents, or the press. The most advanced systems are interactive. The redistricter signifies to the computer a desire to move a particular census unit or precinct out of one district and into another, and the computer instantaneously retabulates the summary of political and demographic information after the change. The computer system must also have the capacity to provide a detailed description of the districts in terms of tracts and blocks so that the proposal can be made into a law.

Maps and Measures of Compactness

A modern redistricting computer system will have a mapping capacity so that people can view what is happening under different proposals. There are two basic kinds of maps. One is a computerized map which shows the whole county down to the census block or precinct level. An innovation of the 1990 census has been the creation of the so-called TIGER file system which adds various prominent geographic features, such as roads and railroad tracks to the computer map. However, even with these additional features, most people find the computer-generated maps hard to read and too sparse. Often people will want very specific information about side streets, neighborhoods, and topography which require a finer grade of map.

The second type of map is the printed precinct or census maps providing extremely detailed information about streets and other features. The advantage of the first type of map is that the computer can automatically and instantaneously generate a new map with each proposal. The drawback, as we said before, is its sparseness. The advantage of the second type of map is the richness of the information it provides, but a very serious limitation is the difficulty

in generating them after even minor changes are made. When highly detailed maps are not on the computer, districts must be drawn in by hand, and in a large state with thousands of census tracts, delays and mistakes are inevitable.

Maps provide several essential pieces of information. For incumbents, they show in visual form the areas that have been lost and gained in a redistricting trade. Using the census and political information, a map can be colored or shaded to reflect the partisan strength or racial and ethnic composition of various areas within a proposed district. The maps are also important for displaying "holes"—parts of districts that are noncontiguous. In the mad rush to construct numerous proposals in a short period of time, it is easy to forget to assign a tract in the middle of the district or to mistakenly type in the wrong tract or block number. Mapping the districts shows these mistakes and allows for rapid correction.

Third use of maps is to assess the shapes of districts. For reasons we will discuss more fully in the next chapter, it may be important to measure the compactness of proposed districts and to compare the average compactness of districts in one proposal as opposed to the average in another. An element of compactness that has been mentioned already is contiguity—that all parts of a district must be connected at a point. Generally, it is further taken to mean connected at some point on dry land, but not always. Phil Burton claimed contiguity for a district in his 1981 California congressional plan that ran from Marin County across the waters of San Francisco Bay to the city of Vallejo. Another district in Los Angeles county followed the coastline and dock areas of Long Beach and San Pedro so narrowly that it was said of the district that it was contiguous at low tide only. Of course, some kinds of noncontiguity are unavoidable. An off-shore island, for instance, has to be attached to mainland districts by water unless it has, by itself, close to the ideal population for a district.

The other aspect of compactness is that districts should have relatively geometrical shapes, without many branches, dips, or jagged edges. A compactness requirement tries to limit oddly shaped districts, and a compactness measure provides a means for calibrating

how closely districts come to meeting that goal. There are two basic forms of compactness requirements, apart from the informal eyeball reaction that people have to what they see. The first is area based and the second is population based.

An area-based measure is concerned only with the shape of a district (Young, 1988). There are a number of ways of defining such a criterion. Certain irregular shapes will pass the compactness test if one kind of measure is used but fail if another is used instead, and vice versa. For instance, a common form of an area compactness criterion is a perimeter test. One such test is to draw two concentric circles, the first wholly containing every part of a district and the second wholly contained within the district; a reasonably compact district is one in which the area of the second circle is at least 50 percent that of the first. Figure 3.7a shows a rectangular shaped

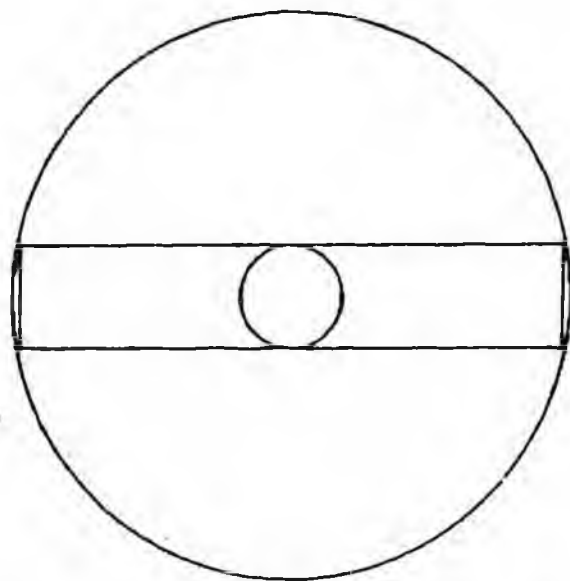


Figure 3.7a Rectangle fails perimeter/area-based compactness.

district that fails this test. However, Figure 3.7b shows a district with a number of dips and jagged edges that passes the concentric circles test and yet would seem intuitively to be noncompact. A smallest square criterion, by comparison, does a better job of catching jagged edges, but not smooth, rectangular forms.

Another less frequently employed compactness measure is population based. The intuition behind this is that compactness is important only where there are people: Oddly shaped lines that are caused by natural features (e.g., the contours of the coast or a mountain range) should not be judged in the same way as oddly shaped lines in populated areas. One procedure is to specify that the ratio of the population inside a district to the population inside a polygon just enclosing the whole district should be above a certain level. Unfortunately, a by-product of using such a measure is that it establishes a double standard of compactness for urban versus rural areas. Areas that are densely and uniformly populated face a more

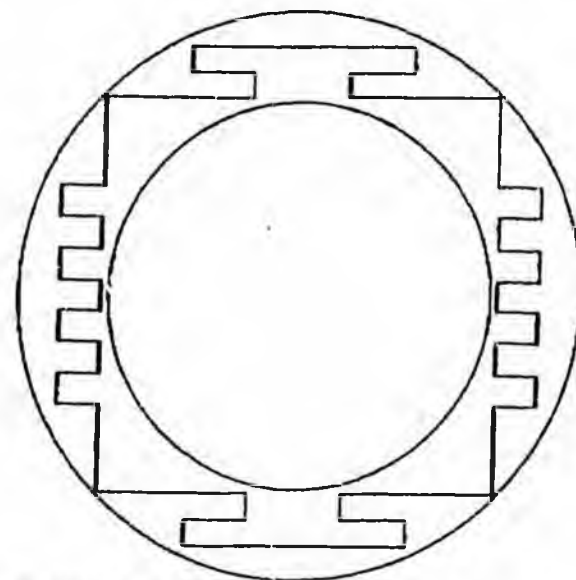


Figure 3.7b The jagged form passes.

Butler & Cain

stringent compactness requirement in effect than unevenly settled and less populated areas. Since groups that are protected under the Voting Rights Act tend to live in the urban areas, a criterion that restricts options to give fuller representation to their communities might well be challenged in court.

Conclusion

The technical aspects of redistricting are made necessary by the quantitative nature of the task and the immense volume of data that is needed to assess the racial and political effects of various proposals. However, the technical appearance of redistricting is somewhat deceptive. Redistricting choices are about more than mere numbers and shapes — they concern political power, fairness, and values of representation. Problems with reconciling these often conflicting values and choices are what we shall consider next.

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199 Md. 458

In the Matter of the LEGISLATIVE DISTRICTING OF the STATE.

Misc. Nos. 2-11, Sept. Term, 1982.

Court of Appeals of Maryland.

June 4, 1983.

Opinion May 29, 1984.

On petitions filed with the court, and following hearings before special master, the Court of Appeals, Murphy, C.J., held that no violation of any state or federal constitutional provision was shown in the Maryland legislative districting plan.

Plan declared to comply with all provisions of State and Federal Constitutions, and affirmed as enacted.

1. Constitutional Law § 226.3(3)

It was necessary that Maryland's legislative districting and apportionment plan comply not only with State Constitution but also with federal constitutional constraints imposed by equal protection clause of the Fourteenth Amendment and with the Fifteenth Amendment. Const. Art. 3, §§ 2-5, U.S.C.A. Const. Amends. 14, 15.

2. Constitutional Law § 226.3(4)

Cardinal principle that equal protection clause of Fourteenth Amendment requires that seats in both houses of bicameral state legislature be apportioned on substantially equal population basis is the sine qua non of fair representation, assuring that vote of any citizen is approximately equal in weight to that of any other citizen in the state. U.S.C.A. Const. Amend. 14.

3. Constitutional Law § 226.3(8)

State legislative districts may be substantially equal in population and still be in violation of Fourteenth Amendment because of invidious discrimination against racial or ethnic minorities in apportionment process, but it is basic principle of federal constitutional law that only if discrimination is purposeful can there be violation of

equal protection clause. U.S.C.A. Const. Amend. 14.

4. Constitutional Law § 226.3(6)

Claim of unconstitutional dilution of racial or ethnic voting strength requires proof that challenged plan has intentionally discriminatory effect, and it is not enough to show that those allegedly discriminated against did not obtain legislative representation in proportion to their numbers, and racially discriminatory motivation is also necessary ingredient of Fifteenth Amendment violation. U.S.C.A. Const. Amends. 14, 15.

5. Constitutional Law § 226.3(8)

Multi-member legislative district is not per se unconstitutional under equal protection clause but may violate Fourteenth Amendment if purpose is invidiously to minimize or cancel voting potential of racial or ethnic minorities, and proof of such illegal purpose must be more than mere showing that group allegedly discriminated against has not elected representatives in proportion to their numbers. U.S.C.A. Const. Amend. 14.

6. Constitutional Law § 226.3(3)

Legislative districting to minimize contests between incumbents does not establish per se invidiousness in violation of Fourteenth Amendment. U.S.C.A. Const. Amend. 14.

7. Constitutional Law § 226.3(8)

Drawing of legislative districts in such manner as to intentionally enhance chances for election of sensible representatives does not constitute per se violation of equal protection clause, nor does intentional effort to district so as to create balance between two primary partisan political groups. U.S.C.A. Const. Amend. 14.

8. States § 27(6)

The "overriding objective" in state legislative districting is substantial equality of population among the various districts. U.S.C.A. Const. Amend. 14.

9. States § 27(3)

Contiguity requirement for legislative districting mandates that there be no division between one part of district's territory and the rest of the district, and, in other words, contiguous territory is territory touching, adjoining and connected, as distinguished from territory separated by other territory, but, on other hand, idea of compactness, in geometric terms, is circle, with perimeter of district equidistant from its center. Const. Art. 3, §§ 3, 4; U.S.C.A. Const. Amend. 14.

10. States § 27(3)

Contiguity and compactness are not federal constitutional requirements. U.S.C.A. Const. Amends. 14, 15.

11. States § 4

In view of supremacy clause of the Federal Constitution and Maryland Declaration of Rights provision, federal constitutional requirement of population equality in districting process is the predominant constraint on compactness provision of the Maryland Constitution. U.S.C.A. Const. Art. 3, cl. 2; Const. Declaration of Rights, Art. 2; Const. Art. 3, § 4.

12. States § 27(3)

It cannot ordinarily be determined by mere visual examination of electoral map whether compactness requirement has been violated, but in some instances involving districts of extremely irregular size or shape a glance at districting map may permit conclusion that district is not constitutionally compact. U.S.C.A. Const. Art. 3, cl. 2; Const. Declaration of Rights, Art. 2; Const. Art. 3, § 4.

13. States § 27(3)

State constitutional provision that due regard shall be given to natural boundaries and boundaries of political subdivisions is integrally related to compactness and contiguity requirements, and all involve the physical configuration of district lines. Const. Art. 3, § 4.

14. States § 27(3)

Primary intent of state constitutional requirement that due regard be given to natural boundaries and boundaries of political subdivisions in districting is to preserve those fixed and known features which enable voters to maintain orientation as to their own territorial areas, and such requirement is of mandatory application. Const. Art. 3, § 4.

15. States § 27(3)

Goal underlying enactment of legislative districting plan of having no deviation from ideal population greater than 10 percent was plainly achieved, and districts were therefore well within permissible limits for state legislative districts permitted by judicial precedent, as found by special master. Const. Art. 3, §§ 2-5, U.S.C.A. Const. Amends. 14, 15.

16. States § 27(5)

Notwithstanding disparity between certain subdistricts, legislative districting plan represented honest and good-faith effort to construct districts as nearly of equal population as was practicable under circumstances. Const. Art. 3, §§ 2-5, U.S.C.A. Const. Amends. 14, 15.

17. States § 27(10)

Petitioners failed to carry strong burden imposed upon them under cited cases to support their claims of invidious discrimination in legislative districting plan. Const. Art. 3, §§ 2-5; U.S.C.A. Const. Amends. 14, 15.

18. States § 27(2)

Residents of two municipalities had no right, constitutional or otherwise, to placement in different districts in order that their voting strength might be maximized at expense of other voters within the county. Const. Art. 3, §§ 2-5; U.S.C.A. Const. Amends. 14, 15.

19. States § 27(4)

Construction of certain districts in legislative districting plan had rational purpose, and record showed no indication that division of residents within unincorporated

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IN RE Constitutionality of Sea JF Res.

597 So. 2d 276, 601

(Case No. 775 A. Md. Cir. (Md. 1982))

town of Columbia was hideously calculated to dilute their voting strength. Const. Art. 3, §§ 2-5; U.S.C.A. Const. Amends. 14, 15.

20. States — 27(3)

Politically fair consideration of incumbency in redistricting process does not offend Constitution, absent showing that districts were unfairly fashioned to favor or hinder either incumbents or nonincumbents. Const. Art. 3, §§ 2-5; U.S.C.A. Const. Amends. 14, 15.

21. States — 27(10)

Charge of invidious discrimination could not be sustained in absence of supporting evidence that political processes leading to election were not equally open to those challenging the districting plan on constitutional grounds. Const. Art. 3, §§ 2-5; U.S.C.A. Const. Amends. 14, 15.

22. States — 27(3)

Mathematical formulation for determining whether particular election district is unconstitutionally noncompact was not within contemplation of constitutional framers when they proposed adoption of state constitutional provision requiring that legislative districts consist of adjoining territory, be compact in form and of substantially equal population and that due regard be given to natural boundaries and boundaries of political subdivisions. Const. Art. 3, §§ 3, 4.

23. States — 27(3)

Compactness requirement in State Constitution is intended to prevent political gerrymandering, and therefore oddly shaped or irregularly sized districts of themselves do not ordinarily constitute evidence of gerrymandering and noncompactness, but, rather, affirmative showing is ordinarily required to show that such districts were intentionally so drawn as to produce unfair political results by diluting or enhancing voting strength of discrete groups for partisan political advantage or other impermissible purposes. Const. Art. 3, § 4.

24. States — 27(3)

Requirement of compactness of legislative districts is a requirement for close union of territory, conducive to constituent-representative communication, rather than requirement independent upon district being of any particular shape or size, although in determining whether there has been compliance with the mandatory compactness requirement, due consideration must be afforded to "mix" of constitutional and other factors making some degree of noncompactness unavoidable, i.e., concentration of people, geographic features, convenience of access, means of communication and the several competing constitutional mandates. Const. Art. 3, §§ 2-5; U.S.C.A. Const. Amends. 14, 15.

25. States — 27(10)

As to compliance with compactness requirement, as with compliance with other constitutional criteria, legislative redistricting plan enjoy presumption of validity. Const. Art. 3, §§ 2-5; U.S.C.A. Const. Amends. 14, 15.

26. States — 27(3)

Montgomery county districts, including district 17, as provided for in legislative districting plan, were in compliance with compactness requirement of the State Constitution. Const. Art. 3, § 4.

27. States — 27(2)

Petitioners showed no violation of compactness requirement in any of Baltimore City's districts as provided for by legislative districting plan. Const. Art. 3, § 4.

28. States — 27(3)

Compactness requirement was not ignored in constructing election district, in legislative districting plan, in view of fact that size and shape of district resulted from generally low density of population as well as its irregular and elongated geographical configuration. Const. Art. 3, § 4.

29. States — 27(3)

The "due regard" constitutional provision which seeks to preserve well-recog-

nized boundary lines to aid voters in orienting themselves to territory of their districts does not encompass protection for concept as nebulous and unworkable as "communities of interest," involving as it does concentrations of people sharing common interests. Const. Art. 3, § 4.

30. States — 27(1)

Record showing that numerous public hearings were conducted by governor's advisory committee throughout the state as well as fact that two hearings were personally conducted by the governor to receive comment on recommended legislative districting plan before its final adoption refuted contention that public hearing requirement of State Constitution was violated. Const. Art. 3, § 5.

C. Lawrence Wiser, petitioner, Kensington, in pro. per.

Stanley D. Abrams, Chevy Chase, for Druse A. Goldenson and amici curiae, City of Gaithersburg.

Roger W. Titus, Sp. Counsel, Rockville, for amici curiae, Mayor and Council of Rockville.

W. Shephardson Abell and Marianne K. Resjlian, Chevy Chase, for amici curiae, Montgomery County Legislative Delegation.

Reed K. McGaffrey, Baltimore, for Carville L. Collins et al., petitioners.

Robert B. Ostrom, County Atty., Upper Marlboro, for amici curiae, Prince George's County.

Richard L. Andrews, petitioner, Baltimore, in pro. per.

Charles K. Graham, petitioner, Baltimore, in pro. per.

M. Albert Figinaki, Baltimore, for amici curiae, Gerald J. Curran.

Frank G. Libinsky, Baltimore, for Joseph T. Landers, III, et al., petitioners.

Thomas W. Chamberlain and Michael H. Weir, Baltimore, for amici curiae, themselves.

Linda H. Lamone, Diana G. Metz, Mary N. Humphries, James L. Shea and Robert A. Zernoch, Asst. Atty. Gen., Baltimore, for the State.

Argued before MURPHY, C.J., and SMITH, ELDRIDGE, COLE, DAVIDSON, RODOWSKY and COUCH, JJ.

PER CURIAM ORDER

WHEREAS, petitions were filed by various registered voters of the State with this Court as authorized by Section 5 of Article III of the Constitution of Maryland challenging the constitutionality of the 1982 Legislative Districting Plan which was approved and became law on February 26, 1982; and

WHEREAS, this Court appointed a Special Master to schedule hearings and to submit his findings of fact and conclusions of law to the Court; and

WHEREAS, this Court has considered the findings and conclusions of the Special Master, the exceptions filed thereto and the oral arguments of the parties and amici curiae presented in support of their respective positions; now, therefore, it is this 4th day of June, 1982

ORDERED, by the Court of Appeals of Maryland, a majority of the Court concurring, that for reasons to be set forth in an opinion later to be filed, the petitions challenging the 1982 Legislative Districting Plan (House Joint Resolution No. 32) having failed to establish any violations of the federal constitution or the Constitution of Maryland, the exceptions to the Special Master's report taken by the State and they are hereby, sustained and all other exceptions are hereby overruled, and the legislative districts of the State shall be as established in and by House Joint Resolution No. 32; and it is further

ORDERED, that pursuant to the provisions of Section 5 of Article III of the Constitution of Maryland, the provisions of Section 9 of Article III of the Constitution shall govern the age, citizenship and residency requirements for election of Sena-

(The No. 433 A-24 430 (Md., 1982))

tion and Delegates to the General Assembly of Maryland except that for the primary and general elections of 1982, only, any person seeking election as a Senator or Delegate must have resided in the district which he or she seeks to represent not later than July 11, 1982.

MURPHY, Chief Judge.

This case involves a number of challenges to the constitutionality of Maryland's Legislative Districting and Apportionment Plan (the Plan), as enacted by House Joint Resolution No. 32 (H.J.R. 32) at the 1982 session of the General Assembly.

§

[1] Under the Constitution of Maryland, Article III, § 5, the Governor is required, after each federal decennial census, and after public hearings, to prepare a Plan setting forth the boundaries of the legislative districts for electing members of the Senate and House of Delegates. The Plan is required to conform to the dictates of §§ 2, 3 and 4 of Art. III of the Maryland Constitution, which respectively provide:

Section 2: "The membership of the Senate shall consist of forty-seven (47) Senators. The membership of the House of Delegates shall consist of one hundred forty-one (141) Delegates."

Section 3: "The State shall be divided by law into legislative districts for the election of members of the Senate and House of Delegates. Each legislative district shall contain one (1) Senator and three (3) Delegates. Nothing herein shall prohibit the subdivision of any one or more of the legislative districts for the purpose of

electing members of the House of Delegates into three (3) single-member delegate districts or one (1) single-member delegate district and one (1) multimember delegate district."

Section 4: "Each legislative district shall consist of adjoining territory, be compact in form, and of substantially equal population. Due regard shall be given to natural boundaries and the boundaries of political subdivisions."

The Plan is also required to comply with federal constitutional constraints imposed by the equal protection clause of the fourteenth amendment, see *Reynolds v. Sims*, 377 U.S. 633, 84 S.Ct. 1362, 12 L.Ed.2d 601 (1964),¹ and with the fifteenth amendment, see *Gomillion v. Lightfoot*, 364 U.S. 339, 81 S.Ct. 125, 6 L.Ed.2d 110 (1960).²

Following completion of the 1980 federal census, Governor Harry Hughes, on April 13, 1981, appointed a five member Advisory Committee on Reapportionment and Redistricting to assist him in developing a new legislative districting and apportionment plan.³ The Committee conducted numerous public hearings throughout the State and submitted its recommendations to the Governor on December 8, 1981. Two public hearings were held by the Governor later that month to permit comment on the recommended plan. The Governor thereafter made several changes in the Committee's proposal, and submitted the Plan to the General Assembly on January 13, 1982; it was introduced as H.J.R. 32 and after legislative hearings were conducted, the resolution was approved by the General Assembly and became law on February 26,

1. The equal protection clause provides that "[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws."

2. The fifteenth amendment provides: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude."

3. The Committee was chaired by William S. James, State Treasurer, and included then Senate President James Clark, Jr., Speaker of the House Benjamin I. Cardin, Dr. C. Vernon Gray, a Democrat from Howard County and a professor at Morgan State University, and Barbara Feuerhoff, a Republican from Washington County and a member of the League of Women Voters.

1982 pursuant to Art. III, § 5 of the Maryland Constitution.⁴

Under the provisions of Art. III, § 5 of the State Constitution, the Court of Appeals of Maryland is vested with original jurisdiction, upon petition filed by any registered voter, "to review the legislative districting of the State and [to] grant appropriate relief, if it finds that the districting of the State is not consistent with requirements of either the Constitution of the United States of America, or the Constitution of Maryland." A petition challenging H.J.R. 32 was filed on March 2, 1982, by Montgomery County registered voter and former State Senator, C. Lawrence Wiser, thereby invoking our original jurisdiction. Recognizing the likelihood of additional challenges, and the need for a Special Master to conduct hearings and submit findings of fact and conclusions of law to the Court, we designated the Honorable W. Albert Menckins, a retired Associate Judge of the Court of Special Appeals, to act in that capacity. By order dated March 5, 1982, we directed that any registered voter who claimed that the 1982 Legislative Districting Plan, or any part thereof, was invalid should "intervene in these proceedings by petition filed . . . [by] March 31, 1982 setting forth his objection to said plan and containing the particular part or parts of the plan claimed to be unconstitutional and the factual and legal basis for such claims, and the particular relief sought, including any alternative district configurations suggested or requested by the petitioner."

Ten petitions in all were filed in opposition to H.J.R. 32. The Wiser petition, Misc. No. 2, was consolidated with Misc. No. 6, which was brought by Bruce Goldensohn, Mayor of Gaithersburg, since both petitions challenged the districting of Montgomery County, i.e., Districts 14-20, inclusive. It was alleged that several of these districts

violated the state constitutional requirement of compactness (District 17 being designated as the chief offender). Other principal claims were that H.J.R. 32, as it divided Montgomery County, (1) disregarded "communities of interest," in violation of the state constitutional requirement of due regard for natural boundaries and political subdivisions; (2) that it violated the equal protection clause by improperly treating incumbent candidates, 89 of whom, lived in the southern portion of Montgomery County; and (3) that it violated the equal protection clause by diluting the voting strength of residents of the incorporated municipalities of Gaithersburg and Rockville by including both cities in District 11.⁵ Both petitions provided alternative districting configurations.

Miscellaneous No. 3, brought by Carville S. Collins, et al., challenged H.J.R. 32 because of the way in which Howard County was divided. The principal charges were that the Plan (1) violated the requirement of due regard for natural boundaries and the boundaries of political subdivisions by dividing Columbia, a large unincorporated residential business area of the county in half and by crossing county lines with floors of Delegates Subdistricts 4B, 13B and 14B, and (2) that the voting strength of blacks in western Columbia was invidiously diluted, in violation of the equal protection clause.

Miscellaneous No. 4, brought by Richard L. Andrews, was consolidated with two other challenges involving the districting of Baltimore City, Misc. No. 8 (filed by Vernon L. Morris, et al., and Misc. No. 9, by Joseph T. Landers, III, et al. Taken together, these petitions alleged (1) that Districts 4E and 4F were unconstitutionally noncompact; (2) that the use of three-member at-large delegate districts invidiously diluted the voting strength of blacks, in

4. Three maps delineating the approved legislative districts are set forth in Appendix A to this opinion.

5. Amicus Curiae briefs were submitted by the Mayor and Council of Rockville and the City of

Gaithersburg, primarily contending that the legislative districts in Montgomery County were not compact in form as required by § 4 of Article III of the Maryland Constitution.

violation of the equal protection clauses of the federal and state constitutions; (3) that district lines were intentionally drawn to divide Republicans among several districts, diluting their voting strength in violation of the equal protection clause; (4) that the boundary between Districts 47 and 48 did not give due regard to the natural boundary of Frederick Avenue; (5) that the inclusion of the predominantly black Morgan State University community in District 43, which is predominantly white, rather than in District 41, which is racially balanced, invidiously diluted black voting strength and divided a black "community of interest," in violation of the equal protection clause; and (6) that the lines between Districts 43 and 41 failed to give due regard to natural boundaries.

Miscellaneous No. 6, brought by William Rush, related principally to the districting of Baltimore County. It was the petitioner's claim that Districts 8 through 9, and particularly District 8, failed to abide by the constitutional requirements of compactness and due regard for natural boundaries or the boundaries of political subdivisions. The petitioner also asserted that H.J.R. 32, as a whole, did not provide for apportionment of substantially equal population, and that the Plan's enactment was not preceded by public hearings adequate to satisfy state constitutional requirements. An alternative configuration for districting Baltimore County was submitted with this petition.

Miscellaneous No. 7, brought by Sarah Boyd and George M. Nutwell, challenged the manner in which H.J.R. 32 districted the counties in Southern Maryland. It was contended (1) that Southern Anne Arundel County was severed from the northern portion of the county and combined with all of Calvert and part of St. Mary's County, in Senatorial District 29, without due regard for natural boundaries and the boundaries of political subdivisions; (2) that District 29 was unconstitutionally noncompact; (3) that the creation of two House single-member districts, 29H and 29C, rather than one

two-member delegate district, resulted in population inequalities violative of the equal protection clause, and the state constitutional requirement of apportionment in substantially equal numbers; and (4) that the division of Anne Arundel, Calvert, Charles and St. Mary's Counties, in creation of Districts 28 and 29 and their respective subdistricts, violated requirements of compactness and due regard for natural boundaries and the boundaries of political subdivisions. The petitioners offered an alternative districting configuration which, *inter alia*, combined Calvert and St. Mary's Counties into a single district, and reunited southern Anne Arundel County with the rest of that county's territory.

Miscellaneous No. 10, filed by Thomas R. Falcinelli, challenged H.J.R. 32 in its entirety. Two issues were raised, namely, (1) that the use of multi-member House delegate districts violated the equal protection clause, and (2) that the hearings held before the Advisory Committee were insufficient to satisfy the constitutional requirement of public hearings precedent to the preparation of the Governor's plan.

Miscellaneous No. 11, brought by Victor H. Laws, et al. (all members of the Wicomico County Council), challenged the districting of the southern Eastern Shore. Their claims were that the lines between Districts 37 and 38 failed to give due regard to natural boundaries and the boundaries of political subdivisions, and divided constitutionally protected communities of interest in and around the municipality of Salisbury; and that the division of the black community of interest located around Salisbury was invidious and violative of the equal protection clause. These petitioners sought a single district comprising solely of Wicomico and Worcester Counties, and the combining of all of Somerset and Dorchester Counties with parts of Talbot and Caroline Counties.

Pursuant to our order of March 6, 1962, the State filed timely answers to the petitions, evidence was taken by the Special Master on April 14, 1962, and he heard oral

arguments on April 28, 1963. The Special Master, in a detailed and thorough report to the Court, found no merit in any of the petitions except Misc. No. 9, as to which he concluded that Baltimore City District 44 violated the compactness requirement of § 4 of Art. III of the Maryland Constitution. In his report, the Master proposed alterations to Districts 43 and 44 which he believed would remedy the asserted constitutional defect in District 44.

Exceptions were taken both by the State and the petitioners to the Special Master's report, as to which we heard oral argument on June 1, 1962. By per curiam order dated June 4, 1962, a majority of the Court concurring, we concluded for reasons to be set forth in an opinion later to be filed, that none of the petitions established any violation of the state or federal constitutions. We therefore sustained the State's exceptions to the Special Master's report and overruled all other exceptions. Accordingly, we concluded in the per curiam order that "the legislative districts of the State shall be as established in and by Joint House Resolution No. 32." We now give our reasons for so holding.

II

A brief review of fundamental state and federal constitutional principles governing the legislative districting and apportionment process is prerequisite to a proper understanding of our disposition of the various contentions raised by the parties.

[2-4] The equal protection clause of the fourteenth amendment requires that the seats in both houses of a bicameral state legislature be apportioned on a substantially equal population basis; this cardinal principle is the sine qua non of fair representation, assuring that the vote of any citizen is approximately equal in weight to that of any other citizen in the State. *Reynolds v. Sims*, 377 U.S. 633, 84 S.Ct. 1082, 12 L.Ed.2d 648 (1964); *Maryland Committee for Fair Representation v.*

Tauva, 377 U.S. 656, 84 S.Ct. 1429, 12 L.Ed.2d 696 (1964). Of course, state legislative districts may be substantially equal in population and still be in violation of the fourteenth amendment because of invidious discrimination against racial or ethnic minorities in the apportionment process. *White v. Register*, 412 U.S. 755, 93 S.Ct. 2332, 37 L.Ed.2d 314 (1973); *Waltcomb v. Chavis*, 403 U.S. 124, 91 S.Ct. 1866, 29 L.Ed.2d 343 (1971). It is, however, a basic principle of federal constitutional law that only if the discrimination is purposeful can there be a violation of the equal protection clause. *Mobley v. Bolden*, 446 U.S. 65, 100 S.Ct. 1460, 64 L.Ed.2d 47 (1980); *Washington v. Davis*, 426 U.S. 229, 96 S.Ct. 2040, 48 L.Ed.2d 387 (1975); *Hornbeck v. Somerset Co. Bd. of Educ.*, 293 Md. 507, 456 A.2d 758 (1983). Thus, a claim of unconstitutional dilution of racial or ethnic voting strength requires proof that the challenged plan has an intentionally discriminatory effect; it is not enough to show that those allegedly discriminated against have not obtained legislative representation in proportion to their numbers. *Mobley v. Bolden*, *supra*; *White v. Register*, *supra*. In other words, it must be shown that the districting plan was conceived or operated as a purposeful device to further racial or ethnic discrimination. *Mobley v. Bolden*, *supra*; *Waltcomb v. Chavis*, *supra*.

[5-7] A multi-member legislative district is not per se unconstitutional under the equal protection clause. *Burns v. Richardson*, 384 U.S. 73, 86 S.Ct. 1288, 16 L.Ed.2d 376 (1966); *Porton v. Dorsey*, 379 U.S. 403, 85 S.Ct. 498, 13 L.Ed.2d 401 (1965). However, such legislative apportionments may violate the fourteenth amendment if their purpose were invidiously to minimize or cancel the voting potential of racial or ethnic minorities. *Mobley v. Bolden*, *supra*; *White v. Weiner*, 412 U.S. 763, 93 S.Ct. 2348, 37 L.Ed.2d 336 (1973);

6. A racially discriminatory motivation is also a necessary ingredient of a Fourteenth Amendment

violation. *McMillen v. Dolton*, *supra*, 446 U.S. at 62, 100 S.Ct. at 1497.

White v. Regeher, supra. To prove such an illegal purpose requires more than a mere showing that the group allegedly discriminated against has not elected representatives in proportion to their numbers. *Mobile v. Bolden*, supra, 404 U.S. at 65, 100 S.Ct. at 1199. Nor does legislative districting to minimize contests between incumbents establish per se involuntariness in violation of the fourteenth amendment. *White v. Miller*, supra; *Gaffney v. Cummings*, 412 U.S. 735, 93 S.Ct. 2321, 37 L.Ed.2d 295 (1973); *Davenport v. Appointments Comm'n*, 66 N.J. 126, 319 A.2d 714 (1974). Neither does the drawing of legislative districts in such a manner as to intentionally enhance the chances for election of nonwhite representatives constitute a per se violation of the equal protection clause. *United Jewish Organizations v. Carey*, 430 U.S. 144, 97 S.Ct. 956, 51 L.Ed.2d 220 (1977). Similarly, an intentional effort to district so as to create a balance between two primary partisan political parties does not violate the fourteenth amendment. *Gaffney v. Cummings*, supra.

(8) While the "overriding objective" in state legislative districting is substantial equality of population among the various districts, *Reynolds v. Sims*, supra, 377 U.S. at 579, 81 S.Ct. at 1300, the Supreme Court recognized in that case that other valid considerations, which do not significantly impair equality of apportionment, may be taken into account in the districting and apportionment of state legislative bodies. It said:

7. Prior to 1970, the Maryland Constitution did not contain any provision in compliance with federal constitutional requirements for reapportionment of the state legislature. Section 3 of the 1968 draft Constitution of Maryland, proposed for adoption by the Maryland Constitutional Convention of 1967, provided in pertinent part that the population represented by each senator and delegate "shall be substantially equal"; and that each district "(a) shall consist of adjoining territory and be compact in form [and] (b) no regard shall be given to natural boundaries and the boundaries of political subdivisions." While the draft Constitution was rejected by the people of Maryland upon referendum held on May 16, 1968, the substantial

"A State may legitimately desire to maintain the integrity of various political subdivisions, insofar as possible, and provide for compact districts of contiguous territory in designing a legislative apportionment scheme. Valid considerations may underlie such aims. Indiscriminate districting, without any regard for political subdivisions or natural or historical boundary lines, may be little more than an open invitation to partisan gerrymandering. Single-member districts may be the rule in one State, while another State might desire to achieve some flexibility by creating multimember or federal districts." *Id.* at 678-679, 81 S.Ct. at 1309 (footnotes omitted).

(9) Consistent with these principles from *Reynolds*, § 3 of Article III of the Maryland Constitution, as already observed, permits both single-member and multi-member delegate districts; and § 4 directs that legislative districts "shall consist of adjoining territory, be compact in form, . . . of substantially equal population [and] (a) no regard shall be given to natural boundaries and the boundaries of political subdivisions." Of these constitutional requirements, that which mandates that legislative districts consist of adjoining territory (i.e., contiguity) and be compact in form have in a considered by other states having similar provisions in their constitutions. These courts have held that the contiguity and compactness requirements, and particularly the latter, are intended to prevent political gerrymandering.⁹ See, e.g.,

equality of population, "adjoining territory" and "compact in form" provisions of that document were later included in a constitutional amendment proposed by ch. 783 of the Acts of 1969 and ratified by the people on November 3, 1970. By ch. 263 of the Acts of 1972, ratified on November 7, 1972, the Constitution was again amended to include the provision, first included in the 1968 draft Constitution, that "no regard shall be given to natural boundaries and the boundaries of political subdivisions."

8. The word "gerrymander" was given birth in 1812 following a cartoonist's drawing of a Massachusetts legislative district that he described as appearing like a "salamander." An author

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Schrago v. State Board of Elections, 85 Ill.2d 87, 68 Ill.Dec. 461, 430 N.E.2d 683 (1981); *Prinster v. Doberty*, 385 Mo. 640, 284 S.W.2d 427 (1955); *Schneider v. Kocherfellow*, 31 N.Y.2d 420, 340 N.Y.S.2d 859, 293 N.E.2d 67 (1972); *Opinion to the Governor*, 101 R.I. 203, 221 A.2d 799 (1966). The contiguity requirement mandates that there be no division between one part of a district's territory and the rest of the district; in other words, contiguous territory is territory touching, adjoining and connected, as distinguished from territory separated by other territory. See, e.g., *Schneider*, supra; *In re Sherrill*, 108 N.Y. 185, 81 N.E. 124 (1907). On the other hand, the ideal of compactness, in geometric terms, is a circle, with the perimeter of a district equidistant from its center. See, e.g., *Schwartzberg, Reapportionment, Gerrymandering and the Notion of "Compactness"*, 40 Minn.L.Rev. 643 (1954); *Reuch, Measuring Compactness as a Requirement of Legislative Apportionment*, 6 Midwest J.Pol.Sci. 70 (1961). With the possible exception of Colorado, however (see *Acker v. Love*, 178 Colo. 175, 196 P.2d 76 (1972)), no jurisdiction has defined or applied the compactness requirement in geometric terms. On the contrary, most jurisdictions have concluded that the constitutional compactness requirement, in a state legislative redistricting context, is a relative rather than an absolute standard.

(10) *People v. Thompson*, 156 Ill. 451, 40 N.E. 307, decided in 1886, was the first case to discuss compactness authoritatively under a state constitutional provision requiring contiguous and compact districts apportioned on a population basis.¹⁰ The court there eschewed adopting a standard dictionary definition of the word "compact" as meaning "dense," "pressed together,"

observes suggested that the district might more properly be described as a "gerrymander" after then Governor of Massachusetts Elbridge Gerry who had a role, albeit a minor one, in the construction of the district. See *Handy, Classifying the Gerrymander*, 4 Pepperdine L.Rev. 243, 259 (1977).

or "close, near to a common center," 40 N.E. at 316. It recognized that the most compact district territorially would be a circular plane, every point on the boundary of which would be equidistant from the center; and that the next most compact district would be a square. *Id.* The court held, however, that "anything like close approximation to perfect compactness of territory, in the sense of equal distances of its points to a common center, could not have been meant." *Id.* After noting that the compactness provision, in application, was effected and influenced by the requirement of equality in population among the various districts, the court concluded that, as used in the Illinois Constitution, the term "compact" meant "closely united, territoriality." *Id.* Later Illinois cases have adhered closely to the principles of *Thompson*. See *Schrago v. State Board of Elections*, 85 Ill.2d 87, 68 Ill.Dec. 451, 430 N.E.2d 683 (1981); *People ex rel. Scott v. Grivetti*, 60 Ill.2d 164, 277 N.E.2d 881 (1972); *People ex rel. Heffernan v. Carlock*, 190 Ill. 180, 45 N.E. 109 (1907). While other cases are generally in accord with *Thompson*, some have expanded or enlarged upon its rationale. In *Opinion to the Governor*, 101 R.I. 203, 221 A.2d 799 (1966), the court said that the term "compact" has no precise or exact meaning within the context of that state's constitutional provision requiring that legislative districts be "as compact in territory as possible." Instead, the court held that the term had reference to a principle, rather than to a definition, and had meaning "only within an appropriate factual context." 221 A.2d at 802. Referring to Rhode Island's irregular boundaries, its bays, inlets, islands, rivers, lakes and other geographical features, and to the overriding requirement that districts be comprised of substantially

9. Equal apportionment, contiguity and compactness have been referred to as the triad of equitable representation. *Hacker, Congressional Districting*, Brookings Institution, 49 (1964). Contiguity and compactness are not, however, federal constitutional requirements. See *Gaffney v. Cummings*, supra.

equal population, the court said that the compactness requirement did not mean that the state had to be divided into districts comprised of circular planes or squares. *Id.* The compactness requirement, the court explained, is an anti-gerrymandering safeguard to provide the electorate with effective representation, rather than with a design to establish an orderly and symmetrical pattern of electoral districts; it was proper, therefore, to consider natural, historical and geographical boundaries, as well as political lines, in drawing districts so long as the purpose was not to achieve a political gerrymander prohibited by the compactness provision. *Id.*

Virtually the same views were expressed in *Schwartz v. Rochester*, 31 N.Y.2d 420, 340 N.Y.S.2d 849, 293 N.E.2d 67 (1972). Within the context of New York's constitutional provision that districts be compact in form, the court said that the requirement was a "practical" one, without a precise meaning. 340 N.Y.S.2d at 896, 293 N.E.2d at 72. The compactness requirement, the court said, must be interpreted and applied so as to accommodate the overriding goal of equality of population among the various districts; and it did not violate the constitutional compactness mandate to take account of existing political subdivision lines, topography, the irregularity of state and municipal boundaries, means of transportation and lines of communication. *Id.*¹⁰

Commonwealth ex rel. Spetler v. Levin, 448 Pa. 1, 283 A.2d 16 (1972), in interpreting Pennsylvania's constitutional compactness requirement, concluded "that there is a certain degree of unavoidable noncom-

pliance in any apportionment scheme." 293 A.2d at 23. The court recognized that the paramount objective of achieving substantial equality of population, the unevenness of population densities within the state, and efforts to maintain the integrity of boundaries of political subdivisions, ordinarily result in the drawing of districts that are not models of geometric compactness. An odd shaped district is not, therefore, necessarily a reliable sign of a political gerrymander, the court said; rather, the compactness of legislative districts must be evaluated objectively and with allowance for the elements of unavoidable noncompactness for reasons similar to those outlined in *Opinion to the Governor and Schneider*, *supra*.¹¹

Preisler v. Kirkpatrick, 608 S.W.2d 428 (Mo.1976), also recognized that a degree of unavoidable noncompactness would be present in some apportionment schemes because of uneven population densities, the need for population equality among districts, and the desire to preserve natural boundaries; and that consequently district lines might not be aesthetically pleasing models of geometric compactness. *Id.* at 426.¹² The court in *Davenport v. Apportionment Comm'n*, 66 N.J. 126, 319 A.2d 718 (1974), described compactness as an "elusive concept," one of limited utility in view of the overriding goal of substantial equality of population, and the irregularity and odd configurations of the state's boundaries and the boundaries of its political subdivisions.¹³

A more precise definition of compactness was attempted in *Acker v. Lewis*, 178 Colo. 175, 496 P.2d 76 (1972), involving a state

constitutional requirement that districts be "as compact in area as possible." The court said that, as used in the Colorado Constitution, compactness was concerned with "a geographic area whose boundaries are as nearly equilateral as possible from the geographic center of the area being considered, allowing for variances caused by population density and distribution, census enumeration districts, and reasonable variations necessitated by natural boundaries and by county lines." *Id.*, 496 P.2d at 76. In a later Colorado case, *In re Interregatories by Gen'l Assembly*, 178 Colo. 311, 497 P.2d 1024 (1972), the court held that there had been "substantial compliance" with the compactness requirement where consideration was given to the "geography of the state, population concentrations and their location, the various sizes and shapes of census enumeration districts, and the absence of census blocks in many instances, plus the various sizes and shapes of counties, all of which militate against one particular or ideal solution to the reapportionment problem." 497 P.2d at 1026.

[11, 12] The cases generally recognize that the compactness requirement is subservient, in application, to the dominant federal constitutional requirement of substantial equality of population among districts.¹⁴ See, e.g., *Schwartz*, *Davenport*, *Barrett* and *Girelli*, all *supra*. As indicated, the cases also recognize that the compactness requirement must be applied in light of, and in harmony with, the other legitimate constraints which interact with and operate upon the constitutional mandate that districts be compact in form. Thus, it cannot ordinarily be determined by a mere visual examination of an electoral map whether the compactness requirement has been violated. *Spetler*, *Richardson* and *Downing*, all *supra*, although in some in-

stances involving districts of extremely irregular size or shape a glance at the districting map may permit the conclusion that a district is not constitutionally compact. See *Schwartz*, *supra*. The cases hold that compliance with the state constitutional compactness requirement is mandatory; indeed, a number of jurisdictions have found legislative districts to be unconstitutional for failure to observe the compactness standard. See, e.g., *In re Legislative Districting of Gen'l Assembly*, 193 N.W.2d 784 (Iowa 1972); *Acker*, *Thompson*, *Barrett*, and *Preisler v. Doberty*, all *supra*. On the other hand, the cases also recognize that it is not for the judiciary to determine whether a more compact district could have been drawn; that under challenge; the court's province is solely to determine whether the principles underlying the requirement of compactness of territory have been considered and properly applied considering all relevant circumstances. See, e.g., *Schwartz*, *Davenport*, *Opinion to the Governor and Thompson*, all *supra*.

[13, 14] The provision of § 4 of Article III of the Maryland Constitution that "[d]ue regard shall be given to natural boundaries and the boundaries of political subdivisions" is integrally related to the compactness and contiguity requirements; all involve the physical configuration of district lines.¹⁵ The primary intent of the "due regard" provision is to preserve those fixed and known features which enable voters to maintain an orientation to their own territorial areas. Like compactness and contiguity, the "due regard" requirement is of mandatory application, although by its very verbiage it would appear to be the most fluid of the constitutional components outlined in § 4.

14. In view of the Supremacy Clause of the Federal Constitution, Article VI, and Article 2 of the Maryland Declaration of Rights, the federal constitutional requirement of population equality in the districting process is the predominant constraint on the compactness provision of § 4 of Article III of the Maryland Constitution.

15. We construed incorporated municipalities as being "political subdivisions" within the contemplation of § 4 in *In re Legislative Districting*, 279 Md. 320, 317 A.2d 677 cert. denied sub. nom. *Thibault v. Governor of Md.*, 419 U.S. 840, 95 S.Ct. 70, 42 L.Ed.2d 67 (1974).

10. Unlike New York cases we generally consider with the *Thompson* and *Schwartz* cases. See *In re Richardson*, 307 N.Y. 709, 121 N.E.2d 217 (1954); *In re Downing*, 279 N.Y. 41, 113 N.E. 545 (1940); *In re Sherrill*, 188 N.Y. 163, 81 N.E. 126 (1907).

11. A later Pennsylvania case is in accord with *Spetler*. See *In re Apportionment Plan for Penna. Gen'l Assembly*, 671 Pa. 523, 442 A.2d 661 (1981).

12. Either Missouri cases are in accord with *Thompson* and *Preisler v. Kirkpatrick*, *supra*. See, e.g., *Preisler v. Doberty*, 363 Mo. 460, 264 S.W.2d 427 (1953); *State ex rel. Davis v. Rosenblatt*, 193 S.W.2d 617 (Mo.1946); *State ex rel. Barrett v. Hancock*, 261 Mo. 473, 166 S.W. 40 (1912).

13. Either New Jersey cases are consistent with *Davenport*. See *Schwartzinger v. Schreyer*, 60 N.J. 483, 296 A.2d 134 (1972); *Archman v. Boardman*, 49 N.J. 606, 231 A.2d 193 (1967).

equal population compactness that the state districts comply with the equal population principle. The Special Master's conclusion is that the state districts comply with the equal population principle. The Special Master's conclusion is that the state districts comply with the equal population principle. The Special Master's conclusion is that the state districts comply with the equal population principle.

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er, the disparity in within the tolerance permitted by *Shaw* under the federal equal protection clause.¹⁵ In this regard, we note that the districting in the Southern Maryland area took into account the obvious need to maintain continuity of territory in order to preserve consistent representative communication. Moreover, the districting process in this area was complicated by seven concentrations of population on a land area divided by unbridged waters and contained by an intricate, uneven shoreline. Of several alternatives considered, the districting plan, as ultimately adopted, avoided dividing districts between unbridged waters, albeit at a cost of slightly increased unequal apportionment between the two subdistricts. However, as required by *Reynolds v. Sims*, *supra*, and within the formulation of *Mohon*, we agree with the Special Master that as to the districts challenged in Petition No. 7, H.J.R. 32 represents an honest and good faith effort to construct districts as nearly of equal population as was practicable in the circumstances.¹⁶

III
ALLEGED FEDERAL
CONSTITUTIONAL
VIOLATIONS

(A)

Population Apportionment

[15] Only Petitions Nos. 6 (Baltimore County) and 7 (Southern Maryland) challenge districts on the ground that they are not of substantially equal population. As to the former petition, the goal underlying enactment of H.J.R. 32 of having no deviation from the ideal population greater than 10 percent (± 5) was plainly achieved and the districts are therefore well within the permissible limits for state legislative districts permitted by *Mahan v. Howell*, 410 U.S. 315, 93 S.Ct. 879, 36 L.Ed.2d 320 (1973), as found by the Special Master. See also *Drown v. Thomson*, — U.S. —, 103 S.Ct. 2590, 77 L.Ed.2d 214 (1983).

[16] As to Petition No. 7, there is a disparity between Subdistricts 29B and 29C of + 6.69 and - 6.13 from the mean, respectively. While this disparity might have been eliminated or reduced by combining these two districts into a single two-member district, as maintained by the petitioner,

(3)

Invidious Discrimination

[17] As already indicated, eight petitions challenged districts for varying reasons as being invidiously discriminatory in violation of the equal protection clause of the fourteenth amendment, i.e., (1) as to Petitions Nos. 2, 3 and 5, that the districts diluted the voting strength of residents of incorporated municipalities and an unincorporated town; (2) as to Petitions Nos. 2 and 5, that the districts were drawn to protect incumbents by assuring that not more than one incumbent senator or three incumbent delegates were placed in any single district; (3) as to Petitions 3, 4, 8, 9 and 11, that the

districts diluted the voting strength of blacks and political minority groups, and (4) as to Petitions 3, 4, 8, 9, 10 and 11, that the voting strength of discrete groups was otherwise diluted by utilizing multimember districts and by dividing "communities of interest." We agree with the Special Master's conclusion that there is no merit in any of these claims.

There is nothing in the record even remotely suggesting that the districts in H.J.R. 32 were conceived as a purposeful device to further racial or other invidious forms of discrimination. The petitioners did not, therefore, carry the along burden imposed upon them under the cited Supreme Court cases to support their claims of invidious discrimination and, accordingly, their claims must fail.

[18] More specifically, however, Petitions 2 and 5 challenged the inclusion in District 17 (Montgomery County) of the incorporated municipalities of Rockville and Gaithersburg. The evidence showed that Rockville has a population of 42,000, that Gaithersburg's population is 28,000 and that the statistically ideal district population is 69,723. Neither municipality, therefore, possessed the population required for a single district. It is equally clear that the respective northern-southern boundaries of these municipalities are separated in part by a narrow corridor, with a common boundary in one precinct of the district. The joinder of the two municipalities within a single district gave consideration to the municipal boundaries of each and additional population was added from adjoining areas to comprise the balance of the district, bringing it within 2.56% of the statistically ideal district population.

The petitioners' claim of debasement of the voting strength of the residents of the two municipalities appears, in reality, predicated upon the notion that, if in separate districts, they would possess greater influence over their legislative representatives

than if joined within a single district. As we see it, the residents have no right, constitutional or otherwise, to placement in different districts in order that their voting strength may be maximized at the expense of other voters within the county.

[19] Along similar lines, the petitioner in No. 8 (Howard County) complained of the division of the unincorporated Town of Columbia so that some of its "villages" were placed in District 13 (comprising residents of Howard and Prince George's Counties) while others were included in District 14 (comprising residents of Howard and Montgomery Counties).¹⁷ Howard County's population of 118,872, however, prohibited retention of the county's boundaries within a single district. It is readily apparent that in the formulation of Districts 13 and 14, H.J.R. 32 gave consideration to the interests of population groups in and around the municipal boundaries of Laurel, as well as those within unincorporated Columbia. The competing interests were resolved in H.J.R. 32 by dividing unincorporated Columbia along a major highway between the two districts. Under the Plan, District 13 was formulated with a population variance of only 2.4% from the statistically ideal while District 14's population variance was 4.9%. We think it obvious that the construction of these districts had a rational purpose, and there is no indication that the division of residents within Columbia was invidiously calculated to dilute their voting strength.

[20] Nor is there evidence to support the claim of invidious discrimination asserted in Petitions 2 and 5 that District 17 (Montgomery County) and others were drawn to unfairly protect incumbent delegates and senators. At most, the record shows that the challenged districts were drawn so as to minimize contests between incumbents; but this, without more, does not mandate a finding of invidious discrimi-

15. *Shaw* teaches that as long as divergence from a strict population standard is based on legitimate considerations incident to the effectuation of a rational state policy, a deviation from the equal population principle is permissible (1996 deviations approved in *Mahan*).

16. The petitioners in No. 7 did not contend before us that the claimed population disparity violated the state constitutional provision in § 4 of Article III for substantial equality of population among districts. We, therefore, do not consider whether the state constitutional requirement is more stringent than the federal constitutional requirement.

17. A small number of Howard County residents were placed in District 14 with residents of Carroll County.

nation in the districting process. Indeed, a politically fair consideration of incumbency in the redistricting process does not offend the constitution, absent a showing that the districts were unfairly fashioned to favor or hinder either incumbents or nonincumbents. It is incongruous in our view to profess the virtues of constituent-representative communication while at the same time endorsing the practice of permitting the voters to decide whether an incumbent is to continue as an elected representative. See *Harris v. Richardson*, supra, 384 U.S. 569 n. 10, 86 S.Ct. at 1296 n. 10. See also *White v. Weiser*, 412 U.S. 783, 91 S.Ct. 2143, 37 L.Ed.2d 335 (1972); *Quinn v. Cummins*, 412 U.S. 735, 93 S.Ct. 2321, 37 L.Ed.2d 298 (1972).

(21) Those petitions which claimed dilution of voting strength of blacks or minority political groups in Howard County, Baltimore City and in the southern Eastern Shore Counties are wholly unsubstantiated by evidence. Indeed, there is nothing in the record to show a discriminatory effect by reason of any of the challenged districting or, if there was such an effect, that it was intended to be invidiously discriminatory. As already observed, the controlling Supreme Court cases make it clear that a claim of invidious discrimination cannot be sustained in the absence of supporting evidence (and there is none here) that the political processes leading to election were not equally open to those challenging the districting plan on constitutional grounds.¹⁹

None is there anything in the record to show that H.J.R. 32, by utilizing multimember districts, sought to minimize or cancel out the voting potential of any racial or political group.²⁰ And neither was there

substantiation of the bare allegations, for some petitions that "communities of 'interest'" were divided in the districting process for intentionally discriminatory purposes.²¹

IV

ALLEGED STATE CONSTITUTIONAL VIOLATIONS

(A)

Compactness

Petitions Nos. 2, 4, 5, 6, 7 and 8 allege violations of the compactness requirement of the State Constitution, the principal challenges being against District 17 in Montgomery County and District 14 in Baltimore City. See Appendix A. In addition, an amicus curiae brief submitted by the Mayor and City Council of Rockville urged that District 17 was unconstitutionally noncompact.

(22) In considering the validity of these challenges, we note at the outset that Maryland's straight line borders to the north (Pennsylvania), to the west (West Virginia) and to the east (Delaware) are joined by a southern border of contorted convolutions, giving the State a bizarre geographic configuration. The State's westernmost counties are almost severed from the rest of the State by the protruding northern boundary of West Virginia; the easternmost counties are severed by the waters of the Chesapeake Bay; and the southwest border is warped by the winding waters of the Potomac River. The State's internal structure is further fragmented by numerous other rivers, water bodies and topographic irregularities. Clearly, the State's geography inhibits the geometric

as being invidiously discriminatory based on a clear evidentiary showing that there was a racially discriminatory purpose in constructing a multimember district.

20. Communities of interest, in the sense contemplated by the petitioners, would appear to be identifiable concentrations of population which share one or more common interests.

fashioning of districts of asymmetrical compactness and it was hardly the purpose of the compactness requirement to promote aesthetically pleasing district configuration forms. We therefore think it obvious that a mathematical formulation for determining whether a particular district is unconstitutionally noncompact was not within the contemplation of the constitutional framers when proposing adoption of § 4 of Article III of the Maryland Constitution.

(23) As the cases so plainly indicate, the compactness requirement in state constitutions is intended to prevent political gerrymandering. Oddly shaped or irregularly sized districts of themselves do not, therefore, ordinarily constitute evidence of gerrymandering and noncompactness. On the contrary, an affirmative showing is ordinarily required to demonstrate that such districts were intentionally so drawn to produce an unfair political result, that is, to dilute or enhance the voting strength of discrete groups for partisan political advantage or other impermissible purposes. Thus, irregularity of shape or size of a district is not a *litmus* test proving violation of the compactness requirement.

(24, 25) We are essentially in agreement with those cases which view compactness as a requirement for a close union of territory (conducive to constituent-representative communication), rather than as a requirement which is dependent upon a district being of any particular shape or size. Of course, in determining whether there has been compliance with the mandatory compactness requirement, due consideration must be afforded, as the courts almost uniformly recognize, to the "razz" of constitutional and other factors which make some degree of noncompactness unavoidable, i.e., concentration of people, geographic features, convenience of access, means of communication, and the several compelling constitutional restraints, including contiguity and due regard for natural and political boundaries, as well as the preponderant constitutional requirement that districts be comprised of substantially

equal population. As to compliance with the compactness requirement, as with compliance with the other constitutional criteria, H.J.R. 32 enjoys a presumption of validity, and it is not the province of the judiciary to strike down a district as being noncompact simply because a more geometrically compact district might have been drawn. Essentially, the districting process is a political exercise for determination by the legislature and not the judiciary; the function of the courts is limited to assessing whether the principles underlying the compactness and other constitutional requirements have been fairly considered and applied in view of all relevant considerations.

(26) The Special Master found, and we agree, that the Montgomery County districts, including District 17, are in compliance with the compactness requirement of the State Constitution. In addition to containing the municipalities of Rockville and Gaithersburg, District 17 (See Appendix A) includes a fingerlike appendage to the south of Rockville, giving the district a shape which the petitioners assail as lacking in compactness. The challenged portion of District 17 contains sufficient population, in addition to that within the two municipalities, to bring the district into compliance with the constitutional requirement of substantially equal population apportionment. One petition, in faulting this configuration, urges that a more compact district could have been achieved if the needed population had been obtained from the north of Gaithersburg rather than from the south of Rockville. Another petition suggests that the additional population requirement should have been satisfied by looking to the west of Rockville. That these suggestions, if implemented, might have achieved a greater measure of geometric compactness only begs the question of whether the district, as actually drawn, violates the compactness requirement. The petitioners champion various objective measurements of shape as determinative of compactness, while largely ignoring the

19. The Special Master's finding that District 14 in Baltimore City was unconstitutional as drawn was based on his view that the district was noncompact, although he gave some indication that a better racial equality could be achieved if his suggested alteration of the district's boundaries was accepted.

20. Compare *White v. Registrar*, 412 U.S. 753, 93 S.Ct. 2142, 37 L.Ed.2d 314 (1972), where the Supreme Court struck down a legislative district

principle that a degree of noncompactness is unavoidable. We think the petitioners, using their shape analysis upon us, lost sight of the fact that considerations other than compactness are involved in shaping each individual district, as well as the overall districting process.

27) In arguing that District 17 is facially compact, the amici *Rockville Area v. State* (Md. Ct. App., 1981) cited *Schryer v. State of Elections*, 38 Md. 217, 64 Md. (Dec. 1, 42) N.E. 31 483 (1901). That case involved a challenge to a state legislative district of extremely irregular size, measuring across of 125 miles through 29 towns, 6 counties, parts of 4 congressional districts, 2 Appellate Court districts, and 5 formerly appointed state delegate districts. The district was not served by either a single newspaper or television station or a single common newspaper. The court in *Schryer* found the district to be noncompact, not because of its shape but because its unwieldy size, stating, "The creation of a representative district which is extremely elongated and not 'closely united' significantly impedes vital constituent-representative communication, thus preventing the achievement of a legislative process which is, in fact, representative." 430 Md. at 489.

District 17 is but a fraction of the size of the district involved in *Schryer* and we see no parallel between the two districts. Moreover, we note that District 17 is widest at its center, while the district concerned in *Schryer* was most narrow at its center (typical of the so-called dumbbell shape).

As to the Baltimore City districts, the Special Master concluded that there was no violation of the compactness requirement, except as to District 44. In his report, he observed that under H.J.R. 32 Baltimore City was divided into nine districts of substantially equal population; that the city was intentionally districted to reasonably assure four white and four black majority districts, with District 44 being a "swing" district in which the black-white population

was substantially equal, that precincts 38 and 40 had been excluded from District 44 and placed in District 43, which had an 80 percent white population; that the placement of these two precincts thereby excluded the predominantly black Morgan State University community from "swing" District 44; and that the exclusion of those two precincts from District 44 was accomplished by "cutting a wide swath from the northern outline of the District and by adding a hook-like appendage to its southeast corner." The Special Master recommended altering Districts 43 and 44 by moving three precincts from District 44 to District 43 and compensating for the loss of that population by adding precincts 39 and 40, and three others, from District 43 to District 44. The recommended change, the Special Master said, "promotes an improved configuration of both Districts; and promotes a better racial equality in the 'swing district' . . ."

District 44 (see Appendix A2) is undoubtedly the most irregularly shaped of any of the challenged Baltimore City districts. The Special Master's finding of noncompactness as to this district appears based on his belief that the district's odd shape was attributable, in some part at least, to an invidious racial motivation—a finding with which we have already expressed disagreement, in that there was no evidence that any racial group was invidiously denied its fair share of representation. Indeed, the population in the precinct that includes Morgan State University actually consists of more whites than blacks, hardly an indicia of invidious discrimination.

We find no violation of the compactness requirement in any of the city's districts. Like the State itself, the straight line north, east and west boundaries of Baltimore City are connected by an extremely ragged southern boundary resulting from the interdiction of navigable waters so essential to the city's life. This circumstance alone is a constraint upon formulation of districts of simple geometric design.

The 1980 census disclosed that Baltimore City's population had declined in relation to the population of the State as a whole. As a result, the city's seven districts were reduced to six. It having been decided that the geographic borders of the city should remain intact in the redistricting process, a massive reorganization of district lines was essential and the districts were drawn with an average population within 2.5 percent of the statistically ideal.¹¹ Since Baltimore City would thereby lose two seats in the Senate and six seats in the House of Delegates, the rational goal of avoiding additional loss of senior legislators by reducing the number of contests between incumbents was adopted, as was the legitimate achievement of racial balance among the nine districts. See *United Jewish Organizations v. Carey*, 430 U.S. 144, 87 S.Ct. 996, 61 L.Ed.2d 229 (1977). Necessarily these goals required careful adjustment of district lines and resulted in some sacrifice of ideal geometric compactness and due regard for natural boundaries, although the requirement for substantial equality of population among the districts was in no way compromised. We thus conclude that the legislature, in adopting H.J.R. 32, did construct districts in Baltimore City, all of which were "compact in form" in the light of the constraints upon geographic form imposed by other constitutional commands and the geography of the city itself.

[20] Even as an element of compactness is involved in the challenge to District 29 (see Appendix A). While that district extends approximately one-half of the length of Maryland's Western Shore, its size (and shape) results from the generally low density of population in Southern Maryland, as well as its irregular and oblonged geographical configuration. The compactness requirement has not, therefore, been ignored in constructing this district but only

22. H.J.R. 32's maintenance of the city's boundaries represents a configuration of a long process of preserving the city's integrity as a discrete and insular jurisdiction—a practice which cannot be denied on constitutional grounds as

reconciled with those considerations which naturally counteract ideal compactness.

Finally, we conclude that other challenges based on an alleged lack of compactness are equally without merit.

(B)

Due Regard for Boundaries

All but one petition raised questions as to compliance with § 4's requirement that due regard be given to "natural boundaries" and the boundaries of "political subdivisions." In this regard, some of the petitioners have argued the issue in the context of a disregard of "communities of interest" in the districting process. The Special Master found no merit in any of the claims. Nor do we after careful consideration of the claims made in the various petitions.

[21] The "due regard" provision, as we have heretofore explained, seeks to preserve well-recognized boundary lines to aid voters in orienting themselves to the territory of their districts. The provision does not, in our view, encompass protection for a concept as nebulous and unworkable as "communities of interest," involving as it does concentration of people sharing common interests. We think it apparent that the number of such communities is virtually unlimited and no reasonable standard could possibly be devised to afford them recognition in the formulation of districts within the required constitutional framework.

(C)

Public Hearings

[22] There is no merit to the contention raised in Petition No. 10 that the public hearing requirement of § 5 of Article III of the Maryland Constitution was violated in

long as it does not impede equality in opportunity, or violate principles of compactness and continuity or disregard natural or political boundaries.

Author: tim.storey@ncsl.org (Tim Storey) at CC2MHS1
Date: 3/4/98 3:59 PM
Priority: Normal
TO: Mike Tibbles at LAA_HTHR
Subject: Redistricting Language
Mike,

"Contiguity

The contiguity requirement-that no part of one district be completely separated from any other part of the same district-has been universally accepted and poses no enforcement problem or serious challenge to districting flexibility pursuit of other fair representation values.

Compactness

The requirement of compactness specifies that the boundaries of each district shall be as short as practicable. Although there is no federal constitutional requirement of compactness, such a requirement may present a certain restraint on gerrymandering and may seem innocuous on its face. Rigid adherence to a compactness, however, phrased, should be avoided. A district pattern of symmetrical squares, although conceivable, well can operate to submerge a significant element of the electorate. As a practical matter, absolute compactness (districts forming perfect circles that are even shorter lines than squares) is an impossibility. Furthermore, a benign gerrymander, in the sense of some asymmetrical districts, may well be required to assure representation of submerged elements within a larger area. Shape requirements focus on form rather than the substance of effective political representation."

I hope this is of some assistance.

Best Regards,
Tim Storey
NCSL staff



NATIONAL CONFERENCE OF STATE LEGISLATURES

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Alaska State Legislature



Official Business

State Capitol
Juneau AK
99801-1182

JOINT SPONSOR STATEMENT FOR

HJR 44: A RESOLUTION PROPOSING AMENDMENTS TO THE CONSTITUTION OF THE STATE OF ALASKA RELATING TO REAPPORTIONMENT AND REDISTRICTING OF THE LEGISLATURE; AND PROVIDING FOR AN EFFECTIVE DATE.

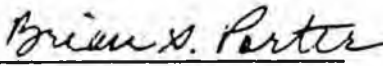
The reapportionment and redistricting provisions of the Alaska Constitution have been outdated for more than 25 years. U.S. Supreme Court decisions have struck down state law provisions excluding military personnel from reapportionment population bases, and have extended the one-person, one-vote requirement of the equal protection clause of the XIVth Amendment to senate districts as well as to house districts. The Alaska Supreme Court has been inviting the legislature to amend the constitution since at least 1972 in these areas.

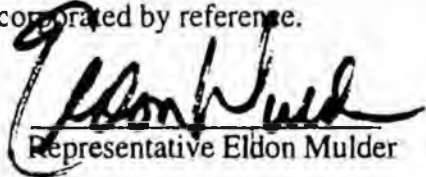
Alaska is only one of two states in the Union which places the reapportionment power in the office of the Governor. In the other state, Maryland, the senate has the right to ratify the governor's appointees. No such check exists in Alaska. This situation has produced reapportionment plans which have been subject to criticism of being borne in the crucible of politics, rather than creating a reapportionment plan based on bipartisan fairness and objectivity. The existing system of constitutional provisions has spawned litigation after every decennial census since statehood, the most recent of which was exceptionally contentious.

This proposal creates a five-member reapportionment board. Four members are individually appointed by the Speaker of the House, House Minority Leader, Senate President and Senate Minority Leader respectively. The fifth member, who will chair the board, is selected by the first four appointees, or in the event of deadlock, by the Chief Justice of our supreme court. While no reapportionment mechanism can be completely free of political influences, the one proposed in this legislation is intended to produce balanced, professionally drawn apportionment plans. Many other states have adopted this approach.

Probably due in part to the inherent political bias of the existing mechanism, and the delays inherent in legal challenges, the Alaska Supreme Court has had to take an increasingly activist approach in deciding reapportionment disputes. The most recent legal challenge caused two of the Justices to dissent regarding what they perceived to be an "abuse of power" by the majority of the court. The court majority sent the final reapportionment task to the superior court and special masters to rewrite the plan, rather than remand the case to the reapportionment board. The proposed changes to the constitution will remove the basis for the court to consider this kind of remedy.

There are other changes proposed, such as clarifying that representatives and senators shall be elected from single-member districts. A more detailed analysis of other sections of HJR 44 appears in the sectional analysis, which is incorporated by reference.


Representative Brian Porter


Representative Eldon Mulder

	1991 2001												1992 2002											
	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D
HICKEL CASE	①	②		④								⑤	⑥											
HJR 44	①	②		④								⑤	⑥											
			③																			⑦	⑧	

- ① = BOARD IS APPOINTED.
- ② = BOARD ORGANIZES & ADOPTS REDISTRICTING POLICIES.
- ③ = DECENNIAL CENSUS DATA RELEASED.
- ④ = FORMULATE PROPOSED PLAN; HOLD HEARINGS; FORMULATE FINAL PLAN AND ISSUE PROCLAMATION.
- ⑤ = 30 DAY PERIOD BEFORE SUITS CAN BE FILED.
- ⑥ = LITIGATION UP TO COURT APPROVAL OF INTERIM PLAN.
- ⑦ = AUGUST PRIMARIES.
- ⑧ = NOVEMBER FINAL ELECTIONS.

⊕ NOTE HICKEL CASE TOOK 9 MONTHS TO LITIGATE. HJR 44 ALLOWS 12 MONTHS.

⊕⊕ IN HICKEL CASE, SUPREME COURT ORDERED EXTENSION OF DEADLINES FOR PRIMARY ELECTION FILINGS ON 6/25/92.

Sectional Analysis for CS FOR HJR 44(JUD) 0-LS0528\W
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Section Number of HJR 44.	Changes Made to Existing Section of Constitution Article VI	Reasons for Changes and Intent
Section 1 and Section 2.	<p>Language is added to Section 1 and Section 2 of Article VI that boundaries of house election districts and senate districts are to be established after decennial censuses, as provided in the framework spelled out in the changes to Article VI.</p> <p>Old language is deleted which referred to Article XIV. Article XIV is no longer necessary, and is repealed in Section 11 of HJR 44.</p>	<p>The proposed language changes clarify that boundaries of house and senate districts are to be redrawn after every decennial census of the United States. This amendment requires that senate districts, as well as house districts, be subject to reapportionment to achieve equal representation. This change brings the constitution into line with the U.S. Supreme Court's decision 34 years ago in <u>Reynolds v. Sims</u> (1964), 377 US 533, and companion Alaska Supreme Court decisions in <u>Wade v. Nolan</u> (1966), 414 P.2d 689, and <u>Egan v. Hammond</u> (1972), 502 P.2d 856.</p> <p>Article XIV is a lengthy description of existing house and senate districts, which changes every 10 years. The intent in eliminating Article XIV is to eliminate the need for unnecessary amendment of the constitution every ten years.</p>
Section 3.	<p>The power to reapportion in Section 3 of Article VI is changed from the Governor to a Reapportionment Board.</p> <p>Language is added to make clear that both house districts and senate districts are reapportioned, and not just the house districts.</p>	<p>Alaska and Maryland are the only two states we are aware of where the Governor has reapportionment authority. In Maryland, the senate has ratification power over the appointments to the board; in Alaska there is no such check and balance over the executive branch. This change is intended to remove reapportionment and redistricting as far as possible from the political arena by creating a bipartisan Reapportionment Board.</p> <p>At the time the Alaska Constitution was drafted, The U.S. Supreme Court had not yet ruled that the one-person, one-vote equal protection requirement applied to senate districts as well as to house districts in state legislatures. As discussed above, this change is intended to conform the constitution to controlling federal and state case law.</p>

	<p>Language is added to make clear that reapportionment is based on the entire state's population base, including military population, and not just the civilian population.</p>	<p>Citing controlling U.S. Supreme Court case law, twenty six years ago the Alaska Supreme Court held that eliminating military personnel as a class from the reapportionment population base is unconstitutional. <u>Egan v. Hammond</u>, 502 P. 2d 856 (1972), at 871.</p> <p>The issue then arose as to whether it is constitutionally required to exclude non-resident military personnel from the population base. In <u>Hickel v. Southeast Conference</u> (1992), 846 P.2d 38, at 55, the Alaska Supreme Court held that exclusion is not constitutionally required if it is not possible to accurately identify non-resident military personnel, after finding that it was "methodologically impossible" to accurately identify them.</p> <p>There has been much discussion about changing "reapportionment" to "redistricting" in many places in Article VI. The Alaska Supreme Court has stated by way of dicta that there is little difference between the two words, and that reapportionment is inseparable from redistricting. <u>Egan v. Hammond</u> (1972), 502 P. 2d 856, at 873. For that reason and because "redistricting" has not yet received acceptance in legal treatises and dictionaries, "reapportionment" has been retained.</p>
<p>Section 4.</p>	<p>Language is added to Section 4 of Article VI to create forty single-member house election districts, which contain "as nearly as practicable" one-fortieth of the reapportionment population base.</p> <p>Language is added to create twenty single-member senate districts, which consist of two contiguous house districts.</p>	<p>The intent is to confirm single-member house districts. Since Alaska Supreme Court and U.S. Supreme Court decisions make clear that minor deviations from an ideal one-fortieth reapportionment per district are permissible, the "as nearly as practicable" language is added.</p> <p>The intent is to confirm single-member senate districts, each coinciding with the boundaries of two contiguous house districts. This language is specifically intended to overrule the supreme court's decision in <u>Kenai Feninsula Borough v. State</u> (1987), 743 P.2d 1352, at 1364-1365, in so far as the inapplicability of Article VI, section 6 factors to</p>

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	<p>Language is deleted about civilian population and creating forty equal election districts.</p>	<p>reapportionment of senate districts, with the result that here shall never again be another "Donut" district.</p> <p>The deleted language refers to "civilian" population, which, as discussed above, has been struck down by the Alaska Supreme Court on constitutional grounds. The concept of forty equal election districts is retained in restated form in this section.</p>
Section 5.	<p>Language is added to Section 6 of Article VI to clarify that the Reapportionment Board, and not the Governor, will do the reapportionment.</p>	<p>Self-explanatory. See discussion in Section 3.</p>
Section 6.	<p>(a) Language is added to Section 8 of Article VI to clarify that the Reapportionment Board shall consist of five members, all of whom shall be residents of the state and none of whom may be public employees or officials at the time of and during the tenure of appointment.</p> <p>Language is added to clarify that compensation to be paid to board members is "as provided by law".</p> <p>Language is deleted which previously required board members to be from certain geographic areas of the state, and which required that appointments be made without regard to political affiliation.</p> <p>(b) New language is added which requires board members</p>	<p>This language is intended to establish that the Reapportionment Board will have five members who must be Alaska residents, in addition to the existing limitation against having public employees or officials serving on the board</p> <p>It is intended that the board members be compensated for per diem and travel expenses. If the constitutional amendment is approved by the voters, a bill will be drafted to provide for compensation.</p> <p>It would be unnecessarily restrictive to allocate one board member to be from a certain geographic area of the state, considering how the board members are appointed. The intent of deleting the language referring to appointments "without regard to political affiliation" is to be consistent with the method by which the first four board members are appointed. Two are appointed by the majority party, and two by the minority party.</p> <p>it is the intent of this language to have at least the first four board members</p>

	<p>to be appointed after, but not later than 15 days after, the election of the Speaker of the House and of the President of the Senate in the year following the decennial census.</p> <p>New language is added to require the board members to serve until a final reapportionment plan and proclamation has been adopted, including all legal challenges and remands by the Alaska Superior Court or Alaska Supreme Court.</p> <p>(c) New language is added which requires the Speaker of the House, the House Minority Leader, the President of the Senate, and the Senate Minority Leader to each select one board member. The appointments are to be made after the election of the Speaker of the House and the President of the Senate at the beginning of the legislative session following the decennial census.</p> <p>Language is added provide for the rare instance where the senate or house organize as one majority. In such a case, the minority appointing officer of that house shall be appointed by the members of that house who are not members of the political party with the greatest number of members in that house.</p> <p>(d)The fifth board member is appointed by a majority vote of the other four members. If there is a deadlock, the Chief Justice of the Alaska Supreme Court appoints the fifth member. The fifth member</p>	<p>appointed within 15 days after the Speaker of the House and the President of the Senate have been elected. The minority caucuses will organize and appoint two of the four board members within the same period of time.</p> <p>It is the intent of this language to require board members to serve until a plan and proclamation have been adopted, and to continue to serve through any remands following superior court or supreme court decisions.</p> <p>This language is intended to simply set out that the presiding officers and minority leaders of both bodies each appoint one board member. The rather obfuscatory and convoluted language is the result of drafting rules which do not allow the use of words not found and defined elsewhere in the constitution, such as "caucus" and "minority". The intent is to ensure that a fair balance is achieved by allowing the majority and minority two seats each on the board.</p> <p>Several years ago the senate organized as on majority, with no ostensible minority leader to appoint a board member. This language provides for that rare contingency.</p> <p>If the four board members cannot agree on the fifth member, a procedure is in place to avoid deadlock. The Chief Justice makes the appointment.</p>
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	<p>shall automatically become the chair.</p> <p>The fifth member may not have held an elected state office or an elected office of a political party in Alaska in the five years preceding the appointment.</p> <p>(e) New language is added which requires the legislature to pass a law determining the order in which each of the appointing legislators makes his or her appointment.</p> <p>(f) New language is added which allows for removal of any of the first four board members, with or without cause. However, removal may only be made the appointing legislator or that person's successor. All vacancies created by the removal, resignation, death or incapacity of any of the first four board members are filled by the appointing legislator or that person's successor.</p> <p>The fifth board member may be removed only for good cause shown, as determined by a majority vote of a group consisting of the other four board members and the Chief Justice of the Alaska supreme Court. The vacancy due to removal, resignation, death, or incapacity of the fifth board member is filled by the appointing procedure set forth in (d) of this section.</p>	<p>This provision is taken almost verbatim from New Jersey, and is intended to make the fifth member as politically neutral as possible. The phrase "political party" is defined in AS 15.13.400(10). It cannot be overemphasized that the intent behind the fifth board member's appointment is to find a person as politically neutral as possible, for only such a person could lead the other four members to a fair and well thought out reapportionment plan.</p> <p>The intent of this language is to allow for a random process for appointing the first four board members. A bill should be introduced to take care of this detail, upon approval of HJR 44 by the voters of the state. The bill should also provide for compensation of board members, as mentioned in Section 6(a).</p> <p>The appointing legislators or their successors will control the discharge and appointment of the first four appointees.</p> <p>As to the fifth member, who is the chair, removal must be for good cause shown. The requirement of showing good cause for removal applies only to the fifth member because a politically neutral chair should not be removable without cause. It is the intent that "good cause shown" is to be determined by case law. Vacancies for any reason are filled first by a majority vote of the other four members, or, in the event of deadlock, by the Chief Justice.</p>
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	<p>(g) New language is added that precludes board members from seeking elected legislative office in the general election following adoption of the final reapportionment plan.</p>	<p>This provision is intended to avoid the appearance of impropriety on the part of a board member who might otherwise be accused of reapportioning a district for self serving reasons. The over-all goal of the changes to Article VI is to have as far as possible, a reapportionment plan that is fair, rational, objective, and free from undue political influence.</p>
Section 7.	<p>Language is deleted from Section 9 of Article VI by which the board previously elected its own chairman.</p> <p>Language is added by which "actions of the board" require a majority vote, but ambiguous language is deleted about "a ruling or determination" and "or otherwise act for the board".</p> <p>New language is added which requires the board to "employ or contract for services of independent legal counsel".</p>	<p>This is intended as a consistency deletion.</p> <p>The language in the existing constitution creates ambiguities about the legal effect of a majority of only three board members meeting somewhere and taking unspecified "rulings or determinations". Two members in this scenario should not be able to bind a five member board.</p> <p>The board will need independent legal counsel, and should not be allowed to utilize legal services from any of the three branches of state, local or federal government.</p>
Section 8.	<p>New language is added to Section 10 of Article VI which requires the board to agree on one or more proposed plans within 30 days of release of the decennial census population data. The board then has 60 more days to hold hearings and agree on a final reapportionment plan and to issue a proclamation of reapportionment.</p> <p>If the census data is released before the board is duly appointed, language has been added to clarify that the clock starts to run for coming up with a plan after the board is duly appointed and the census data has been released.</p>	<p>The assumed time line concludes that the board has been appointed and is fully organized by the end of January 2001. The decennial census data likely will be available a month or two later. The board then will have 30 days to agree on one proposed plan, if it can. If it cannot, it will have hearings on multiple proposed plans instead of just one, over the next 60 days. By the end of the 90 day period following the release of the decennial census data, the board is to adopt a final single plan and proclamation.</p> <p>In the remote event the census data is released before the board is duly appointed, it is the intent of this language that the board has 30 days after it is appointed to come up with one or more proposed plans, and a total of 90 days after it is appointed to come up with the final plan.</p>

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	<p>Language is deleted about the board reporting to the Governor, and the Governor submitting the final plan and proclamation.</p> <p>New language is added by which the final plan is to set out boundaries of house election districts and senate districts.</p> <p>New language is added to clarify that an existing reapportionment plan will remain effective until a new plan has been fully adjudicated in time for the next primary or general election. Existing language in Section 10 of Article VI states that reapportionment plans expire "after the official reporting of the next decennial census". The new language makes the old plan fully effective until the new plan has been litigated to a final decision, and 60 days remain for election officials to prepare registration lists and other materials after the final adjudication before the next election.</p> <p>(b) New language is added to clarify that adoption of a final plan of reapportionment requires at least three votes of the board.</p>	<p>This deletion is for consistency reasons. It is the Reapportionment Board which develops and adopts the proposed and final plans of reapportionment.</p> <p>This provision is intended to clarify that the final plan sets out the boundaries of senate districts as well as of house election districts, as discussed above.</p> <p>This language is intended to deal with the possible scenario where, because of protracted litigation, a general election cannot be held on time. Under the language found in existing Section 10 of Article VI, the presently existing reapportionment plan expires the minute the year 2000 decennial census is officially reported, which likely will be about April 1 of 2001. If a new reapportionment plan were not fully litigated in time for the 2002 elections, there would be no legal house and senate districts in which to hold an election: the old reapportionment plan would have expired, and the new plan would be snarled in litigation. The new language allows the old reapportionment plan to be used for primary and general election purposes until the new plan is litigated through a final judicial decision, plus 60 days to allow election authorities to prepare registration lists and other materials for the election.</p> <p>This language is self-explanatory.</p>
Section 9.	The enforcement provisions of Article VI, Section 11, now provide that any qualified voter can compel the board to perform its duties in formulating a final plan and proclamation, or to correct any error in redistricting or	This is a consistency change which substitutes the board for the Governor.

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	<p>reapportionment.</p> <p>A lawsuit to compel performance of the duty to formulate a final reapportionment plan and proclamation at the end of 90 days must be filed not later than 30 days after the 90 day period. A lawsuit to correct any error in redistricting or reapportionment must be filed within 30 days after adoption of the final plan and proclamation by the board.</p> <p>New language is added to require the courts to dispose of cases arising under Article VI on an expedited basis.</p> <p>If any reapportionment remands are ordered by the courts, the matter shall be remanded directly to the board for correction and development of a new plan, and not to the superior court or to special masters.</p>	<p>Self-explanatory, and is consistent with recent supreme court handling of such cases.</p> <p>This language is intended to avoid the situation which arose in Hickel v. Southeast Conference, in which the court system in effect rewrote the reapportionment plan. The approach was criticized by two of the justices in a dissenting opinion in that case.</p>
<p>Section 10.</p>	<p>The effective date of these amendments to the constitution is January 1, 2001.</p> <p>Language is added to ensure that the reapportionment plan in effect on December 31, 2000, will be the fall back reapportionment plan in the event the reapportionment process which will follow the 2000 decennial census is not fully completed in time for the 2002 primary and general elections.</p>	<p>Self-explanatory.</p> <p>This applicability of amendments language is intended to protect against the scenario spelled out in section 8 of this sectional analysis, which discusses section 10 of Article VI.</p>
<p>Section 11.</p>	<p>Article VI, sections 5 and 7, and Article XIV of the constitution are repealed.</p>	<p>These sections of Article VI and Article XIV are repealed because they are no longer necessary in light the changes made in HJR 44.</p>

Legislative Research Report 98.027

January 27, 1998

Nonresident Military Personnel and Reapportionment in California, Georgia, and North Carolina

Legislative Research Services
Division of Legal and Research Services
Legislative Affairs Agency
Alaska State Legislature

Prepared for Representative Brian Porter
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NONRESIDENT MILITARY PERSONNEL AND REAPPORTIONMENT IN CALIFORNIA, GEORGIA, AND NORTH CAROLINA

You asked if laws in California, Georgia, or North Carolina exclude nonresident military personnel from population estimates when reapportioning election districts. In order to determine this, we reviewed pertinent sections of each state's constitution and statutes and contacted elections officials from each state.

Neither California, Georgia, nor North Carolina exclude nonresident military personnel when reapportioning election districts. According to Ed Arnold with the California Division of Elections, population estimates for reapportionment in California are taken strictly from the decennial U.S. Census and are not modified in any way. Mr. Arnold indicated that in addition to including nonresident military personnel, other groups that may be excluded in other states, such as felons, nonresident aliens, and refugees, are counted in California.

We found a similar situation in Georgia and North Carolina. According to Linda Maggers with the Georgia Division of Elections, population estimates from the U.S. Census Bureau are not modified to exclude nonresident personnel. She indicated that excluding these individuals would be difficult because of fluctuating populations of military personnel and the unavailability of records identifying the residency of these individuals.

Michelle Wyatt, Voter Registration Director for the North Carolina State Board of Elections, reported that nonresident military personnel are not excluded from population estimates when reapportioning election districts in North Carolina. She indicated that the legislature's research division reviewed the U.S. Census Bureau population estimates prior to the most recent reapportionment. According to Bill Gelkenson with the North Carolina Legislative Research Division, his division reviewed data on the percentage of registered voters in each election district. He indicated that although those districts with large military installations had significantly lower percentages of registered voters, the legislature did not attempt to exclude nonresident military personnel when reapportioning election districts.

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MEMORANDUM

March 3, 1998

SUBJECT: Legislative redistricting (HJR 44)

TO: Representative Gene Therriault, Co-chair
House Finance Committee
Attn: Mike Tibbles

FROM: Richard A. Glover - *RAG*
Legislative Counsel

Enclosed is the requested CS for HJR 44. As I discussed with your staff, the change to the provision specifying the geographic regions that members of the redistricting board are to be appointed from is ambiguous, so this draft should be considered incomplete. The judicial districts are established by law, so there is no constitutional requirement that there be 5 or fewer districts. If your intent is to allow the legislature to affix the geographic regions as they exist on a given date, it would be constitutionally inconsistent to allow the legislature to establish by law different districts that apply to this section of the constitution. I recommend either specifying the date directly ("At least one board member shall be appointed from each judicial district that existed on 1/1/99") or specifying a different term to define the geographic regions the board members are to be appointed from. ("At least one board member shall be appointed from each geographic region that the legislature may establish by law") I would also recommend you consider if the term "appoint from" is specific enough for your purposes: this term most likely refers to the residence of the board member, but other meanings are possible.

RAG:glc
98-136.glc

Enclosure

HJR 44

Alaska Population Overview 1996 Estimates

HD	SD	Representative	Senator	Population April 1 1990	Deviation from Average	Population July 1, 1996	Deviation from Average	Percentage of Growth
				550,043	13,751	607,800	15,195	10.50%
1	A	Bill Williams(D)	Robin Taylor(R)	13985	1.70%	14908	-1.89%	6.60%
2	A	Ben Grussendorf(D)		14541	5.75%	14857	-2.22%	2.17%
3	B	Kim Elton(D)	Jim Duncan(D)	13427	-2.36%	14702	-3.24%	9.50%
4	B	Bill Hudson(R)		13492	-1.88%	15008	-1.23%	11.24%
5	C	Albert Kookesh(D)	Jerry Mackle(D)	13544	-1.51%	14643	-3.63%	8.11%
6	C	Alan Austerman(R)		13309	-3.21%	14028	-7.68%	5.40%
7	D	Gail Phillips(R)	John Torgerson(R)	13661	-0.65%	15688	3.24%	14.84%
8	D	Gary Davis(R)		13547	-1.48%	16197	6.59%	19.56%
9	E	Mark Hodgins(R)	Jerry Ward(R)	13331	-3.05%	14650	-3.59%	9.89%
10	E	Joe Green(R)		13589	-1.18%	15761	3.72%	15.98%
11	F	Norman Rokeberg(R)	Drue Pearce(R)	13833	0.60%	15943	4.92%	15.25%
12	F	Mark Hanley(R)		13663	-0.64%	15265	0.46%	11.73%
13	G	Ethan Berkowitz(D)	Loren Leman(R)	13801	0.36%	15642	2.94%	13.34%
14	G	Terry Martin(R)		14207	3.32%	13227	-12.95%	-6.90%
15	H	Eric Croft(D)	Johnny Ellis(D)	14023	1.98%	15762	3.73%	12.40%
16	H	Allen Kempler(D)		13920	1.23%	15401	1.36%	10.64%
17	I	John Cowdery(R)	Sean Parnell(R)	14131	2.76%	16948	11.54%	19.93%
18	I	Con Bunde(R)		13758	0.05%	16483	8.48%	19.81%
19	J	Jerry Sanders(R)	Dave Donley(D)	14029	2.02%	17462	14.92%	24.47%
20	J	Brian Porter(R)		13892	1.03%	15954	5.00%	14.84%
21	K	Joe Ryan(R)	Tim Kelly(R)	13971	1.60%	15825	4.15%	13.27%
22	K	Ramona Barnes(R)		14031	2.04%	16109	6.02%	14.81%
23	L	Eldon Mulder(R)	Randy Phillips(R)	14129	2.75%	11963	-21.27%	-15.33%
24	L	Pete Kott(R)		13510	-1.75%	15776	3.82%	16.77%
25	M	Fred Dyson(R)	Rick Halford(R)	13695	-0.41%	16057	5.67%	17.25%
26	M	Vic Kohring(R)		13950	1.45%	16276	7.11%	16.67%
27	N	Scott Ogan(R)	Lyda Green(R)	14993	9.03%	18590	22.34%	23.99%
28	N	Beverly Masek(R)		14895	8.32%	20583	35.46%	38.19%
29	O	John Davies(D)	Gary Wilken(R)	13247	-3.67%	14334	-5.67%	8.21%
30	O	Tom Brice(D)		13242	-3.70%	14547	-4.26%	9.86%
31	P	Pete Kelly(R)	Bert Sharp(R)	13395	-2.59%	13565	-10.73%	1.27%
32	P	Al Vezey(R)		13793	0.31%	13955	-8.16%	1.17%
33	Q	Gene Therriault(R)	Mike Miller(R)	13138	-4.46%	14503	-4.55%	10.39%
34	Q	Jeannette James(R)		12806	-6.87%	13491	-11.21%	5.35%
35	R	Gene Kubina(D)	Georgianna Lincoln(D)	12808	-6.86%	13350	-12.14%	4.23%
36	R	Irene Nicholia(D)		12776	-7.09%	13168	-13.34%	3.07%
37	S	Reggie Joule(D)	Al Adams(D)	12889	-6.27%	14558	-4.19%	12.95%
38	S	Richard Foster(D)		13565	-1.35%	15284	0.59%	12.67%
39	T	Ivan Ivan(D)	Lyman Hoffman(D)	14507	5.50%	16280	7.14%	12.22%
40	T	Carl Moses(D)		15020	9.23%	11057	-27.23%	-26.38%

Source: Alaska Department of Labor
Research Analysis Section
Demographics Unit.