

ALASKA LEGISLATURE COMMITTEE FILES

1997-1998

8672

9228

HOUSE JUDICIARY

* First, when the court must decide whether an action of the United States constitutes "major federal action" under the National Environmental Policy Act, thereby requiring an environmental impact statement. Development activity on 80 acres might seem far more significant in Southern California than it does in Alaska.

* Another example is when the court must decide fish and wildlife issues. Again, the perspective on hunting a wild animal or forgoing development to protect habitat probably differs greatly between California and Alaska.

* Finally, the court's perspective hurts Alaska when the court faces issues of state vs. federal jurisdiction. The court has indicated in some of its decisions a bias against Alaska's state government and in favor of the federal government, implying that Alaskans cannot be trusted to protect their natural resources or subsistence interests.

Another concern of the Attorney General is the untimeliness of decisions from the Ninth Circuit. This is due in part to the volume of cases the court hears, but also is escalated in Alaska's case because of the court's oral argument calendar. In general, the court hears argument each year twelve times in San Francisco; twelve times in Pasadena; twelve times in Seattle; six

times in Portland; two times in Honolulu; and one time in Anchorage. A panel of three judges travels to Alaska each year in July or August to hear Alaska cases. As a result, the court "saves" Alaska cases for this annual trip, so that while a case from California may be set for argument a month or two after briefing is complete, Alaska cases generally are set for July or August, even if briefing is complete in January or February. This creates an unnecessary delay for Alaskan cases.

In conclusion, Alaska and the other states included would benefit from creation of a twelfth circuit comprised of Northwestern states because the twelfth circuit court judges would not bring foreign perspectives to their decisions.

HJR

36

HOUSE JUDICIARY STANDING COMMITTEE

DATE: 1/21/98

ISSUE: move H JR 34 from committee

	YEA	NAY	PRESENT
Vice Chair Bunde	—		
Representative Berkowitz		—	
Representative Croft		—	
Representative James	—		
Representative Porter	—		
Representative Rokeberg			—
Chairman Green	—		
TOTALS:			

PASSED 4-2

FAILED _____

HOUSE JUDICIARY STANDING COMMITTEE

DATE: 1/21/98

ISSUE: HJR 36
Amend. #1

	YEA	NAY	PRESENT
Vice Chair Bunde		—	
Representative Berkowitz (pass)	—		
— Representative Croft	—		
Representative James (pass)		—	
Representative Porter		—	
Representative Rokeberg			—
Chairman Green		—	
TOTALS:	2	4	

PASSED _____

FAILED X

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HJR36

Revision Date _____	Dept. Affected <u>Office of the Governor</u>
Title <u>Const. Amdt.: Reapportionment Board and</u>	BRU <u>Elective Operations</u>
Redistricting _____	Component <u>General and Primary Elections</u>
Sponsor <u>Representative Green</u>	
Requester <u>House Judiciary</u>	Component Serial No. <u>#22</u>

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
Personal Services						
Travel						
Contractual		3.0				
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	3.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES []						
-------------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

FUND SOURCE	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
1002 Federal Receipts						
1003 GF Match						
1004 GF		3.0				
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	3.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost: none

POSITIONS

POSITIONS	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
Full-time		0				
Part-time		0				
Temporary		0				

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 Gail Fenumia
 Division Division of Elections
 Approved by Co Lt. Governor Fran Ulmer
 Agency Office of the Lieutenant Governor

Phone 465-3935
 Date 4/29/97
 Date 4/29/97

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
 For further distribution information, call the Governor's Legislative Office

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: April 23, 1997

FURTHER REFERRALS:

Finance

Date of Committee Action: 1-21-98

The JUDICIARY Committee considered:

HJR 36

HOUSE JOINT RESOLUTION NO. 36

REAPPORTIONMENT BOARD & REDISTRICTING

Proposing amendments to the Constitution of the State of Alaska relating to redistricting of the legislature, and repealing as obsolete language in the article setting out the apportionment schedule used to elect the members of the first state legislature.

recommends it be replaced with the following committee substitute CS HJR 36 (Jud.) 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) Gov 1/20/98

fiscal note(s) _____

zero fiscal note(s) _____

zero fiscal note(s) _____

<u>SIGNING WITH RECOMMENDATIONS</u>	DP	DNP	NR	AM
<i>Com. Beuda</i>			<input checked="" type="checkbox"/>	
<i>Monette James</i>			<input checked="" type="checkbox"/>	
<i>[Signature]</i>		<input checked="" type="checkbox"/>		
<i>[Signature]</i>	<input checked="" type="checkbox"/>			
<i>Robert S. Porter</i>			<input checked="" type="checkbox"/>	
<i>[Signature]</i>			<input checked="" type="checkbox"/>	

CHAIR'S SIGNATURE [Signature]

Out of Hickel Case
868 P2 919

IV. POPULATION BASE

The Board used the 1990 census as its population base. However, the Board did not subtract from the census data military personnel who were stationed in Alaska at the time the census was taken, but who did not consider themselves Alaska residents. The Governor did not vary the population base from the Board's recommendation.

Previously we held that the exclusion of non-resident military personnel (NRMP) from the population base is constitutionally permissible. However, we have never decided whether exclusion was constitutionally required. We have not addressed this issue before because NRMP have been excluded from the population base in every previous district reapportionment, with the exception of the interim plan we devised for the 1972 elections following **Egan v. Hammond**, 502 P.2d 856, 870 (Alaska 1972).

The state argues that the inclusion of NRMP was a policy choice it was allowed to make, and that we should defer to that choice. The state argues further that inclusion of NRMP is permissible because it is impossible to accurately estimate the number of military personnel who are not residents. It notes that this question is different with this reapportionment because the United States Army and Air Force no longer make personnel data available to the state. The state maintains that in light of this, it acted within its discretion by including all military personnel in the population base.³¹

The respondents argue that exclusion is constitutionally required since inclusion would violate the reapportionment provisions and the equal protection clause of the Alaska Constitution. They argue that the effect of the inclusion is the dilution of the voting power of residents of areas of Alaska without large military populations.

In **Egan**, we implemented an interim plan without a NRMP exclusion because "it was not possible to compile sufficiently accurate data to provide a reasonable basis for excluding any number of military from the population base." 502 P.2d at 870. However, we also recognized "the need for a permanent plan which achieves a level of accuracy of [the military population's] voting participation which is closer than either including or excluding all military as a class."³² 502 P.2d at 870. "The challenge is to arrive at the best approximation of the population to be counted without losing sight of the fact that the right of equal representation is also an individual and personal right." **Egan**, 502 P.2d at 869.

We therefore hold that exclusion is not constitutionally required if it is not possible to accurately identify those military personnel who are non-residents.³³ However, it is necessary to consider alternative plans for obtaining a sufficiently accurate plan for estimating the number of NRMP. **Id.** (noting that it was "incumbent upon [this court] to discuss alternative plans which may be available to handle the problem"). See also **Groh v. Egan**, 526 P.2d 863, 868 (Alaska 1974) (finding that the Board's careful examination of alternatives supported the conclusion that the state's choice of population base was rational).

The key determination is whether the Board's efforts in "discussing the alternatives" were

sufficient to support its conclusion that compiling accurate data was impossible. The trial court found that a "hard look" was required. The hard look requirement is consistent with our previous acknowledgement that the state has a compelling interest in attempting to exclude NRMP. *Carpenter*, 667 P.2d at 1213 (identifying the "compelling state interest" as "the prevention of the dilution of its residents' voting strength"). See also *Reynolds v. Sims*, 377 U.S. 533, 555, 12 L. Ed. 2d 506, 84 S. Ct. 1362 (1964) ("The right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.").

Judge Weeks identified six "legitimate reasons" for including the NRMP. He also found that although the extent of non-residency among the military was determinable, it was unclear whether it was possible to make a reliable determination of the enumeration districts in which non-resident, off-base military personnel lived. Despite these findings, he concluded that the Board did not take a "hard look" at this issue. The inclusion of all military personnel in the population base was thus not justifiable.

Judge Weeks apparently believed that the reasons stated by the Board for including NRMP were post hoc justifications. Also he found it significant that the Board's legal advisor advised strongly to exclude NRMP.

At its March 4, 1991 meeting, the Board adopted the policy that the population base for the reapportionment would be the 1990 census data. The Board decided that it would not adjust the census data to account for NRMP.

In its Report and Proposed Plan, the Board discussed several methods for determining the appropriate adjustment to be made. The Board discussed the method used by the 1973 Board whereby the number of Alaska residents on a military base was determined by multiplying the number of registered voters on the base by the statewide person-counted/registered-voter ratio. The number of "residents" obtained was then divided by the number of adults living on the base to derive a percentage of residents. When the same method was applied to the 1990 data, all the military bases showed a greater than one hundred percent resident percentage.

The Board explained that other available survey methods were not adequate. It indicated that it had received expert advice that the survey method used in the Department of Labor study made that study inadequate to serve as a basis for making an adjustment. The Board also stated that it had solicited surveys from two political pollsters in Alaska and had been rejected.³⁴ The Board explained that "a poll taken a significant period of time after the Census enumeration 'would be a sampling of a different set of people with possibly changed attitudes.'" (quoting *Egan*, 502 P.2d at 887). Finally, the Board eliminated Permanent Fund Dividend applications, Military Leave and Earning statements, and registered voter data bases as reliable sources of information about residency.³⁵

The Board attempted to discover what other alternatives existed. As noted, the Board received expert opinion that an accurate survey was methodologically impossible. Even when the Board was told that a statewide survey was possible, it was told that identifying the NRMP in

each district would be impossible.³⁶ The Board discussed the expert opinion at its March 4 meeting and agreed with the proposal of director Babcock that, at least as an initial guideline, the survey could not be performed. Additionally the Board determined that the inclusion of NRMP would not result in a rural/urban bias. The Board thus concluded that its original guideline of using the census data as its population base was proper.

Based on what we have previously required of reapportionment boards, we conclude that the Board's "look" was "hard" enough. It is not necessary to attempt a survey or statistical analysis when a thorough examination reveals that such a survey is not possible. **Groh**, 526 P.2d at 868-69. Rather, we need only be assured that the Governor's authority was "exercised in a rational as opposed to an arbitrary manner." **Id.** at 868. Although we have found a "thorough and exemplary exploration" to be persuasive in proving that the Board's decision was rational, we have not required it. **Groh**, 526 P.2d at 868. The Board's consideration of alternatives and expert advice was sufficient examination.

note 33
 estimation of % of NRMP to need
 not be ~~more~~ any more precise than
 the approximation of other portions
 of the population

CHAIRMAN GREEN asked whether there were other questions. He noted that no one from the public had signed up to testify.

Number 1982

REPRESENTATIVE ROKEBERG referred to disagreement within the committee about definitions of "reapportionment" and "redistricting." He asked whether they were going to clarify those as they apply to this bill.

CHAIRMAN GREEN replied that he would hope it would stay this way, as advised by the drafter, Mr. Chenoweth.

Number 2044

REPRESENTATIVE PORTER made a motion to adopt 0-LS0939\E, Glover, 1/20/98, as a work draft. There being no objection, that version was before the committee.

REPRESENTATIVE PORTER read from page 2, lines 4 through 9, Section 3 of the proposed committee substitute, with added comments. He said, "Redistricting - or Reapportionment, depending on this discussion - of the House and Senate. The governor shall redistrict the house of representatives and the senate immediately following the official reporting of each decennial census of the United States. Redistricting shall be based upon population, ... within each election and senate district as reported by the census." Representative Porter said that addresses specifically the boundaries, which is reapportionment, not redistricting.

Number 2076

concluded. "But I'm afraid not being able to get it will end up causing more problems than you'll ever solve by it."

Number 0714

CHAIRMAN GREEN, noting that he maintained a "no" vote, requested a roll call. Voting for Amendment 1 were Representatives Berkowitz and Croft. Voting against it were Representatives Bunde, James, Porter and Green. Representative Rokeberg was absent, chairing another meeting. Therefore, Amendment 1 failed by a vote of 4-2.

Number 0769

REPRESENTATIVE PORTER made a motion to amend page 2, line 12, to insert the word "forty" between the words "establish" and "single-member".

CHAIRMAN GREEN asked whether there were questions or an objection. There being no objection, Amendment 2 was adopted.

Number 0801

REPRESENTATIVE CROFT offered a conceptual amendment. He explained, "On page 2, line 8, it says [CIVILIAN], and that's taken out; I understand why from the Egan v. Hammond case. But in a previous draft, I'd seen 'resident,' and that's the way I'd understood the court interpreting it. We said 'civilian,' but what they really have to mean is 'resident.' Should that be 'resident population' there?" He said it is "pretty much a technical-doing-what-the-supreme-court-told-us-we-had-to-do." He concluded, "But with no modifier there, I'm not sure what would happen."

REPRESENTATIVE BERKOWITZ said he hadn't looked at one of those census books in quite a while. However, if he remembered right, he said, census taking includes numbers such as tourists and transient workers. He asked whether they are saying here that they'll count those people for redistricting purposes, or reapportioning, whichever term they settled on.

Number 1046

CHAIRMAN GREEN indicated he presumed the objection was maintained. He asked whether there was further discussion, then asked Representative Croft for confirmation that he wanted to put "resident" in front of "population."

REPRESENTATIVE CROFT answered, "Right, where 'civilian' was deleted."

CHAIRMAN GREEN requested a roll call vote on Amendment 3. Voting for Amendment 3 were Representatives Berkowitz and Croft. Voting against it were Representatives Bunde, James, Porter and Green. Representative Rokeberg was absent. Therefore, Amendment 3 failed by a vote of 4-2.

REPRESENTATIVE PORTER asked for confirmation that Chairman Green didn't want to deal with the issue of whether to call it "redistricting" or "reapportionment."

CHAIRMAN GREEN said no, they were voting on it as-is.

Number 1107

REPRESENTATIVE JAMES made a motion to move the proposed committee

substitute for HJR 36, version 0-LS0939\E, Glover, 1/20/98, as amended, from committee with individual recommendations and attached fiscal note(s).

REPRESENTATIVE BERKOWITZ objected.

CHAIRMAN GREEN requested a roll call vote. Voting to move the resolution from committee were Representatives Bunde, James, Porter and Green. Voting against it were Representatives Berkowitz and Croft. Representative Rokeberg was absent. Therefore, CSHJR 36(JUD) moved from the House Judiciary Standing Committee by a vote of 4-2.

ADJOURNMENT

Number 1120

CHAIRMAN GREEN adjourned the House Judiciary Standing Committee at 3:29 p.m.

HJR 36 - REAPPORTIONMENT BOARD & REDISTRICTING

Number 0076

CHAIRMAN GREEN announced the first item of business was House Joint Resolution No. 36, proposing amendments to the Constitution of the State of Alaska relating to redistricting of the legislature, and repealing as obsolete language in the article setting out the apportionment schedule used to elect the members of the first state legislature.

JACK CHENOWETH, Attorney, Legislative Legal and Research Services, Legislative Affairs Agency, explained that since not long after statehood, it has been clear that provisions covering legislative apportionment are out of sync with constitutional requirements first laid down by the United States Supreme Court in the early 1960s. This resolution would conform Alaska's constitutional scheme to those requirements. It would also require that in future legislative districting schemes, only single-member districts would be used.

MR. CHENOWETH noted that HJR. 36 deals principally with Article VI, the legislative apportionment article of the constitution. Section 1 of Article VI talks about election districts, the "term-of-art" used to describe the districts in which House members run for election or re-election. Section 1 of HJR 36 deletes obsolete language that refers to the first reapportionment and the reference to Article XIV, Section 1, substituting a requirement that the boundaries of election districts be drawn in conformity with other provisions of this article after each decennial census of the United States. A parallel change is made in Section 2 for Senate districts.

MR. CHENOWETH referred to Section 3 and said he is recommending substitution of the term "redistricting" throughout this article. "Reapportionment" is a term generally reserved to amending or changing the number of representatives within fixed political boundaries. For example, every ten years when the census comes out, the United States Congress is reapportioned, with states gaining or losing seats based on population changes. The shift of seats from one jurisdiction to another having fixed boundaries, such as state boundaries, is a true reapportionment; the number of seats is reallocated among these jurisdictions.

MR. CHENOWETH explained that within jurisdictions, however, the process of drawing lines is a simple redistricting, which is what is going on with state legislatures. The United States Supreme

Court has made it clear that only resident population count can serve as the basis for the line-drawing and that any effort to tie this to some sort of fixed, permanent or semi-permanent lines will not sit well with the courts. This is a simple redistricting of Alaska into 20 Senate seats and 40 House seats. Section 3 of HJR 36 simply substitutes the term "redistricting" for "reapportionment", and that change is made throughout the rest of the resolution.

MR. CHENOWETH referred to page 2, line 7, and said it also substitutes the word "resident" so that "resident population" rather than "civilian population" is the basis for redistricting. The limitation of tying this to a civilian population was set aside by an early state supreme court case. "And we have to go with some sort of resident-based population scheme," he concluded.

Number 0365

MR. CHENOWETH said Section 4 deletes current language that talks about how reapportionment shall be developed and substitutes the requirement of single-member districts. "The Governor is to establish single-member election districts and is to establish Senate districts composed of two contiguous election districts, with each Senate district to elect one Senator," he explained. "That's the scheme that we now have in place."

MR. CHENOWETH explained that Section 5 reworks Article VI, Section 6. It deletes some language that ties back to reapportionment and keeps in place the only language that seems to be pertinent to how lines are to be drawn, the language that the reapportionment boards in the past, and the courts in their review of the work of the Governor, have looked back at and used to consider these reapportionment decisions.

MR. CHENOWETH noted that Section 6 changes the board's name to the "Redistricting Board". It maintains the requirement of a geographic spread but unties this from the notion of fixed Southeastern, Southcentral, Central and Northwestern Senate districts, which are the fixed districts used in the original constitution; it substitutes the four judicial districts established by law and authorized under Article IV, Section 1.

MR. CHENOWETH said Section 7 simply is a change in name from "Reapportionment" to "Redistricting". Section 8 updates some references to the Governor, removing a gender-based pronoun and substituting a neutral term. It also makes further substitutions of "redistricting" for "reapportionment".

MR. CHENOWETH said Section 9 deletes two sections of Article VI made obsolete by United States Supreme Court decisions: Section 5, which talks about combining House districts in order to maintain Senate districts in the old fixed-boundary scheme, and Section 7 (misstated as Article VII), which talks about modification of Senate districts when necessary to accommodate population shifts.

MR. CHENOWETH stated, "We also propose to repeal Article XIV, which is a provision that sets out the initial reapportionment dating from 1959. It's not used anymore. It has no standing anymore. Article XIV is simply a device or a vehicle by which we generally restate the current apportionment, so that it can be found in the statute books. It's typically an annotation of some sort that describes the boundaries of the current apportionment, so at least we have it someplace out in the public and they can find it. Every time there's an apportionment change, every ten years, that change is made. But ... the original language of Article XIV is of no value anymore." He concluded by saying Section 10 is a boiler plate to get this before the voters in November 1998.

Number 0570

REPRESENTATIVE ELM CROFT asked whether the major change is "constitutionalizing" single-member districts.

MR. CHENOWETH said yes, for both the House and the Senate.

REPRESENTATIVE CROFT asked, "Do you mean any change in current law when you make the switch from 'civilian' to 'resident,' that is, the law that we're forced into by the federal interpretation?"

MR. CHENOWETH replied, "Yes, we are following the requirements that have been imposed by, chiefly, recently, state supreme court decisions that have eliminated the use of 'civilian' and required that we go to a resident population base. And the state supreme court has suggested ways in which it is possible to take, for example, the military count, and try to allocate some number of estimated military that reflect a better split between resident and nonresident."

REPRESENTATIVE CROFT asked whether it conforms to current practice in that regard.

MR. CHENOWETH affirmed that.

REPRESENTATIVE CROFT referred to the term "contiguous" and said

Change in Multimember Legislative Districts from 1980s to 1990s

state	State Senates						State Houses					
	Total Number of Districts		Number of Multimember Districts		Largest Number of Seats in a District		Total Number of Districts		Number of Multimember Districts		Largest Number of Seats in a District	
	1980s	1990s	1980s	1990s	1980s	1990s	1980s	1990s	1980s	1990s	1980s	1990s
Alaska	14	20	6	0	2	1	27	40	13	0	2	1
Arizona							30	30	30	30	2	2
Arkansas							84	97	10	2	3	3
Georgia							156	180	15	0	5	1
Idaho	33	35	6	0	3	1	33	35	33	35	6	2
Indiana							77	100	16	0	3	1
Maryland							59	62	45	44	3	3
Nevada	14	16	7	5	2	2						
New Hampshire							175	132	103	74	10	36
New Jersey							40	40	40	40	2	2
North Carolina	35	42	13	8	3	2	72	98	30	17	4	3
North Dakota	53	49	2	0	2	1	53	49	53	49	2	2
South Dakota							35	35	35	35	2	2
Vermont	13	13	10	10	6	6		108		42		2
Washington							49	49	49	49	2	2
West Virginia	17	17	17	17	2	2	40	58	26	23	12	7
Wyoming	18	30	5	0	4	1	23	60	15	0	9	1

Source: National Conference of State Legislatures

he'd read some of those cases. Because of geography, Alaska has an interpretation somewhat different from other states. For example, Alaska has one Senate district and two House districts separated by 700 miles of ocean; those are considered "contiguous." He stated, "So, we don't mean any change in that."

MR. CHENOWETH concurred.

REPRESENTATIVE CROFT asked, then, whether the sole substantive change is locking in single-member districts. If this were current law and these changes had been made two years ago, would what they are doing now be legal?

MR. CHENOWETH said yes.

Number 0714

REPRESENTATIVE ETHAN BERKOWITZ asked for confirmation that there is no constitutional problem with the existing structure, from a federal perspective.

MR. CHENOWETH replied that what problems there might be, the state courts have generally worked their way around. They have looked at decisions of the United States Supreme Court and accommodated as best as they've been able to, pointing out that this is an article in need of revisitation and amendment, in light of decisions from the United States Supreme Court and their own practices.

REPRESENTATIVE BERKOWITZ indicated the Hickel case is the only related case he has read, although there may be others. He asked, "What, generically, are the concerns in the courts?"

MR. CHENOWETH answered, "Well, the courts have had to fill in, if you will. They have had to assume responsibility where there was no literal expression of responsibility for action taken by the Governor or by the reapportionment board as recommendations to the Governor. For example, there is no authority in law to adjust the terms of sitting Senators. The courts have filled in by saying that when there is a substantial change in a boundary, and a Senate district is increased substantially so that new faces are brought in or former constituents are let go of and put in a different district, ... there is an inherent authority to cut short by two years the Senate terms and require a Senator ... in a remade district to run again."

MR. CHENOWETH indicated there is nothing of that in the state constitution, adding, "They have simply accepted the fact that that

needs to be done, looked at the operation of that kind of a provision in other states and adapted it ... into this." He emphasized this is the one thing for which no express provision exists in the state constitution, nor is there an express provision for it in this resolution.

Number 0845

REPRESENTATIVE CON BUNDE asked why they weren't including that omitted provision here.

MR. CHENOWETH answered, "Well, I think you should. I think a complete package would be some sort of reference in here that the Governor has explicit authority to, under some kind of circumstances, cut short the terms of sitting Senators and require that they run for re-election. Now, I don't know how that's going to sit in the other body, and I certainly wasn't asked to make that change. I only throw it out on the table as the one piece of this puzzle that, as I went back and looked at this thing over the weekend, I thought perhaps we ought to put something in there so that the courts are not relying upon some assumed authority. Having rewritten Article VI, perhaps we ought to add that in and make that point clear."

Number 0919

REPRESENTATIVE BUNDE noted the lateness in the session and the expense required for a public vote or a constitutional amendment. He suggested they'd be remiss not to include as many housekeeping details as possible. He'd like to see that provision included.

REPRESENTATIVE BRIAN PORTER pointed out that the Governor can make the appointment to the districting board without confirmation by or concurrence of the legislature. He asked whether it would be a friendly amendment to add that.

Number 1001

CHAIRMAN GREEN said that was a good thought. He mentioned the "two concepts" and asked Mr. Chenoweth whether there is a way to tighten this so that nothing is left to chance. They'd been working this way at least as long as he'd been in the state, that "every decennial election, the Senators just serve two terms, and then everybody starts from scratch again; but this would codify it."

REPRESENTATIVE PORTER indicated his own suggestion about confirmation had been somewhat facetious.

CHAIRMAN GREEN clarified that he was discussing the prior issue. Although it wasn't essential to do it immediately, he wondered whether there was a way to modify it, possibly for review at a future meeting.

MR. CHENOWETH said he believed that could be accomplished. It may only be necessary to add a sentence or a fraction of one that invites the published final plan to indicate some determination on the terms of Senators then in office, or words to that effect.

CHAIRMAN GREEN said he perceived that to be the will of the committee, according to comments.

REPRESENTATIVE CROFT asked whether there would be other witnesses.

CHAIRMAN GREEN replied that no one was on teleconference, but Mr. Baldwin was signed up to testify locally.

Number 1114

JAMES BALDWIN, Assistant Attorney General, Governmental Affairs Section, Civil Division (Juneau), Department of Law, came forward to testify, saying Representative Croft's questions had pretty well covered what he wanted to clarify that day. The people in his area of the department generally end up advising the reapportionment board. He said, "I guess I've been through about three or four, but not that many governors. It seems like there's been more reapportionments than there have been governors because of the way these things get into litigation. And we seem to have to do them more than once per ten-year cycle."

MR. BALDWIN indicated the application of the federal voting rights act has made their job increasingly complicated over time. He explained, "It seems like we do the plan, we get through our courts, and then we have to get through the Justice Department for pre-clearance, which then seems to make us have to go through another cycle again." Mr. Baldwin is concerned, with this legislation particularly, about abandoning some current flexibility in techniques to bring forward reapportionment plans. He stated, "If you go strictly to a single-member-district approach, then you give up the ability to go to multi-member districts, if that would serve our interests and perhaps assist us in gaining pre-clearance from the Justice Department."

MR. BALDWIN said he couldn't pose a particular set of facts that would cause that to arise. "But I've been having a terrible time

doing that for every reapportionment plan we've come up with; there's always been something new that comes up to cause us a hurdle before the Justice Department," he stated. "So, I just ask the committee to consider that fact. As our population grows and it shifts, and we know it's shifting somewhat, particularly towards the Mat-Su area of the state, it's going to take a larger population for rural areas of the state; they're going to have to come in and pick up, perhaps, what we call the 'fringe areas' of the municipalities and more higher-populated areas."

MR. BALDWIN said it might be possible they'd need to go to multi-member districts to solve some particular problem. Under the current interpretation of the state constitution, they can go to single-member districts if the Governor desires that. Mr. Baldwin advised members, "Not knowing who the next Governor is going to be that's going to be writing the next plan, you might want to keep in mind leaving that option open to him or her."

MR. BALDWIN expressed concern that being required to go to single-member districts may affect rural areas more than urban areas. While he wasn't saying they'd want to do multi-member districts in rural areas, they may need to do so in urban districts in order to make things work in the rural areas. Or they could possibly be into retrogression, which he called a "nasty word in the area of voting rights." Mr. Baldwin explained, "In other words, the minorities who are represented now would lose representation. And ... mathematically, if that works out, if demographically that works out, we have to do that, that's fine. But ... if it can be done another way, the Justice Department is going to be there, and I don't know what the outcome would be, lacking the flexibility that we have now. So, ... I really hate this saying, but 'if it ain't broke, don't fix it' might well apply here."

MR. BALDWIN said he believed the testimony earlier was that the requirement of districting only resident population is not intended to be a change from anything now in effect. He stated, "Our supreme court was not quite so direct in the way it said that contiguity can include expanses of water. And I want to make sure that in here you're not saying 'contiguous' in its plain meaning, which means right up against one another. We can't lose that flexibility, because geography just works against us in so many ways, and particularly getting things to work. So, I'm glad that you're creating a strong record for that."

MR. BALDWIN noted that it was nearly the end of session. If this resolution did not pass both houses, he asked the committee to carefully consider studying this matter in the interim, particularly with regard to single-member districts. He mentioned "knowing better what's going into the building blocks of the census, which is being put together now, whether there isn't going to be enough evidence there to perhaps lead to a decision that we don't need to abandon this flexibility that we have now."

MR. BALDWIN commented that from a Governor's perspective, single-member districts are good because a veto can be done "surgically," by district. However, from the realities of reapportionment or redistricting, it may cause real problems for the next Governor.

Number 1432

CHAIRMAN GREEN indicated they had used this method since the 1992 election. He asked whether there wasn't a significant influx and shifting of population in the 1980s. He said it seems the concerns Mr. Baldwin expressed were handled well in single-member districts. He asked, "Do you anticipate some reason why that won't continue to be handled well with single-member districts?"

MR. BALDWIN said the only thing he can successfully anticipate is that there will be litigation over the plan, one way or another. There have been a couple of supreme court cases recently on using minority voters as a criteria. While he can't foresee the affect of that, he predicts Alaska will be in a "fight over retrogression" in the next reapportionment. He explained, "When you go into these reapportionment efforts, the Justice Department generally sticks you with a benchmark as to ... how many minority-influence seats you have, how many majority seats you have. And if the way we go into it forces us into a retrogression situation, I see long and protracted litigation, with uncertain results at the end of the tunnel."

REPRESENTATIVE PORTER asked, "With the feds?"

MR. BALDWIN replied, "I think with the minorities, and the feds will be as a part of it, yes. They will be ... in the litigation as well." He said for a state like Alaska, which is closely monitored under the voting rights act, the best situation is not to have retrogression but to maintain the benchmarks, if at all possible. While it is hard to predict what will happen, he anticipates that is what Alaska will be confronted with. There might be ways to avoid it.

MR. BALDWIN stated, "Keeping the maximum powers in the hands of the Governor to do that, (indisc.) in the board to do that, would be my preferred alternative. But it's not the best." He pointed out there is much good to be said for single-member districts. Campaigns are cheaper and easier. It is easier to maintain "one person, one vote." Constituents don't need to feel that they can't tell who their representative is, and there is a more direct relationship. Mr. Baldwin stated, "There's all those good things, but when you get right down to the problems that we have with a small population, a large area of geography and much water and all those factors brought to bear, tying your hands to one method of redistricting might not be what would serve the interests of ... the state as a whole."

Number 1596

CHAIRMAN GREEN suggested that when one looked at the demographics of the districts as they were done, and the number of minorities and other factors, it looked pretty good across the state. "To then say that it might be better to go to multiple-member districts and potentially get back into the 'doughnut' district or Valdez being tied in with South Anchorage, I mean, those kinds of things seem to be much more confusing and much more potential for litigation than to go to an area where the constituency is far more aware of who their representative really is," he said.

REPRESENTATIVE JEANNETTE JAMES agreed with Mr. Baldwin's reasons why a single-member district is important. She indicated she'd prefer not to have an option, which they may use when they don't need to. She'd never yet seen a redistricting without litigation. She feels much more comfortable with a single-member district because of the "one man, one vote" issue and because the people know who represents them. She believes those are important issues.

REPRESENTATIVE JAMES indicated she understands about losing members from rural areas. However, in the next ten years there may be a surge in the rural areas, particularly if they get some of the anticipated development. She asked whether "maybe it ought to be left that the option is only a single-member district and then, should we see a problem with that coming in the future, that we then go to the voters to ask for a change." She added, "Maybe that's not wise, because maybe most of the voters are in the areas who love to have more representation than less out there; I don't necessarily think that's true." She asked Mr. Baldwin to respond to that way of looking at it.

Number 1708

MR. BALDWIN replied, "I don't think it's harder to come up with a list of ... why you'd want multi-member districts, first off. I think there's a list of reasons for that, too, and because of the other criteria in the constitution about compactness and socioeconomic interrelatedness, which are the other criteria in the constitution, it might well be able to state a case that an area, for example, Juneau, which ... has in past reapportionment plans, before the one we're in, has had multi-member districts, and probably for a good reason. It's hard to see any division line between the town and the [Mendenhall] Valley, for example, and there have been other areas in the state that are like that, that have benefitted from having multi-member districts."

MR. BALDWIN said he didn't know what the process would be for the voters to come back and change it at some point in the future. He stated, "I mean, we have a reapportionment, and we try to do a plan and have it done so it can be in place for another ten years. And to interrupt that in the middle of a cycle, which is what we've done the last couple of times because of litigation, has been very disruptive to the electoral process. Can you imagine the Division of Elections scrambling to try and get their precinct lines and regulations done for an election when you don't know what the districts are going to be? It's really pandemonium." He said he wouldn't recommend an approach like that, if he understood the question correctly.

Number 1777

REPRESENTATIVE JAMES mentioned a lawsuit "determined on a national level last year" about gerrymandering in the South. In her own district, she noted that they'd "zeroed out Nenana to meet some population, Native population, and left me with less people in my district than other districts," but within the parameters allowed. She asked whether that court decision would have precluded that from happening and whether Mr. Baldwin was familiar with it.

MR. BALDWIN replied, "Yes, I am. I don't think so. Representative Croft and I've argued about this a little bit; he doesn't quite see it my way. But I think that in Alaska we did our redistricting considering not only race; we also considered the other traditional criteria, which are compactness and socioeconomic connectedness. At the same time, we did the adjustments which were required, we thought, to meet pre-clearance requirements. It's only when you're doing it based completely on race, without any other criteria, that you fall into the realm of those U.S. Supreme Court cases involving Texas and Georgia. So, if that was your ... sole criteria, you did

it just because of race considerations, then you're going to have violated the U.S. Constitution."

Number 1874

REPRESENTATIVE PORTER indicated that if it wasn't the sponsors' desire to get this past both bodies this year, he was only being facetious regarding confirmation of the board by the legislature to the extent that he believed this was a "slam-dunk" housekeeping legislation. However, if the main feature needs looked at further, this would be the appropriate committee to perhaps look at "a much bigger element of this whole area."

REPRESENTATIVE PORTER explained, "I would think that it would be appropriate to try to get a procedure to put in place a board that would look at redistricting from a position of what is the most appropriate - under the law - district to put in place for the betterment of the voters of the state of Alaska, instead of, 'How much partisan gerrymandering can we do and get away with it?' And I'm not saying that one party does this any better or worse than the other party. I mean, we've been here long enough to know that they both do it. So, if it is that we have a desire to work on this over the interim, I would be happy to try to work on that element also."

CHAIRMAN GREEN indicated changing that would raise a concern. He asked whether Mr. Baldwin had indicated, in response to Representative Porter's mention of this earlier, that the Administration would be more concerned about the resolution if they modified the strong gubernatorial input in selection of the board.

MR. BALDWIN suggested that may have been Mr. Chenoweth. He said it wasn't brought up while he was present.

CHAIRMAN GREEN asked, "So, you don't see any problem with that?"

MR. BALDWIN laughed, then said, "I think that the constitution is just fine, as far as having the Governor appoint the board. That was a decision that was hotly debated in the minutes of the constitution. ... They felt that the legislature, while a[n] exceedingly wise organization, maybe was not best suited for ... making reapportionment decisions."

Number 2004

REPRESENTATIVE CROFT suggested if they knew anything after this history, it's that the legislature doesn't want to be involved in

rewriting its own boundaries. While to some extent it's up to the vagaries of who is in office every decade and there have been some games, he can't imagine the games there would be if the legislature were in charge of that.

Number 2024

REPRESENTATIVE PORTER responded that he certainly wasn't suggesting that. He was suggesting trying to establish a neutral board without gubernatorial or legislative direction on how to try to gerrymander the districts. He said, "And if there's anybody here that doesn't think that that isn't what's happened the last 10, 20, 30, 40 years, I'll talk to you after we get off the record."

Number 2050

REPRESENTATIVE BUNDE brought up questions he'd like to have addressed if this was worked on during the interim. First, do other states have both single-member and multiple-member districts in the same body? And have other states gone from having single to multiple members? He understood that most have gone from multiple to single, for many good reasons, and while he understood the plea for flexibility, "we may need a socket set here but we've got a crescent wrench; maybe we don't need to keep the crescent wrench."

MR. BALDWIN replied that he didn't know the answer but would be happy to research it.

Number 2107

CHAIRMAN GREEN asked whether there were further comments. Speaking as both sponsor and chairman, he announced that HJR 36 would be held over and worked on during the interim.

JACK CHENOWETH, Attorney
Legislative Legal and Research Services
Legislative Affairs Agency
130 Seward Street, Suite 409
Juneau, Alaska 99801-2105
Telephone: (907) 465-2450
POSITION STATEMENT: Testified regarding HJR 36.

JAMES BALDWIN, Assistant Attorney General
Governmental Affairs Section
Civil Division (Juneau)
Department of Law
P.O. Box 110300
Juneau, Alaska 99811-0300
Telephone: (907) 465-3600
POSITION STATEMENT: Provided department's position and answered
questions regarding HJR 36.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

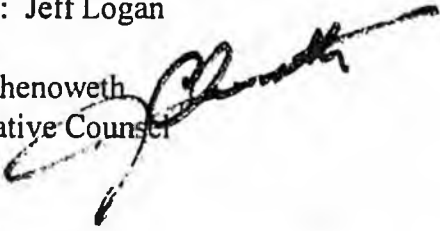
MEMORANDUM

April 21, 1997

SUBJECT: Redistricting constitutional amendment resolution (Work Order No. 0-LS0939\A)

TO: Representative Joe Green
ATTN: Jeff Logan

FROM: Jack Chenoweth
Legislative Counsel



Although popularly understood as "reapportionment," a term that is used in articles VI and XIV of the Constitution of the State of Alaska, the process of revising state legislative election and senate district lines to achieve equal population is properly styled "districting" or "redistricting."

"Apportionment" is the division of a given number of positions among established political subdivisions in accordance with an existing plan or formula. Every ten years, under article I, sec. 2, cl. 3 of the United States Constitution, the number of authorized members allowed to each of the 50 states in the House of Representatives is redetermined to reflect changes in the respective populations in the states as determined by the census. This redetermination or reallocation of seats among the political jurisdictions is an apportionment, or reapportionment, and the net gain or loss of House seats by each state is the product of that apportionment. Thereafter, within each state, the boundaries of the districts of the members of the House of Representatives are revised into new district boundaries to achieve equal population under a process of "districting" or "redistricting."

Historically, in the state legislatures--and this is true of the Alaska State Senate under the provisions of article VI of the state constitution--one house was often "apportioned" in the sense that members elected to that house were chosen within specific political subdivisions having fixed boundaries such as counties. Some counties or groups of counties elected one member, but more populous counties were assigned multiple members. But, at least since the decision in Reynolds v. Sims, 377 U.S. 533 (1964), holding that both houses of a bicameral state legislature are to be districted on a population basis, reliance on the fixed boundary lines set by counties and other political subdivisions to identify the basis of electing members of one house of the state legislature has been abandoned.

Representative Joe Green

April 21, 1997

Page 2

The terminology--the only terminology--properly applicable to the process to be revised within article VI, Constitution of the State of Alaska, is "districting" or "redistricting." I have amended the appropriate provisions of article VI to so provide.

*

If this memo or its attachment prompts questions, please contact me.

JBC:jdr

97-281.jdr

Attachment

MEMORANDUM

Date: 2/4/98
To: Richard Glover
From: Kevin Jardell
Re: HJR 36 Reapportionment Board and Redistricting

Richard,

For purposes of clarification I have attached the House Judiciary Committee minutes from 1/21/98 which reflect the following:

Rep. Porter moved to adopt 0-LS0939\E as a work draft. Without objection the version was before the committee.

Rep. Porter moved to amend page 2, line 12, to insert the word "forty" between the words "establish" and "single-member." Without objection the amendment was adopted.

If you have any further questions please contact me at ext. 4990.

Thanks.

AMENDMENT

BY REPRESENTATIVE CROFT

OFFERED IN HOUSE JUDICIARY

TO: CSHJR 36 () work draft O-LS0939\ E

Page 2, line 9 following "census.":

Insert "The reapportionment board shall conduct a survey to determine the percentage of resident and non-resident military voters and shall reapportion based on the resident population."

Hickel v. Southeast Conference, 868 P.2d 919 (Alaska 1994).

Dealt mostly with Atty's fees for prevailing party. Democratic Party as public Interest Litigant.

DOJ reviews plan under Section 5 of Voting Rights Act.

Hickel v. Southeast Conference, 846 P.2d 38 (Alaska 1992)

Ak. Const. Art. VI, § 3. and *Wade v. Nolan*, 414/689, 700 (Alaska 1966), Governor has power and duty to reapportion the state legislature every ten years.

Contiguous and compact territory containing as nearly as practicable a relatively integrated socio-economic area. Total [civilian] population by 40.

EQUAL PROTECTION

- 1) One person, one vote. The right to an equally weighted vote. (Quantitative, purely numerical.)
- 2) "Fair and effective representation." The right to group effectiveness or an equally powerful vote. (Qualitative.)

Kenai Peninsula Borough,
743/1366.

One person one vote. "minor deviations from mathematical equality among state legislative districts are insufficient to make out a prima facie case of invidious discrimination under the 14th Amendment. State must provide justification for deviation above 10%. Art 6 requirements will justify greater than 10%. (deviation of 16.3% seen as outside parameters *Gaffney*, 412 US 735 (1973).

Fair and effective representation. Fair Representation is denied where there is proof that the group has substantially excluded from the political process and denied political effectiveness over a period of more than one election. FED Equal Protection *Kenai* at 1369.

Ak Equal Protection. More strict standard. Won't hypothesize facts which would sustain otherwise questionable legislation i.e. rational basis. Upon a

showing that the Board acted intentionally to discriminate against the voters of a geographic area, The Board must demonstrate that its plan will lead to greater proportionality of representation. *Kenai* at 1372.

Voting Rights Act. Reapportionment invalid if it "would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise."

Ak Ct has emphasized the need to preserve flexibility in the redistricting process so that all constitutional requirements may be satisfied as nearly as practicable. *Hickel*, 846 at 50.

NRMP. (non-resident military personnel) Exclusion is not constitutionally mandated if it is not possible to accurately identify those military personnel who are non-residents. It is necessary to consider alternative plans for obtaining a sufficiently accurate plan for estimating the number of NRMP. A "hard look" is required. Explained in *Hickel*, 846 at 57.

Alaska State Legislature



House of Representatives House Judiciary Committee

State Capitol, Room 120
Juneau, Alaska 99801-1182
(907) 465-4990

Distribution of Representative Green's HJR 36 Sponsor Statement and CS/E
for Inclusion in Committee Member Packets.

Rep. C. Bunde

✓

Rep. B. Porter

JP

Rep. N. Rokenburg

Rep. J. James

James

Rep. E. Croft

Rep. E. Berkowitz

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HJR36 | _____

Revision Date (Note if correction) _____ Dept. Affected Office of the Governor
 Title Const. Amend: Reapportionment Board BRU Elective Operations
 and Redistricting _____ Component Elections
 Sponsor Representative Green
 Requester House Judiciary Committee Component Serial No. #21

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						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

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 Dana LaTour *D LaTour* Phone 465-5347
 Division Division of Elections Date 1/20/98
 Approved by C. Lt. Governor Fran Ulmer *Fran Ulmer* Date 1/20/98
 Agency Office of the Lieutenant Governor

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

For further distribution information, call the Governor's Legislative Office

HJR

44

HOUSE JUDICIARY STANDING COMMITTEE

DATE: 2/11/98

ISSUE: ^{move (cs)} HJR 44 out

	YEA	NAY	PRESENT
Vice Chair Bunde	1		
Representative Berkowitz		1	
Representative Croft		1	
Representative James _____			_____
Representative Porter	1		
Representative Rokeberg	1		
Chairman Green	1		
TOTALS:	4	2	

PASSED

FAILED

move

HOUSE COMMITTEE REPORT

(7) Date Referred to Committee: January 12, 1998 FURTHER REFERRALS: Finance

Date of Committee Action: 2/19/98

The JUDICIARY 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 HJR44 (JUD) [] the same title [X] a new title

[] additional referral to _____ Committee [] attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) APPROVES PREVIOUS: (Dept/Date) [X] fiscal note(s) LAW / & Gov. [] fiscal note(s)

[] zero fiscal note(s) [] zero fiscal note(s)

Table with 5 columns: SIGNING WITH RECOMMENDATIONS, DP, DNP, NR, AM. Contains handwritten signatures and checkmarks.

CHAIR'S SIGNATURE [Signature]

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. CSHJR44(JUD)

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						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

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

POSITIONS	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
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 Fenunui</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>	

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information, call the Governor's Legislative Office

FISCAL NOTE

Workdraft M

**STATE OF ALASKA
1998 LEGISLATIVE SESSION**

BILL NO. CS HJR 44(JUD)

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

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						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	63.7	11.1				
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	63.7	11.1	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)

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 *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

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

For further distribution information, call the Governor's Legislative Office

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			\$67,692
	FY00			\$11,126

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

BY

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; and providing for an effective
3 date.

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

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

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

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

13 Section 2. Senate Districts. Members of the senate shall be elected by the
14 qualified voters of the respective senate districts. The boundaries of the senate
15 districts shall be set under this article after each decennial census of the United
16 States [SENATE DISTRICTS SHALL BE AS SET FORTH IN SECTION 2 OF

1 ARTICLE XIV, SUBJECT TO CHANGES AUTHORIZED IN THIS ARTICLE].

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

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

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

9 Section 4. Method of Reapportionment. The Reapportionment Board shall
10 establish forty election districts, with each election district to elect one member
11 of the house of representatives. Each election district shall contain a population
12 as near as practicable to the quotient obtained by dividing the population of the
13 state by forty. The board shall establish twenty senate districts each composed
14 of two contiguous election districts, with each senate district to elect one senator
15 [REAPPORTIONMENT SHALL BE BY THE METHOD OF EQUAL
16 PROPORTIONS, EXCEPT THAT EACH ELECTION DISTRICT HAVING THE
17 MAJOR FRACTION OF THE QUOTIENT OBTAINED BY DIVIDING TOTAL
18 CIVILIAN POPULATION BY FORTY SHALL HAVE ONE REPRESENTATIVE].

19 * Sec. 5. Article VI, sec. 6, Constitution of the State of Alaska, is amended to read:

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

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

30 Section 8. Reapportionment Board. (a) The Reapportionment Board
31 [THE GOVERNOR SHALL APPOINT A REAPPORTIONMENT BOARD TO ACT

1 IN AN ADVISORY CAPACITY TO HIM. IT] shall consist of five members, all of
2 whom shall be residents of the state and none of whom may be public employees
3 or officials at the time of and during the tenure of appointment. Board members
4 shall be appointed as provided in (b) and (c) of this section [. AT LEAST ONE
5 MEMBER EACH SHALL BE APPOINTED FROM THE SOUTHEASTERN,
6 SOUTHCENTRAL, CENTRAL, AND NORTHWESTERN SENATE DISTRICTS.
7 APPOINTMENTS SHALL BE MADE WITHOUT REGARD TO POLITICAL
8 AFFILIATION]. Board members shall be compensated as provided by law.

9 (b) Except as provided in (c) of this section, members of the
10 Reapportionment Board shall be appointed after, but not later than fifteen days
11 after, the election of the permanent presiding officers of the house of
12 representatives and senate following the first regular session of a legislature that
13 convenes the year following a decennial census. Except as provided in (f) of this
14 section, board members serve until a final plan for reapportionment and
15 proclamation of reapportionment has been adopted and all challenges to it
16 brought under Section 11 of this article have been resolved after final remand or
17 affirmation.

18 (c) Following election of the permanent presiding officers of the house of
19 representatives and senate, the members of the house of representatives who are
20 not members of the majority shall elect by majority vote a house of
21 representatives minority appointing officer, and the members of the senate who
22 are not members of the majority shall elect by majority vote a senate minority
23 appointing officer. If all members of the senate or house of representatives are
24 members of the majority, the minority appointing officer of that house shall be
25 appointed by the members of that house who are not members of the political
26 party with the greatest number of members in that house. One member of the
27 Reapportionment Board shall be appointed by the presiding officer of the house
28 of representatives, one by the house of representatives minority appointing officer,
29 one by the presiding officer of the senate, and one by the senate minority
30 appointing officer.

31 (d) The four board members appointed by the legislators shall appoint by

1 majority vote a fifth member of the board who shall be chair. If the fifth
2 member has not been appointed by the end of the day that is five days after the
3 last day required for appointment of the board members under (b) of this section,
4 the chief justice of the supreme court shall appoint the fifth member who shall be
5 chair. The chair of the board may not have held an elected state office or an
6 elected office of a political party in this state in the five-year period preceding
7 appointment.

8 (e) The legislature shall provide by law the procedure for determining the
9 order for making an appointment to the Reapportionment Board by each of the
10 legislators authorized to make appointments under this section.

11 (f) Any of the four members of the Reapportionment Board appointed by
12 a legislator may be removed with or without cause. Removal will be effected by
13 the person who originally made the appointment or by that person's successor.
14 A vacancy due to removal, resignation, death, incapacity, or otherwise shall be
15 filled by the person who originally made that appointment or by that person's
16 successor. The chair of the board may be removed only for good cause shown by
17 a majority vote of the group consisting of the other members of the board and the
18 chief justice of the supreme court. The vacancy of the chair, due to removal,
19 resignation, death, incapacity, or otherwise, shall be filled as provided for in (d)
20 of this section.

21 (g) A person who was a member of the Reapportionment Board at any
22 time during the process leading to final adoption of a reapportionment plan under
23 Section 10 of this article may not be a candidate for the legislature in the general
24 election following the adoption of the final reapportionment plan.

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

26 Section 9. Board Actions [ORGANIZATION]. [THE BOARD SHALL
27 ELECT ONE OF ITS MEMBERS CHAIRMAN AND MAY EMPLOY TEMPORARY
28 ASSISTANTS.] Concurrence of three members of the Reapportionment Board is
29 required for actions of the board [A RULING OR DETERMINATION], but a lesser
30 number may conduct hearings [OR OTHERWISE ACT FOR THE BOARD]. The
31 board shall employ or contract for services of independent legal counsel.

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

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

20 (b) Adoption of a final reapportionment plan shall require the affirmative
21 votes of three members of the Reapportionment Board.

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

23 **Section 11. Enforcement.** Any qualified voter may apply to the superior
24 court to compel the Reapportionment Board [GOVERNOR], by mandamus or
25 otherwise, to perform its [HIS REAPPORTIONMENT] duties under this article or
26 to correct any error in redistricting or reapportionment. Application to compel the
27 board [THE GOVERNOR] to perform [HIS REAPPORTIONMENT DUTIES] must
28 be filed not later than [WITHIN] thirty days following [OF] the date that the duty
29 is required to be done under [EXPIRATION OF EITHER OF THE TWO
30 NINETY-DAY PERIODS SPECIFIED IN] this article. Application to compel
31 correction of any error in redistricting or reapportionment must be filed within thirty

1 days following the adoption of the final plan and proclamation by the board
2 [PROCLAMATION]. Original jurisdiction in these matters is [HEREBY] vested in
3 the superior court. On appeal from the superior court, the cause shall be reviewed
4 by the supreme court on the law and the facts. Notwithstanding Section 15 of
5 Article IV, all dispositions by the superior court and the supreme court under this
6 section shall be expedited and shall have priority over all other matters pending
7 before the respective court. Upon a final judicial decision that a plan is invalid,
8 the case shall be returned to the board for correction and development of a new
9 plan [UPON THE LAW AND THE FACTS].

10 * Sec. 10. Article XV, Constitution of the State of Alaska, is amended by adding a new
11 section to read:

12 **Section 29. Effective Date and Applicability of Amendments Providing for**
13 **Redistricting of the Legislature.** (a) The 1998 amendments relating to redistricting
14 of the legislature (art. VI) take effect January 1, 2001.

15 (b) Notwithstanding Section 10 of Article VI, the proclamation of
16 reapportionment and redistricting in effect on December 31, 2000, is effective for
17 election of members of the legislature until sixty days after adoption and final
18 adjudication of the succeeding reapportionment plan and proclamation of
19 reapportionment under Article VI.

20 * Sec. 11. Article VI, secs. 5 and 7, and Article XIV, Constitution of the State of Alaska,
21 are repealed.

22 * Sec. 12. The amendments proposed by this resolution shall be placed before the voters
23 of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the
24 State of Alaska, and the election laws of the state.

	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		③							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.

To: Brian and Tim
Fm: Jim

February 9, 1998

Re: HJR 44: Explanation of changes to C and J versions which now appear in the attached M version. Page references are to the M version.

1. Page 2, lines 24-27 : In earlier versions, language appearing in the existing constitution about districts being equal in population was taken out of section 3 of Article VI [Method of Redistricting]. The language was eliminated because the same language appeared in the preceding section 4 of Article VI, and it seemed redundant to have it in both places.

That language is now being reinserted. The sponsors do so in order to make clear that when the reapportionment board draws the lines around proposed districts, it does so by first making the districts relatively equal in population, before going on to consider contiguity, compactness, and socio-economic integrity of the area.

The reason for returning to the existing constitutional language is that the court in the Hickel case placed little weight on the equal population element, and directed its efforts to the socio-economic integrity elements in doing the analysis. Had the equal population language been deleted, it might give rise to an inference that equal population was not important, or not even required in performing the redistricting function. Given the court's demonstrated tolerance of significant population deviations, this is not an academic issue.

2. Page 3, line 3: The previous version only prohibits board members from being public employees at the time of appointment. Leg Legal has concern in that the language does not prohibit becoming a public employee while serving on the board. The language is now clear that board members must not be public employees either at the time of appointment, or during the time they serve on the board.

3. Page 3, Line 16 : The word "upon" is changed to "after" to clarify that board members serve until the court has affirmed the board's plan, or until after the board complies with all judicial remand orders.

4. Page 3, lines 23-26 : Representative Rokeberg expressed concern over how the first four board members would be appointed if the senate, for example, organized as a twenty-member majority, with no senate minority leader. The new language takes care of the problem.

5. Page 4, line 4: In the previous version, if the first four members could not agree on the fifth member, the fifth member was chosen by the Speaker of the House, the House Minority Leader, and the Chief Justice. In response to concerns expressed by the Alaska Court System, the new version places the power to appoint the fifth member solely in the hands of the Chief Justice. [Removal, however, still requires a majority vote of remaining board members and the Chief Justice].

6. Page 5, lines 7-8 : In the previous version, the language did not clearly state the sponsors' intention that the clock begins to run on the 90 day period within which the board has to come up with a final plan only after two events have taken place: The board is appointed, and the official census data has been released. The new language corrects the problem.

7. Page 5, lines 21-22 : This change deleted subsection (c) which appeared in the earlier versions. Those versions provided an awkward three-judge panel mechanism to deal with

the potential problem of the board failing to agree on a final plan at the end of 90 days. In the new version, the three-judge panel is eliminated. The supreme court is no longer a trial court reviewing a decision of the three-judge panel.

In the new version, on page 5, lines 23-26, the sponsors reinsert the language of the existing constitution. This allows any qualified voter to file suit to compel the board to agree on a plan. [[Furthermore, there is also the option on page 4, lines 11-13 of removing four members of the board without cause in the event of failure to agree, before a qualified voter can bring suit. In this scenario, it is possible that even the chair can be removed for "good cause shown" by the four new members and the Chief Justice. Page 4, lines 16-18]].

8. Page 5, line 23 : In the enforcement section, the previous versions contained detailed "scope of judicial review" language. That language is eliminated in the present version. The sponsors have returned to the language of the existing constitution, which allows judicial review by the supreme court "on the law and the facts". The result is that the supreme court's scope of review is not changed from what it is in the existing constitution, as developed by case law.

9. Page 6, line 7-8 : New language is inserted to clarify the sponsors' intent that if a case is decided adversely to the board by the superior court, but not appealed to the supreme court, the case must be returned to the board for correction and development of a new plan. No court appointed special masters are permitted. If the case is appealed to the supreme court, and the supreme court decides adversely to the board, the case must be remanded to the board for correction and development of a new plan. Again, no lower court or special master rewriting of the plan on remand. As a practical matter, the courts likely will maintain continuing jurisdiction, so it will be possible to have multiple remands until the plan is in accordance with the court's decision.

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

BY

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; and providing for an effective
3 date.

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

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

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

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

13 Section 2. Senate Districts. Members of the senate shall be elected by the
14 qualified voters of the respective senate districts. The boundaries of the senate
15 districts shall be set under this article after each decennial census of the United
16 States [SENATE DISTRICTS SHALL BE AS SET FORTH IN SECTION 2 OF

1 ARTICLE XIV, SUBJECT TO CHANGES AUTHORIZED IN THIS ARTICLE].

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

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

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

9 Section 4. Method of Reapportionment. The Reapportionment Board shall
10 establish forty election districts, with each election district to elect one member
11 of the house of representatives. Each election district shall contain a population
12 as near as practicable to the quotient obtained by dividing the population of the
13 state by forty. The board shall establish twenty senate districts each composed
14 of two contiguous election districts, with each senate district to elect one senator
15 [REAPPORTIONMENT SHALL BE BY THE METHOD OF EQUAL
16 PROPORTIONS, EXCEPT THAT EACH ELECTION DISTRICT HAVING THE
17 MAJOR FRACTION OF THE QUOTIENT OBTAINED BY DIVIDING TOTAL
18 CIVILIAN POPULATION BY FORTY SHALL HAVE ONE REPRESENTATIVE].

19 * Sec. 5. Article VI, sec. 6, Constitution of the State of Alaska, is amended to read:

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

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

30 Section 8. Reapportionment Board. (a) The Reapportionment Board
31 [THE GOVERNOR SHALL APPOINT A REAPPORTIONMENT BOARD TO ACT

1 IN AN ADVISORY CAPACITY TO HIM. IT] shall consist of five members, all of
2 whom shall be residents of the state and none of whom may be public employees
3 or officials at the time of ^{of being the spouse of} appointment. Board members shall be appointed as
4 provided in (b) and (c) of this section [. AT LEAST ONE MEMBER EACH
5 SHALL BE APPOINTED FROM THE SOUTHEASTERN, SOUTHCENTRAL,
6 CENTRAL, AND NORTHWESTERN SENATE DISTRICTS. APPOINTMENTS
7 SHALL BE MADE WITHOUT REGARD TO POLITICAL AFFILIATION]. Board
8 members shall be compensated as provided by law.

9 (b) Except as provided in (c) of this section, members of the
10 Reapportionment Board shall be appointed after, but not later than fifteen days
11 after, the election of the permanent presiding officers of the house of
12 representatives and senate following the first regular session of a legislature that
13 convenes the year following a decennial census. Except as provided in (f) of this
14 section, board members serve until a final plan for reapportionment and
15 proclamation of reapportionment has been adopted and all challenges to it
16 brought under Section 11 of this article have been resolved ^{All} upon final remand or
17 affirmation.

18 (c) Following election of the permanent presiding officers of the house of
19 representatives and senate, the members of the house of representatives who are
20 not members of the majority shall elect by majority vote a house of
21 representatives minority appointing officer, and the members of the senate who
22 are not members of the majority shall elect by majority vote a senate minority
23 appointing officer. If all members of the senate or house of representatives are
24 members of the majority, the minority appointing officer of that house shall be
25 appointed by the members of that house who are not members of the political
26 party with the greatest number of members in that house. One member of the
27 Reapportionment Board shall be appointed by the presiding officer of the house
28 of representatives, one by the house of representatives minority appointing officer,
29 one by the presiding officer of the senate, and one by the senate minority
30 appointing officer.

31 (d) The four board members appointed by the legislators shall appoint by

1 majority vote a fifth member of the board who shall be chair. If the fifth
2 member has not been appointed by the end of the day that is five days after the
3 last day required for appointment of the board members under (b) of this section,
4 the chief justice of the supreme court shall appoint the fifth member who shall be
5 chair. The chair of the board may not have held an elected state office or an
6 elected office of a political party in this state in the five-year period preceding
7 appointment.

8 (e) The legislature shall provide by law the procedure for determining the
9 order for making an appointment to the Reapportionment Board by each of the
10 legislators authorized to make appointments under this section.

11 (f) Any of the four members of the Reapportionment Board appointed by
12 a legislator may be removed with or without cause. Removal will be effected by
13 the person who originally made the appointment or by that person's successor.
14 A vacancy due to removal, resignation, death, incapacity, or otherwise shall be
15 filled by the person who originally made that appointment or by that person's
16 successor. The chair of the board may be removed only for good cause shown by
17 a majority vote of the group consisting of the other members of the board and the
18 chief justice of the supreme court. The vacancy of the chair, due to removal,
19 resignation, death, incapacity, or otherwise, shall be filled as provided for in (d)
20 of this section.

21 (g) A person who was a member of the Reapportionment Board at any
22 time during the process leading to final adoption of a reapportionment plan under
23 Section 10 of this article may not be a candidate for the legislature in the general
24 election following the adoption of the final reapportionment plan.

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

26 Section 9. Board Actions [ORGANIZATION]. [THE BOARD SHALL
27 ELECT ONE OF ITS MEMBERS CHAIRMAN AND MAY EMPLOY TEMPORARY
28 ASSISTANTS.] Concurrence of three members of the Reapportionment Board is
29 required for actions of the board [A RULING OR DETERMINATION], but a lesser
30 number may conduct hearings [OR OTHERWISE ACT FOR THE BOARD]. The
31 board shall employ or contract for services of independent legal counsel.

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

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

20 (b) Except as provided in (c) of this section, adoption of a final
21 reapportionment plan shall require the affirmative votes of three members of the
22 Reapportionment Board.

23 ~~(c) If the Reapportionment Board is unable to adopt a final plan and~~
24 ~~proclamation by the date specified in (a) of this section, there shall be convened~~
25 ~~a three-judge panel. The presiding officer of the house of representatives and the~~
26 ~~house of representatives minority appointing officer shall each appoint one~~
27 ~~superior court judge to the panel, and the chief justice of the supreme court shall~~
28 ~~appoint one superior court judge to the panel. The board shall, within ten days~~
29 ~~after the panel's appointment, transmit to the panel all proposed reapportionment~~
30 ~~plans under consideration by the board. Within forty-five days after the~~
31 ~~transmittal, the panel shall adopt one of the proposed plans without change as a~~

~~final plan and shall issue a proclamation of reapportionment. The supreme court shall adopt rules for proceedings before the three-judge panel under this subsection [UNTIL AFTER THE OFFICIAL REPORTING OF THE NEXT DECENNIAL CENSUS].~~

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

Section 11. Enforcement. Any qualified voter may apply to the superior court to compel the Reapportionment Board [GOVERNOR], by mandamus or otherwise, to perform its [HIS REAPPORTIONMENT] duties under this article or to correct any error in redistricting or reapportionment. Application to compel the board [THE GOVERNOR] to perform [HIS REAPPORTIONMENT DUTIES] must be filed not later than [WITHIN] thirty days following [OF] the date that the duty is required to be done under [EXPIRATION OF EITHER OF THE TWO NINETY-DAY PERIODS SPECIFIED IN] this article. Application to compel correction of any error in redistricting or reapportionment must be filed within thirty days following the adoption of the final plan and proclamation by the board [PROCLAMATION]. Original jurisdiction in these matters is [HEREBY] vested in the superior court. On appeal from the superior court, the cause shall be reviewed by the supreme court on the law and the facts. Notwithstanding Section 15 of Article IV, all dispositions by the superior court and the supreme court under this section shall be expedited and shall have priority over all other matters pending before the respective court. Upon a ^{FINAL JUDICIAL} ~~decision by the superior court or the supreme court~~ that a plan is invalid, the case shall be returned to the board for development of a new plan [UPON THE LAW AND THE FACTS].

reapportionment and

* Sec. 10. Article XV, Constitution of the State of Alaska, is amended by adding a new section to read:

Section 29. Effective Date and Applicability of Amendments Providing for Redistricting of the Legislature. (a) The 1998 amendments relating to redistricting of the legislature (art. VI) take effect January 1, 2001.

(b) Notwithstanding Section 10 of Article VI, the proclamation of reapportionment and redistricting in effect on December 31, 2000, is effective for election of members of the legislature until sixty days after adoption and final

1 adjudication of the succeeding reapportionment plan and proclamation of
2 reapportionment under Article VI.

3 * Sec. 11. Article VI, secs. 5 and 7, and Article XIV, Constitution of the State of Alaska,
4 are repealed.

5 * Sec. 12. The amendments proposed by this resolution shall be placed before the voters
6 of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the
7 State of Alaska, and the election laws of the state.

From the Legal Information Institute and Project Hermes

[Other parts of the opinion, WordPerfect versions, and related documents]

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 92-357

RUTH O. SHAW, et al., APPELLANTS v. JANET RENO, ATTORNEY GENERAL, et al.

on appeal from the united states district court for the eastern district of north carolina

[June 28, 1993]

Justice O'Connor delivered the opinion of the Court.

The voting age population of North Carolina is approximately 78% white, 20% black, and 1% Native American; the remaining 1% is predominantly Asian. App. to Brief for Federal Appellees 16a. The black population is relatively dispersed; blacks constitute a majority of the general population in only 5 of the State's 100 counties. Brief for Appellants 57. Geographically, the State divides into three regions: the eastern Coastal Plain, the central Piedmont Plateau, and the western mountains. H. Lefler & A. Newsom, *The History of a Southern State: North Carolina* 18-22 (3d ed. 1973). The largest concentrations of black citizens live in the Coastal Plain, primarily in the northern part. O. Gade & H. Stillwell, *North Carolina: People and Environments* 65-68 (1986). The General Assembly's first redistricting plan contained one majority black district centered in that area of the State.

Forty of North Carolina's one hundred counties are covered by § 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c which prohibits a jurisdiction subject to its provisions from implementing changes in a "standard, practice, or procedure with respect to voting" without federal authorization. *Ibid.* The jurisdiction must obtain either a judgment from the United States District Court for the District of Columbia declaring that the proposed change "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color" or administrative preclearance from the Attorney General. *Ibid.* Because the General Assembly's reapportionment plan affected the covered counties, the parties agree that § 5 applied. Tr. of Oral Arg. 14, 27-29. The State chose to submit its plan to the Attorney General for preclearance.

The Attorney General, acting through the Assistant Attorney General for the Civil Rights Division, interposed a formal objection to the General Assembly's plan. The Attorney General specifically objected to the configuration of boundary lines drawn in the south central to southeastern region of the State. In the Attorney General's view, the General Assembly could have created a second majority minority district "to give effect to black and Native American voting strength in this area" by using boundary lines "no more irregular than [those] found elsewhere in the proposed plan," but failed to do so for "pretextual reasons." See App. to Brief for Federal Appellees 10a-11a.

Under § 5, the State remained free to seek a declaratory judgment from the District Court for the District of Columbia notwithstanding the Attorney General's objection. It did not do so. Instead, the General Assembly enacted a revised redistricting plan, 1991 N. C. Extra Sess. Laws, ch. 7, that included a second majority black district. The General Assembly located the second district not in the south central to southeastern part of the State, but in the north central region along Interstate 85. See Appendix.

The first of the two majority black districts contained in the revised plan, District 1, is somewhat hook shaped. Centered in the northeast portion of the State, it moves southward until it tapers to a narrow band; then, with finger like extensions, it reaches far into the southern most part of the State near the South Carolina border. District 1 has been compared to a "Rorschach ink blot test," *Shaw v. Barr*, 808 F. Supp. 461, 476 (EDNC 1992) (Voorhees, C. J., concurring in part and dissenting in part), and a "bug splattered on a windshield," Wall Street Journal, Feb. 4, 1992, p. A14.

The second majority black district, District 12, is even more unusually shaped. It is approximately 160 miles long and, for much of its length, no wider than the I-85 corridor. It winds in snake like fashion through tobacco country, financial centers, and manufacturing areas "until it gobbles in enough enclaves of black neighborhoods." *Shaw v. Barr*, *supra*, at 476-477 (Voorhees, C. J., concurring in part and dissenting in part). Northbound and southbound drivers on I-85 sometimes find themselves in separate districts in one county, only to "trade" districts when they enter the next county. Of the 10 counties through which District 12 passes, five are cut into three different districts; even towns are divided. At one point the district remains contiguous only because it intersects at a single point with two other districts before crossing over them. See Brief for Republican National Committee as *Amicus Curiae* 14-15. One state legislator has remarked that "[i]f you drove down the interstate with both car doors open, you'd kill most of the people in the district." Washington Post, Apr. 20, 1993, p. A4. The district even has inspired poetry: "Ask not for whom the line is drawn; it is drawn to avoid thee." Grofman, *Would Vince Lombardi Have Been Right If He Had Said: "When It Comes to Redistricting, Race Isn't Everything, It's the Only Thing"?*, 14 Cardozo L. Rev. 1237, 1261, n. 96 (1993) (internal quotation marks omitted).

The Attorney General did not object to the General Assembly's revised plan. But numerous North Carolinians did. The North Carolina Republican Party and individual voters brought suit in Federal District Court alleging that the plan constituted an unconstitutional political gerrymander under *Davis v. Bandemer*, 478 U.S. 109 (1986). That claim was dismissed, see *Pope v. Blue*, 809 F. Supp. 392 (WDNC 1992), and this Court summarily affirmed, 506 U.S. ____ (1992).

Shortly after the complaint in *Pope v. Blue* was filed, appellants instituted the present action in the United States District Court for the Eastern District of North Carolina. Appellants alleged not that the revised plan constituted a political gerrymander, nor that it violated the "one person, one vote" principle, see *Reynolds v. Sims*, 377 U.S. 533, 558 (1964), but that the State had created an unconstitutional racial gerrymander. Appellants are five residents of Durham County, North Carolina, all registered to vote in that county. Under the General Assembly's plan, two will vote for congressional representatives in District 12 and three will vote in neighboring District 2. Appellants sued the Governor of North Carolina, the Lieutenant Governor, the Secretary of State, the Speaker of the North Carolina House of Representatives, and members of the North Carolina State Board of Elections (state appellees), together with two federal officials, the Attorney General

and the Assistant Attorney General for the Civil Rights Division (federal appellees).

Appellants contended that the General Assembly's revised reapportionment plan violated several provisions of the United States Constitution, including the Fourteenth Amendment. They alleged that the General Assembly deliberately "create[d] two Congressional Districts in which a majority of black voters was concentrated arbitrarily--without regard to any other considerations, such as compactness, contiguousness, geographical boundaries, or political subdivisions" with the purpose "to create Congressional Districts along racial lines" and to assure the election of two black representatives to Congress. App. to Juris. Statement 102a. Appellants sought declaratory and injunctive relief against the state appellees. They sought similar relief against the federal appellees, arguing, alternatively, that the federal appellees had misconstrued the Voting Rights Act or that the Act itself was unconstitutional.

The three judge District Court granted the federal appellees' motion to dismiss. 808 F. Supp. 461 (EDNC 1992). The court agreed unanimously that it lacked subject matter jurisdiction by reason of § 14(b) of the Voting Rights Act, 42 U.S.C. § 19731(b), which vests the District Court for the District of Columbia with exclusive jurisdiction to issue injunctions against the execution of the Act and to enjoin actions taken by federal officers pursuant thereto. 808 F. Supp., at 466-467; *id.*, at 474 (Voorhees, C. J., concurring in relevant part). Two judges also concluded that, to the extent appellants challenged the Attorney General's preclearance decisions, their claim was foreclosed by this Court's holding in *Morris v. Gressette*, 432 U.S. 491 (1977). 808 F. Supp., at 467.

By a 2 to 1 vote, the District Court also dismissed the complaint against the state appellees. The majority found no support for appellants' contentions that race based districting is prohibited by Article I, § 4, or Article I, § 2, of the Constitution, or by the Privileges and Immunities Clause of the Fourteenth Amendment. It deemed appellants' claim under the Fifteenth Amendment essentially subsumed within their related claim under the Equal Protection Clause. 808 F. Supp., at 468-469. That claim, the majority concluded, was barred by *United Jewish Organizations of Williamsburgh, Inc. v. Carey*, 430 U.S. 144 (1977) (*UJO*).

The majority first took judicial notice of a fact omitted from appellants' complaint: that appellants are white. It rejected the argument that race conscious redistricting to benefit minority voters is *per se* unconstitutional. The majority also rejected appellants' claim that North Carolina's reapportionment plan was impermissible. The majority read *UJO* to stand for the proposition that a redistricting scheme violates white voters' rights only if it is "adopted with the purpose and effect of discriminating against white voters . . . on account of their race." 808 F. Supp., at 472. The purposes of favoring minority voters and complying with the Voting Rights Act are not discriminatory in the constitutional sense, the court reasoned, and majority minority districts have an impermissibly discriminatory effect only when they unfairly dilute or cancel out white voting strength. Because the State's purpose here was to comply with the Voting Rights Act, and because the General Assembly's plan did not lead to proportional underrepresentation of white voters statewide, the majority concluded that appellants had failed to state an equal protection claim. *Id.*, at 472-473.

Chief Judge Voorhees agreed that race conscious redistricting is not *per se* unconstitutional but dissented from the rest of the majority's equal protection analysis. He read Justice White's opinion in *UJO* to authorize race based reapportionment only when the State employs traditional districting principles such as compactness and contiguity. 808 F. Supp., at 475-477 (Voorhees, C. J., concurring in part and dissenting in part). North Carolina's failure to respect these principles, in Judge Voorhees' view, "augur[ed] a constitutionally suspect, and potentially unlawful, intent" sufficient to defeat the state appellees' motion to dismiss. *Id.*, at 477.

We noted probable jurisdiction. 506 U. S. ____ (1992).

"The right to vote freely for the candidate of one's choice is of the essence of a democratic society"

Reynolds v. Sims, 377 U. S., at 555. For much of our Nation's history, that right sadly has been denied to many because of race. The Fifteenth Amendment, ratified in 1870 after a bloody Civil War, promised unequivocally that "[t]he right of citizens of the United States to vote" no longer would be "denied or abridged . . . by any State on account of race, color, or previous condition of servitude." U. S. Const., Amdt. 15, § 1.

But "[a] number of states . . . refused to take no for an answer and continued to circumvent the fifteenth amendment's prohibition through the use of both subtle and blunt instruments, perpetuating ugly patterns of pervasive racial discrimination." Blumstein, *Defining and Proving Race Discrimination: Perspectives on the Purpose Vs. Results Approach from the Voting Rights Act*, 69 Va. L. Rev. 633, 637 (1983). Ostensibly race neutral devices such as literacy tests with "grandfather" clauses and "good character" provisos were devised to deprive black voters of the franchise. Another of the weapons in the States' arsenal was the racial gerrymander--%the deliberate and arbitrary distortion of district boundaries . . . for [racial] purposes." *Bandemer*, 478 U. S., at 164 (Powell, J., concurring in part and dissenting in part) (internal quotation marks omitted). In the 1870's, for example, opponents of Reconstruction in Mississippi "concentrated the bulk of the black population in a 'shoestring' Congressional district running the length of the Mississippi River, leaving five others with white majorities." E. Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877*, p. 590 (1988). Some 90 years later, Alabama redefined the boundaries of the city of Tuskegee "from a square to an uncouth twenty eight sided figure" in a manner that was alleged to exclude black voters, and only black voters, from the city limits. *Gomillion v. Lightfoot*, 364 U.S. 339, 340 (1960).

Alabama's exercise in geometry was but one example of the racial discrimination in voting that persisted in parts of this country nearly a century after ratification of the Fifteenth Amendment. See *South Carolina v. Katzenbach*, 383 U.S. 301, 309-313 (1966). In some States, registration of eligible black voters ran 50% behind that of whites. *Id.*, at 313. Congress enacted the Voting Rights Act of 1965 as a dramatic and severe response to the situation. The Act proved immediately successful in ensuring racial minorities access to the voting booth; by the early 1970's, the spread between black and white registration in several of the targeted Southern States had fallen to well below 10%. A. Thernstrom, *Whose Votes Count? Affirmative Action and Minority Voting Rights* 44 (1987).

But it soon became apparent that guaranteeing equal access to the polls would not suffice to root out other racially discriminatory voting practices. Drawing on the "one person, one vote" principle, this Court recognized that "[t]he right to vote can be affected by a *dilution* of voting power as well as by an absolute prohibition on casting a ballot." *Allen v. State Board of Elections*, 393 U.S. 544, 569 (1969) (emphasis added). Where members of a racial minority group vote as a cohesive unit, practices such as multimember or at large electoral systems can reduce or nullify minority voters' ability, as a group, "to elect the candidate of their choice." *Ibid.* Accordingly, the Court held that such schemes violate the Fourteenth Amendment when they are adopted with a discriminatory purpose and have the effect of diluting minority voting strength. See, e. g., *Rogers v. Lodge*, 458 U.S. 613, 616-617 (1982); *White v. Regester*, 412 U.S. 755, 765-766 (1973). Congress, too, responded to the problem of vote dilution. In 1982, it amended § 2 of the Voting Rights Act to prohibit legislation that *results* in the dilution of a minority group's voting strength, regardless of the legislature's intent. 42 U.S.C. § 1973; see *Thornburg v. Gingles*, 478 U.S. 30 (1986) (applying amended § 2 to vote dilution claim involving multimember districts); see also *Voinovich v. Quilter*, 507 U. S. ___, ___ (1993) (slip op., at ___) (single member districts).

It is against this background that we confront the questions presented here. In our view, the District Court properly dismissed appellants' claims against the federal appellees. Our focus is on appellants' claim that the State engaged in unconstitutional racial gerrymandering. That argument strikes a powerful historical chord: It is unsettling how closely the North Carolina plan resembles the most egregious racial gerrymanders of the past.

An understanding of the nature of appellants' claim is critical to our resolution of the case. In their complaint, appellants did not claim that the General Assembly's reapportionment plan unconstitutionally "diluted" white voting strength. They did not even claim to be white. Rather, appellants' complaint alleged that the deliberate segregation of voters into separate districts on the basis of race violated their constitutional right to participate in a "color blind" electoral process. Complaint ¶ 29; see also Brief for Appellants 31-32.

Despite their invocation of the ideal of a "color blind" Constitution, see *Plessy v. Ferguson*, 163 U.S. 537, 559 (1896) (Harlan, J., dissenting), appellants appear to concede that race conscious redistricting is not always unconstitutional. See Tr. of Oral Arg. 16-19. That concession is wise: This Court never has held that race conscious state decisionmaking is impermissible in *all* circumstances. What appellants object to is redistricting legislation that is so extremely irregular on its face that it rationally can be viewed only as an effort to segregate the races for purposes of voting, without regard for traditional districting principles and without sufficiently compelling justification. For the reasons that follow, we conclude that appellants have stated a claim upon which relief can be granted under the Equal Protection Clause. See Fed. Rule Civ. Proc. 12(b)(6).

The Equal Protection Clause provides that "[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U. S. Const., Amdt. 14, § 1. Its central purpose is to prevent the States from purposefully discriminating between individuals on the basis of race. *Washington v. Davis*, 426 U.S. 229, 239 (1976). Laws that explicitly distinguish between individuals on racial grounds fall within the core of that prohibition.

No inquiry into legislative purpose is necessary when the racial classification appears on the face of the statute. See *Personnel Administrator of Massachusetts v. Feeney*, 442 U.S. 256, 272 (1979). Accord, *Washington v. Seattle School District No. 1*, 458 U.S. 457, 485 (1982). Express racial classifications are immediately suspect because, "[a]bsent searching judicial inquiry . . . , there is simply no way of determining what classifications are 'benign' or 'remedial' and what classifications are in fact motivated by illegitimate notions of racial inferiority or simple racial politics." *Richmond v. J. A. Croson Co.*, 488 U.S. 469, 493 (1989) (plurality opinion); *id.*, at 520 (Scalia, J., concurring in judgment); see also *UJO*, 430 U. S., at 172 (Brennan, J., concurring in part) ("[A] purportedly preferential race assignment may in fact disguise a policy that perpetuates disadvantageous treatment of the plan's supposed beneficiaries").

Classifications of citizens solely on the basis of race "are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality." *Hirabayashi v. United States*, 320 U.S. 81, 100 (1943). Accord, *Loving v. Virginia*, 388 U.S. 1, 11 (1967). They threaten to stigmatize individuals by reason of their membership in a racial group and to incite racial hostility. *Croson*, *supra*, at 493 (plurality opinion); *UJO*, *supra*, at 173 (Brennan, J., concurring in part) ("[E]ven in the pursuit of remedial objectives, an explicit policy of assignment by race may serve to stimulate our society's latent race consciousness, suggesting the utility and propriety of basing decisions on a factor that ideally bears no relationship to an individual's worth or needs"). Accordingly, we have held that the Fourteenth Amendment requires state legislation that expressly distinguishes among citizens because of their race to be narrowly tailored to further a compelling governmental interest. See, e. g., *Wygant v. Jackson Bd. of Ed.*, 476 U.S. 267, 277-278 (1986) (plurality opinion); *id.*, at 285 (O'Connor, J., concurring in part and concurring in judgment).

These principles apply not only to legislation that contains explicit racial distinctions, but also to those-rare statutes that, although race neutral, are, on their face, "unexplainable on grounds other than race." *Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 266 (1977). As we explained in *Feeney*:

"A racial classification, regardless of purported motivation, is presumptively invalid and can be upheld only

upon an extraordinary justification. *Brown v. Board of Education*, 347 U.S. 483; *McLaughlin v. Florida*, 379 U.S. 184. This rule applies as well to a classification that is ostensibly neutral but is an obvious pretext for racial discrimination. *Yick Wo v. Hopkins*, 118 U.S. 356; *Guinn v. United States*, 238 U.S. 347; cf. *Lane v. Wilson*, 307 U.S. 268; *Gomillion v. Lightfoot*, 364 U.S. 339." 442 U. S., at 272.

Appellants contend that redistricting legislation that is so bizarre on its face that it is "unexplainable on grounds other than race," *Arlington Heights*, *supra*, at 266, demands the same close scrutiny that we give other state laws that classify citizens by race. Our voting rights precedents support that conclusion.

In *Guinn v. United States*, 238 U.S. 347 (1915), the Court invalidated under the Fifteenth Amendment a statute that imposed a literacy requirement on voters but contained a "grandfather clause" applicable to individuals and their lineal descendants entitled to vote "on [or prior to] January 1, 1866." *Id.*, at 357 (internal quotation marks omitted). The determinative consideration for the Court was that the law, though ostensibly race neutral, on its face "embod[ied] no exercise of judgment and rest[ed] upon no discernible reason" other than to circumvent the prohibitions of the Fifteenth Amendment. *Id.*, at 363. In other words, the statute was invalid because, on its face, it could not be explained on grounds other than race.

The Court applied the same reasoning to the "uncouth twenty eight sided" municipal boundary line at issue in *Gomillion*. Although the statute that redrew the city limits of Tuskegee was race neutral on its face, plaintiffs alleged that its effect was impermissibly to remove from the city virtually all black voters and no white voters. The Court reasoned:

"If these allegations upon a trial remained uncontradicted or unqualified, the conclusion would be irresistible, tantamount for all practical purposes to a mathematical demonstration, that the legislation is solely concerned with segregating white and colored voters by fencing Negro citizens out of town so as to deprive them of their pre-existing municipal vote." 364 U. S., at 341.

The majority resolved the case under the Fifteenth Amendment. *Id.*, at 342-348. Justice Whittaker, however, concluded that the "unlawful segregation of races of citizens" into different voting districts was cognizable under the Equal Protection Clause. *Id.*, at 349 (Whittaker, J., concurring). This Court's subsequent reliance on *Gomillion* in other Fourteenth Amendment cases suggests the correctness of Justice Whittaker's view. See, e. g., *Feeney*, *supra*, at 272; *Whitcomb v. Chavis*, 403 U.S. 124, 149 (1971); see also *Mobile v. Bolden*, 446 U.S. 55, 86 (

1980) (Stevens, J., concurring in judgment) (*Gomillion's* holding "is compelled by the Equal Protection Clause"). *Gomillion* thus supports appellants' contention that district lines obviously drawn for the purpose of separating voters by race require careful scrutiny under the Equal Protection Clause regardless of the motivations underlying their adoption.

The Court extended the reasoning of *Gomillion* to congressional districting in *Wright v. Rockefeller*, 376 U.S. 52 (1964). At issue in *Wright* were four districts contained in a New York apportionment statute. The plaintiffs alleged that the statute excluded nonwhites from one district and concentrated them in the other three. *Id.*, at 53-54. Every member of the Court assumed that the plaintiffs' allegation that the statute "segregate[d] eligible voters by race and place of origin" stated a constitutional claim. *Id.*, at 56 (internal quotation marks omitted); *id.*, at 58 (Harlan, J., concurring); *id.*, at 59-62 (Douglas, J., dissenting). The Justices disagreed only as to whether the plaintiffs had carried their burden of proof at trial. The dissenters thought the unusual shape of the district lines could "be explained only in racial terms." *Id.*, at 59. The majority, however, accepted the District Court's finding that the plaintiffs had failed to establish that the districts were in fact drawn on racial lines. Although the boundary lines were somewhat irregular, the majority reasoned, they were not so bizarre as to permit of no other conclusion. Indeed, because most of the nonwhite voters lived together in one area, it would have been difficult to construct voting districts without

concentrations of nonwhite voters. *Id.*, at 56-58.

Wright illustrates the difficulty of determining from the face of a single member districting plan that it purposefully distinguishes between voters on the basis of race. A reapportionment statute typically does not classify persons at all; it classifies tracts of land, or addresses. Moreover, redistricting differs from other kinds of state decisionmaking in that the legislature always is *aware* of race when it draws district lines, just as it is aware of age, economic status, religious and political persuasion, and a variety of other demographic factors. That sort of race consciousness does not lead inevitably to impermissible race discrimination. As *Wright* demonstrates, when members of a racial group live together in one community, a reapportionment plan that concentrates members of the group in one district and excludes them from others may reflect wholly legitimate purposes. The district lines may be drawn, for example, to provide for compact districts of contiguous territory, or to maintain the integrity of political subdivisions. See *Reynolds*, 377 U. S., at 578 (recognizing these as legitimate state interests).

The difficulty of proof, of course, does not mean that a racial gerrymander, once established, should receive less scrutiny under the Equal Protection Clause than other state legislation classifying citizens by race. Moreover, it seems clear to us that proof sometimes will not be difficult at all. In some exceptional cases, a reapportionment plan may be so highly irregular that, on its face, it rationally cannot be understood as anything other than an effort to "segregat[e] . . . voters" on the basis of race. *Gomillion*, *supra*, at 341. *Gomillion*, in which a tortured municipal boundary line was drawn to exclude black voters, was such a case. So, too, would be a case in which a State concentrated a dispersed minority population in a single district by disregarding traditional districting principles such as compactness, contiguity, and respect for political subdivisions. We emphasize that these criteria are important not because they are constitutionally required--they are not, cf. *Gaffney v. Cummings*, 412 U.S. 735, 752, n. 18 (1973)--but because they are objective factors that may serve to defeat a claim that a district has been gerrymandered on racial lines. Cf. *Karcher v. Daggett*, 462 U.S. 725, 755 (1983) (Stevens, J., concurring) ("One need not use Justice Stewart's classic definition of obscenity--'I know it when I see it'--as an ultimate standard for judging the constitutionality of a gerrymander to recognize that dramatically irregular shapes may have sufficient probative force to call for an explanation" (footnotes omitted)).

Put differently, we believe that reapportionment is one area in which appearances do matter. A reapportionment plan that includes in one district individuals who belong to the same race, but who are otherwise widely separated by geographical and political boundaries, and who may have little in common with one another but the color of their skin, bears an uncomfortable resemblance to political apartheid. It reinforces the perception that members of the same racial group--regardless of their age, education, economic status, or the community in which they live--think alike, share the same political interests, and will prefer the same candidates at the polls. We have rejected such perceptions elsewhere as impermissible racial stereotypes. See, e. g., *Holland v. Illinois*, 493 U.S. 474, 484, n. 2 (1990) ("[A] prosecutor's assumption that a black juror may be presumed to be partial simply because he is black . . . violates the Equal Protection Clause" (internal quotation marks omitted)); see also *Edmonson v. Leesville Concrete Co.*, 500 U. S. ___, ___ (1991) (slip op., at 16) ("If our society is to continue to progress as a multiracial democracy, it must recognize that the automatic invocation of race stereotypes retards that progress and causes continued hurt and injury"). By perpetuating such notions, a racial gerrymander may exacerbate the very patterns of racial bloc voting that majority minority districting is sometimes said to counteract.

The message that such districting sends to elected representatives is equally pernicious. When a district obviously is created solely to effectuate the perceived common interests of one racial group, elected officials are more likely to believe that their primary obligation is to represent only the members of that group, rather than their constituency as a whole. This is altogether antithetical to our system of representative democracy. As Justice Douglas explained in his dissent in *Wright v. Rockefeller* nearly 30 years ago:

"Here the individual is important, not his race, his creed, or his color. The principle of equality is at war with the notion that District A must be represented by a Negro, as it is with the notion that District B must be represented by a Caucasian, District C by a Jew, District D by a Catholic, and so on. . . . That system, by whatever name it is called, is a divisive force in a community, emphasizing differences between candidates and voters that are irrelevant in the constitutional sense. . . .

.....

"When racial or religious lines are drawn by the State, the multiracial, multireligious communities that our Constitution seeks to weld together as one become separatist; antagonisms that relate to race or to religion rather than to political issues are generated; communities seek not the best representative but the best racial or religious partisan. Since that system is at war with the democratic ideal, it should find no footing here." 376 U. S., at 66-67 (dissenting opinion) (internal citations omitted).

For these reasons, we conclude that a plaintiff challenging a reapportionment statute under the Equal Protection Clause may state a claim by alleging that the legislation, though race neutral on its face, rationally cannot be understood as anything other than an effort to separate voters into different districts on the basis of race, and that the separation lacks sufficient justification. It is unnecessary for us to decide whether or how a reapportionment plan that, on its face, can be explained in nonracial terms successfully could be challenged. Thus, we express no view as to whether "the intentional creation of majority minority districts, without more" always gives rise to an equal protection claim. *Post*, at 11 (White, J., dissenting). We hold only that, on the facts of this case, plaintiffs have stated a claim sufficient to defeat the state appellees' motion to dismiss.

The dissenters consider the circumstances of this case "functionally indistinguishable" from multimember districting and at large voting systems, which are loosely described as "other varieties of gerrymandering." *Post*, at 14 (White, J., dissenting); see also *post*, at 5-6 (Souter, J., dissenting). We have considered the constitutionality of these practices in other Fourteenth Amendment cases and have required plaintiffs to demonstrate that the challenged practice has the purpose and effect of diluting a racial group's voting strength. See, e.g., *Rogers v. Lodge*, 458 U.S. 613 (1982) (at large system); *Mobile v. Bolden*, 446 U.S. 55 (1980) (same); *White v. Regester*, 412 U.S. 755 (1973) (multimember districts); *Whitcomb v. Chavis*, 403 U.S. 124 (1971) (same); see also *supra*, at 8-9. At large and multimember schemes, however, do not classify voters on the basis of race. Classifying citizens by race, as we have said, threatens special harms that are not present in our vote dilution cases. It therefore warrants different analysis.

Justice Souter apparently believes that racial gerrymandering is harmless unless it dilutes a racial group's voting strength. See *post*, at 6 (Souter, J., dissenting). As we have explained, however, reapportionment legislation that cannot be understood as anything other than an effort to classify and separate voters by race injures voters in other ways. It reinforces racial stereotypes and threatens to undermine our system of representative democracy by signaling to elected officials that they represent a particular racial group rather than their constituency as a whole. See *supra*, at 15-17. Justice Souter does not adequately explain why these harms are not cognizable under the Fourteenth Amendment.

The dissenters make two other arguments that cannot be reconciled with our precedents. First, they suggest that a racial gerrymander of the sort alleged here is functionally equivalent to gerrymanders for nonracial purposes, such as political gerrymanders. See *post*, at 4 (Stevens, J., dissenting); see also *post*, at 5-6 (White, J., dissenting). This Court has held political gerrymanders to be justiciable under the Equal Protection Clause. See *Davis v. Bandemer*, 478 U. S., at 118-127. But nothing in our case law compels the conclusion that racial and political gerrymanders are subject to precisely the same constitutional scrutiny. In fact, our country's long and persistent history of racial discrimination in voting--as well as our Fourteenth Amendment jurisprudence, which always has reserved the strictest scrutiny for discrimination on the basis

of race, see *supra*, at 10-12--would seem to compel the opposite conclusion.

Second, Justice Stevens argues that racial gerrymandering poses no constitutional difficulties when district lines are drawn to favor the minority, rather than the majority. See *post*, at 3 (Stevens, J., dissenting). We have made clear, however, that equal protection analysis "is not dependent on the race of those burdened or benefited by a particular classification." *Crosby*, 488 U. S., at 494 (plurality opinion); see also *id.*, at 520 (Scalia, J., concurring in judgment). Accord, *Wygant*, 476 U. S., at 273 (plurality opinion). Indeed, racial classifications receive close scrutiny even when they may be said to burden or benefit the races equally. See *Powers v. Ohio*, 499 U. S. ___, ___ (1991) (slip op., at 9-10) ("It is axiomatic that racial classifications do not become legitimate on the assumption that all persons suffer them in equal degree").

Finally, nothing in the Court's highly fractured decision in *UJO*--on which the District Court almost exclusively relied, and which the dissenters evidently believe controls, see *post*, at 7-10 (White, J., dissenting); *post*, at 5-6, and n. 6 (Souter, J., dissenting)--forecloses the claim we recognize today. *UJO* concerned New York's revision of a reapportionment plan to include additional majority minority districts in response to the Attorney General's denial of administrative preclearance under § 5. In that regard, it closely resembles the present case. But the cases are critically different in another way. The plaintiffs in *UJO*--members of a Hasidic community split between two districts under New York's revised redistricting plan--did not allege that the plan, on its face, was so highly irregular that it rationally could be understood only as an effort to segregate voters by race. Indeed, the facts of the case would not have supported such a claim. Three Justices approved the New York statute, in part, precisely because it adhered to traditional districting principles:

"[W]e think it . . . permissible for a State, *employing sound districting principles such as compactness and population equality*, to attempt to prevent racial minorities from being repeatedly outvoted by creating districts that will afford fair representation to the members of those racial groups who are sufficiently numerous *and whose residential patterns afford the opportunity* of creating districts in which they will be in the majority." 430 U. S., at 168 (opinion of White, J., joined by Stevens and Rehnquist, JJ.).

As a majority of the Justices construed the complaint, the *UJO* plaintiffs made a different claim: that the New York plan impermissibly "diluted" their voting strength. Five of the eight Justices who participated in the decision resolved the case under the framework the Court previously had adopted for vote dilution cases. Three Justices rejected the plaintiffs' claim on the grounds that the New York statute "represented no racial slur or stigma with respect to whites or any other race" and left white voters with better than proportional representation. *Id.*, at 165-166. Two others concluded that the statute did not minimize or cancel out a minority group's voting strength and that the State's intent to comply with the Voting Rights Act, as interpreted by the Department of Justice, "foreclose[d] any finding that [the State] acted with the invidious purpose of discriminating against white voters." *Id.*, at 180 (Stewart, J., joined by Powell, J., concurring in judgment).

The District Court below relied on these portions of *UJO* to reject appellants' claim. See 808 F. Supp., at 472-473. In our view, the court used the wrong analysis. *UJO*'s framework simply does not apply where, as here, a reapportionment plan is alleged to be so irrational on its face that it immediately offends principles of racial equality. *UJO* set forth a standard under which white voters can establish unconstitutional vote dilution. But it did not purport to overrule *Gomillion* or *Wright*. Nothing in the decision precludes white voters (or voters of any other race) from bringing the analytically distinct claim that a reapportionment plan rationally cannot be understood as anything other than an effort to segregate citizens into separate voting districts on the basis of race without sufficient justification. Because appellants here stated such a claim, the District Court erred in dismissing their complaint.

Justice Souter contends that exacting scrutiny of racial gerrymanders under the Fourteenth Amendment is

inappropriate because reapportionment "nearly always require[s] some consideration of race for legitimate reasons." *Post*, at 2 (Souter, J., dissenting). "As long as members of racial groups have [a] commonality of interest" and "racial bloc voting takes place," he argues, "legislators will have to take race into account" in order to comply with the Voting Rights Act. *Ibid.* Justice Souter's reasoning is flawed.

Earlier this Term, we unanimously reaffirmed that racial bloc voting and minority group political cohesion never can be assumed, but specifically must be proved in each case in order to establish that a redistricting plan dilutes minority voting strength in violation of §2. See *Grove v. Emison*, 507 U. S. ___, ___ (1993) (slip op., at 15) ("Unless these points are established, there neither has been a wrong nor can be a remedy"). That racial bloc voting or minority political cohesion may be found to exist in *some* cases, of course, is no reason to treat *all* racial gerrymanders differently from other kinds of racial classification. Justice Souter apparently views racial gerrymandering of the type presented here as a special category of "benign" racial discrimination that should be subject to relaxed judicial review. Cf. *post*, at 6-7 (Souter, J., dissenting). As we have said, however, the very reason that the Equal Protection Clause demands strict scrutiny of all racial classifications is because without it, a court cannot determine whether or not the discrimination truly is "benign." See *supra*, at 11. Thus, if appellants' allegations of a racial gerrymander are not contradicted on remand, the District Court must determine whether the General Assembly's reapportionment plan satisfies strict scrutiny. We therefore consider what that level of scrutiny requires in the reapportionment context.

The state appellees suggest that a covered jurisdiction may have a compelling interest in creating majority minority districts in order to comply with the Voting Rights Act. The States certainly have a very strong interest in complying with federal antidiscrimination laws that are constitutionally valid as interpreted and as applied. But in the context of a Fourteenth Amendment challenge, courts must bear in mind the difference between what the law permits, and what it requires.

For example, on remand North Carolina might claim that it adopted the revised plan in order to comply with the § 5 "nonretrogression" principle. Under that principle, a proposed voting change cannot be precleared if it will lead to "a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." *Beer v. United States*, 425 U.S. 130, 141 (1976). In *Beer*, we held that a reapportionment plan that created one majority minority district where none existed before passed muster under § 5 because it improved the position of racial minorities. *Id.*, at 141-142; see also *Richmond v. United States*, 422 U.S. 358, 370-371 (1975) (annexation that reduces percentage of blacks in population satisfies § 5 where post-annexation districts "fairly reflect" current black voting strength).

Although the Court concluded that the redistricting scheme at issue in *Beer* was nonretrogressive, it did not hold that the plan, for that reason, was immune from constitutional challenge. The Court expressly declined to reach that question. See 425 U. S., at 142, n. 14. Indeed, the Voting Rights Act and our case law make clear that a reapportionment plan that satisfies § 5 still may be enjoined as unconstitutional. See 42 U.S.C. § 1973c (neither a declaratory judgment by the District Court for the District of Columbia nor preclearance by the Attorney General "shall bar a subsequent action to enjoin enforcement" of new voting practice); *Allen*, 393 U. S., at 549-550 (after preclearance, "private parties may enjoin the enforcement of the new enactment . . . in traditional suits attacking its constitutionality"). Thus, we do not read *Beer* or any of our other § 5 cases to give covered jurisdictions *carte blanche* to engage in racial gerrymandering in the name of nonretrogression. A reapportionment plan would not be narrowly tailored to the goal of avoiding retrogression if the State went beyond what was reasonably necessary to avoid retrogression. Our conclusion is supported by the plurality opinion in *UJO*, in which four Justices determined that New York's creation of additional majority minority districts was constitutional because the plaintiffs had failed to demonstrate that the State "did more than the Attorney General was authorized to *require* it to do under the nonretrogression principle of *Beer*." 430 U. S., at 162-163 (opinion of White, J., joined by Brennan, Blackmun, and Stevens, JJ.) (emphasis added).

Before us, the state appellees contend that the General Assembly's revised plan was necessary not to prevent retrogression, but to avoid dilution of black voting strength in violation of § 2, as construed in *Thornburg v. Gingles*, 478 U.S. 30 (1986). In *Gingles* the Court considered a multimember redistricting plan for the North Carolina State Legislature. The Court held that members of a racial minority group claiming § 2 vote dilution through the use of multimember districts must prove three threshold conditions: that the minority group "is sufficiently large and geographically compact to constitute a majority in a single member district," that the minority group is "politically cohesive," and that "the white majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate." *Id.*, at 50-51. We have indicated that similar preconditions apply in §2 challenges to single member districts. See *Voinovich v. Quilter*, 507 U. S., at ___; *Grove v. Emison*, *supra*, at ___ (slip op., at 14-15).

Appellants maintain that the General Assembly's revised plan could not have been required by § 2. They contend that the State's black population is too dispersed to support two geographically compact majority black districts, as the bizarre shape of District 12 demonstrates, and that there is no evidence of black political cohesion. They also contend that recent black electoral successes demonstrate the willingness of white voters in North Carolina to vote for black candidates. Appellants point out that blacks currently hold the positions of State Auditor, Speaker of the North Carolina House of Representatives, and chair of the North Carolina State Board of Elections. They also point out that in 1990 a black candidate defeated a white opponent in the Democratic Party run off for a United States Senate seat before being defeated narrowly by the Republican incumbent in the general election. Appellants further argue that if § 2 did require adoption of North Carolina's revised plan, § 2 is to that extent unconstitutional. These arguments were not developed below, and the issues remain open for consideration on remand.

The state appellees alternatively argue that the General Assembly's plan advanced a compelling interest entirely distinct from the Voting Rights Act. We previously have recognized a significant state interest in eradicating the effects of past racial discrimination. See, e. g., *Croson*, 488 U. S., at 491-493 (opinion of O'Connor, J., joined by Rehnquist, C. J., and White, J.); *id.*, at 518 (Kennedy, J., concurring in part and concurring in judgment); *Wygant*, 476 U. S., at 280-282 (plurality opinion); *id.*, at 286 (O'Connor, J., concurring in part and concurring in judgment). But the State must have a " 'strong basis in evidence for [concluding] that remedial action [is] necessary.' " *Croson*, *supra*, at 500 (quoting *Wygant*, *supra*, at 277 (plurality opinion)).

The state appellees submit that two pieces of evidence gave the General Assembly a strong basis for believing that remedial action was warranted here: the Attorney General's imposition of the § 5 preclearance requirement on 40 North Carolina counties, and the *Gingles* District Court's findings of a long history of official racial discrimination in North Carolina's political system and of pervasive racial bloc voting. The state appellees assert that the deliberate creation of majority minority districts is the most precise way--indeed the only effective way--to overcome the effects of racially polarized voting. This question also need not be decided at this stage of the litigation. We note, however, that only three Justices in *UJO* were prepared to say that States have a significant interest in minimizing the consequences of racial bloc voting apart from the requirements of the Voting Rights Act. And those three Justices specifically concluded that race based districting, as a response to racially polarized voting, is constitutionally permissible only when the State "employ[s] sound districting principles," and only when the affected racial group's "residential patterns afford the opportunity of creating districts in which they will be in the majority." 430 U. S., at 167-168 (opinion of White, J., joined by Stevens and Rehnquist, JJ.).

Racial classifications of any sort pose the risk of lasting harm to our society. They reinforce the belief, held by too many for too much of our history, that individuals should be judged by the color of their skin. Racial classifications with respect to voting carry particular dangers. Racial gerrymandering, even for remedial purposes, may balkanize us into competing racial factions; it threatens to carry us further from the goal of a political system in which race no longer matters--a goal that the Fourteenth and Fifteenth Amendments

embody, and to which the Nation continues to aspire. It is for these reasons that race based districting by our state legislatures demands close judicial scrutiny.

In this case, the Attorney General suggested that North Carolina could have created a reasonably compact second majority minority district in the south central to southeastern part of the State. We express no view as to whether appellants successfully could have challenged such a district under the Fourteenth Amendment. We also do not decide whether appellants' complaint stated a claim under constitutional provisions other than the Fourteenth Amendment. Today we hold only that appellants have stated a claim under the Equal Protection Clause by alleging that the North Carolina General Assembly adopted a reapportionment scheme so irrational on its face that it can be understood only as an effort to segregate voters into separate voting districts because of their race, and that the separation lacks sufficient justification. If the allegation of racial gerrymandering remains uncontradicted, the District Court further must determine whether the North Carolina plan is narrowly tailored to further a compelling governmental interest. Accordingly, we reverse the judgment of the District Court and remand the case for further proceedings consistent with this opinion.

It is so ordered.

[Appendix containing map of North Carolina Congressional Plan follows this page.]

This archive is a service of the Legal Information Institute.

FindLaw
Internet Legal Resources


LegalMinds
Community


Laws
Cases & Codes


LawReviews
Search & Services



LegalNews
Today's News


LawCrawler
Web Search


Build your practice with a home page from West Group.
Click here to learn how.

Main Index: Laws: Cases and Codes: Supreme Court Opinions

[options]

Click Here
for HTML
to add your
backlink


www.uscaselaw.com/US/478/30.html

Cases citing this case

U.S. Supreme Court

THORNBURG v. GINGLES, 478 U.S. 30 (1986)

478 U.S. 30

**THORNBURG, ATTORNEY GENERAL OF NORTH CAROLINA, ET AL. v. GINGLES ET AL.
APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF NORTH CAROLINA
No. 83-1968.**

Argued December 4, 1985

Decided June 30, 1986

In 1982, the North Carolina General Assembly enacted a legislative redistricting plan for the State's Senate and House of Representatives. Appellees, black citizens of North Carolina who are registered to vote, brought suit in Federal District Court, challenging one single-member district and six multimember districts on the ground, inter alia, that the redistricting plan impaired black citizens' ability to elect representatives of their choice in violation of 2 of the Voting Rights Act of 1965. After appellees brought suit, but before trial, 2 was amended, largely in response to *Mobile v. Bolden*, 446 U.S. 55, to make clear that a violation of 2 could be proved by showing discriminatory effect alone, rather than having to show a discriminatory purpose, and to establish as the relevant legal standard the "results test." Section 2(a), as amended, prohibits a State or political subdivision from imposing any voting qualifications or prerequisites to voting, or any standards, practices, or procedures that result in the denial or abridgment of the right of any citizen to vote on account of race or color. Section 2(b), as amended, provides that 2(a) is violated where the "totality of circumstances" reveals that "the political processes leading to nomination or election . . . are not equally open to participation by members of a [protected class] . . . in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice," and that the extent to which members of a protected class have been elected to office is one circumstance that may be considered. The District Court applied the "totality of circumstances" test set forth in 2(b) and held that the redistricting plan violated 2(a) because it resulted in the dilution of black citizens' votes in all of the disputed districts. Appellants, the Attorney General of

North Carolina and others, took a direct appeal to this Court with respect to five of the multimember districts.

Held:

The judgment is affirmed in part and reversed in part.

590 F. Supp. 345, affirmed in part and reversed in part.

JUSTICE BRENNAN delivered the opinion of the Court with respect to Parts I, II, III-A, III-B, IV-A, and V, concluding that: [478 U.S. 30, 31]

1. Minority voters who contend that the multimember form of districting violates 2 must prove that the use of a multimember electoral structure operates to minimize or cancel out their ability to elect their preferred candidates. While many or all of the factors listed in the Senate Report may be relevant to a claim of vote dilution through submergence in multimember districts, unless there is a conjunction of the following circumstances, the use of multimember districts generally will not impede the ability of minority voters to elect representatives of their choice. Stated succinctly, a bloc voting majority must usually be able to defeat candidates supported by a politically cohesive, geographically insular minority group. The relevance of the existence of racial bloc voting to a vote dilution claim is twofold: to ascertain whether minority group members constitute a politically cohesive unit and to determine whether whites vote sufficiently as a bloc usually to defeat the minority's preferred candidate. Thus, the question whether a given district experiences legally significant racial bloc voting requires discrete inquiries into minority and white voting practices. A showing that a significant number of minority group members usually vote for the same candidates is one way of proving the political cohesiveness necessary to a vote dilution claim, and consequently establishes minority bloc voting within the meaning of 2. And, in general, a white bloc vote that normally will defeat the combined strength of minority support plus white "crossover" votes rises to the level of legally significant white bloc voting. Because loss of political power through vote dilution is distinct from the mere inability to win a particular election, a pattern of racial bloc voting that extends over a period of time is more probative of a claim that a district experiences significant polarization than are the results of a single election. In a district where elections are shown usually to be polarized, the fact that racially polarized voting is not present in one election or a few elections does not necessarily negate the conclusion that the district experiences legally significant bloc voting. Furthermore, the success of a minority candidate in a particular election does not necessarily prove that the district did not experience polarized voting in that election. Here, the District Court's approach, which tested data derived from three election years in each district in question, and which revealed that blacks strongly supported black candidates, while, to the black candidates' usual detriment, whites rarely did, satisfactorily addresses each facet of the proper standard for legally significant racial bloc voting. Pp. 52-61.

2. The language of 2 and its legislative history plainly demonstrate that proof that some minority candidates have been elected does not foreclose a 2 claim. Thus, the District Court did not err, as a matter of law, in refusing to treat the fact that some black candidates have [478 U.S. 30, 32] succeeded as dispositive of appellees' 2 claims. Where multimember districting generally works to dilute the minority vote, it cannot be defended on the ground that it sporadically and serendipitously benefits minority voters. Pp. 74-76.

3. The clearly-erroneous test of Federal Rule of Civil Procedure 52(a) is the appropriate standard for appellate review of ultimate findings of vote dilution. As both amended 2 and its legislative history make clear, in evaluating a statutory claim of vote dilution through districting, the trial court is to

consider the "totality of circumstances" and to determine, based upon a practical evaluation of the past and present realities, whether the political process is equally open to minority voters. In this case, the District Court carefully considered the totality of the circumstances and found that in each district racially polarized voting; the legacy of official discrimination in voting matters, education, housing, employment, and health services; and the persistence of campaign appeals to racial prejudice acted in concert with the multimember districting scheme to impair the ability of geographically insular and politically cohesive groups of black voters to participate equally in the political process and to elect candidates of their choice. Pp. 77-79.

JUSTICE BRENNAN, joined by JUSTICE MARSHALL, JUSTICE BLACKMUN, and JUSTICE STEVENS, concluded in Part III-C that for purposes of 2, the legal concept of racially polarized voting, as it relates to claims of vote dilution - that is, when it is used to prove that the minority group is politically cohesive and that white voters will usually be able to defeat the minority's preferred candidates - refers only to the existence of a correlation between the race of voters and the selection of certain candidates. Plaintiffs need not prove causation or intent in order to prove a prima facie case of racial bloc voting, and defendants may not rebut that case with evidence of causation or intent. Pp. 61-73.

JUSTICE BRENNAN, joined by JUSTICE WHITE, concluded in Part IV-B, that the District Court erred, as a matter of law, in ignoring the significance of the sustained success black voters have experienced in House District 23. The persistent proportional representation for black residents in that district in the last six elections is inconsistent with appellees' allegation that black voters' ability in that district to elect representatives of their choice is not equal to that enjoyed by the white majority. P. 77.

JUSTICE O'CONNOR, joined by THE CHIEF JUSTICE, JUSTICE POWELL, and JUSTICE REHNQUIST, concluded that:

1. Insofar as statistical evidence of divergent racial voting patterns is admitted solely to establish that the minority group is politically cohesive and to assess its prospects for electoral success, such a showing cannot be rebutted by evidence that the divergent voting [478 U.S. 30, 33] patterns may be explained by causes other than race. However, evidence of the reasons for divergent voting patterns can in some circumstances be relevant to the overall vote dilution inquiry, and there is no rule against of all evidence concerning voting preferences other than statistical evidence of racial voting patterns. Pp. 100-101.

2. Consistent and sustained success by candidates preferred by minority voters is presumptively inconsistent with the existence of a 2 violation. The District Court erred in assessing the extent of black electoral success in House District 39 and Senate District 22, as well as in House District 23. Except in House District 23, despite these errors the District Court's ultimate conclusion of vote dilution is not clearly erroneous. But in House District 23 appellees failed to establish a violation of 2. Pp. 101-105.

BRENNAN, J., announced the judgment of the Court and delivered the opinion of the Court with respect to Parts I, II, III-A, III-B, IV-A, and V, in which WHITE, MARSHALL, BLACKMUN, and STEVENS, JJ., joined, an opinion with respect to Part III-C, in which MARSHALL, BLACKMUN, and STEVENS, JJ., joined, and an opinion with respect to Part IV-B, in which WHITE, J., joined. WHITE, J., filed a concurring opinion, post, p. 82. O'CONNOR, J., filed an opinion concurring in the judgment, in which BURGER, C. J., and POWELL and REHNQUIST, JJ., joined, post, p. 83. STEVENS, J., filed an opinion concurring in part and dissenting in part, in which MARSHALL and BLACKMUN, JJ., joined, post, p. 106.

Lacy H. Thornburg, Attorney General of North Carolina, pro se, argued the cause for appellants. With him on the briefs were Jerris Leonard, Kathleen Heenan McGuan, James Wallace, Jr., Deputy Attorney General for Legal Affairs, and Tiare B. Smiley and Norma S. Harrell, Assistant Attorneys General.

Solicitor General Fried argued the cause for the United States as amicus curiae urging reversal. With him on the brief were Assistant Attorney General Reynolds and Deputy Assistant Attorney General Cooper.

Julius LeVonne Chambers argued the cause for appellees. With him on the briefs for appellees Gingles et al. were Eric Schnapper, C. Lani Guinier, and Leslie J. Winner. C. Allen Foster, Kenneth J. Gumbiner, Robert N. [478 U.S. 30, 34] Hunter, Jr., and Arthur J. Donaldson filed briefs for appellees Eaglin et al.*

[Footnote *] Daniel J. Popeo and George C. Smith filed a brief for the Washington Legal Foundation as amicus curiae urging reversal. Briefs of amici curiae urging affirmance were filed for the American Civil Liberties Union Foundation, Inc., et al. by Cynthia Hill, Maureen T. Thornton, Laughlin McDonald, and Neil Bradley; for Common Cause by William T. Lake; for the Lawyer's Committee for Civil Rights Under Law et al. by James Robertson, Harold R. Tyler, Jr., Norman Redlich, William L. Robinson, Frank R. Parker, Samuel Rabinove, and Richard T. Foltin; for James G. Martin, Governor of North Carolina, by Victor S. Friedman; for Legal Services of North Carolina by David H. Harris, Jr., Susan M. Perry, Richard Taylor, and Julian Pierce; for the Republican National Committee by Roger Allan Moore and Michael A. Hess; and for Senator Dennis DeConcini et al. by Walter J. Rockler.

JUSTICE BRENNAN announced the judgment of the Court and delivered the opinion of the Court with respect to Parts I, II, III-A, III-B, IV-A, and V, an opinion with respect to Part III-C, in which JUSTICE MARSHALL, JUSTICE BLACKMUN, and JUSTICE STEVENS join, and an opinion with respect to Part IV-B, in which JUSTICE WHITE joins.

This case requires that we construe for the first time 2 of the Voting Rights Act of 1965, as amended June 29, 1982. 42 U.S.C. 1973. The specific question to be decided is whether the three-judge District Court, convened in the Eastern District of North Carolina pursuant to 28 U.S.C. 2284(a) and 42 U.S.C. 1973c, correctly held that the use in a legislative redistricting plan of multimember districts in five North Carolina legislative districts violated 2 by impairing the opportunity of black voters "to participate in the political process and to elect representatives of their choice." 2(b), 96 Stat. 134.

I

BACKGROUND

In April 1982, the North Carolina General Assembly enacted a legislative redistricting plan for the State's Senate [478 U.S. 30, 35] and House of Representatives. Appellees, black citizens of North Carolina who are registered to vote, challenged seven districts, one single-member¹ and six multimember² districts, alleging that the redistricting scheme impaired black citizens' ability to elect representatives of their choice in violation of the Fourteenth and Fifteenth Amendments to the United States Constitution and of 2 of the Voting Rights Act.³

After appellees brought suit, but before trial, Congress amended 2. The amendment was largely a response to this Court's plurality opinion in *Mobile v. Bolden*, 446 U.S. 55 (1980), which had declared that, in order to establish a violation either of 2 or of the Fourteenth or Fifteenth Amendments, minority voters must prove that a contested electoral mechanism was intentionally adopted or maintained by state officials for a discriminatory purpose. Congress substantially revised 2 to make clear that a violation could be

proved by showing discriminatory effect alone and to establish as the relevant legal standard the "results test," applied by this Court in *White v. Regester*, 412 U.S. 755 (1973), and by other federal courts before Bolden, supra. S. Rep. No. 97-417, p. 28 (1982) (hereinafter S. Rep.). [478 U.S. 30, 36]

Section 2, as amended, 96 Stat. 134, reads as follows:

"(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2), as provided in subsection (b).

"(b) A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: Provided, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population." Codified at 42 U.S.C. 1973.

The Senate Judiciary Committee majority Report accompanying the bill that amended 2 elaborates on the circumstances that might be probative of a 2 violation, noting the following "typical factors":⁴

"1. the extent of any history of official discrimination in the state or political subdivision that touched the right of [478 U.S. 30, 37] the members of the minority group to register, to vote, or otherwise to participate in the democratic process;

"2. the extent to which voting in the elections of the state or political subdivision is racially polarized;

"3. the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;

"4. if there is a candidate slating process, whether the members of the minority group have been denied access to that process;

"5. the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process;

"6. whether political campaigns have been characterized by overt or subtle racial appeals;

"7. the extent to which members of the minority group have been elected to public office in the jurisdiction.

"Additional factors that in some cases have had probative value as part of plaintiffs' evidence to establish a violation are:

"whether there is a significant lack of responsiveness on the part of elected officials to the

particularized needs of the members of the minority group.

"whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous." S. Rep., at 28-29.

The District Court applied the "totality of the circumstances" test set forth in 2(b) to appellees' statutory claim, and, relying principally on the factors outlined in the Senate [478 U.S. 30, 38] Report, held that the redistricting scheme violated 2 because it resulted in the dilution of black citizens' votes in all seven disputed districts. In light of this conclusion, the court did not reach appellees' constitutional claims. *Gingles v. Edmisten*, 590 F. Supp. 345 (EDNC 1984).

Preliminarily, the court found that black citizens constituted a distinct population and registered-voter minority in each challenged district. The court noted that at the time the multimember districts were created, there were concentrations of black citizens within the boundaries of each that were sufficiently large and contiguous to constitute effective voting majorities in single-member districts lying wholly within the boundaries of the multimember districts. With respect to the challenged single-member district, Senate District No. 2, the court also found that there existed a concentration of black citizens within its boundaries and within those of adjoining Senate District No. 6 that was sufficient in numbers and in contiguity to constitute an effective voting majority in a single-member district. The District Court then proceeded to find that the following circumstances combined with the multimember districting scheme to result in the dilution of black citizens' votes.

First, the court found that North Carolina had officially discriminated against its black citizens with respect to their exercise of the voting franchise from approximately 1900 to 1970 by employing at different times a poll tax, a literacy test, a prohibition against bullet (single-shot) voting,⁵ [478 U.S. 30, 39] and designated seat plans⁶ for multimember districts. The court observed that even after the removal of direct barriers to black voter registration, such as the poll tax and literacy test, black voter registration remained relatively depressed; in 1982 only 52.7% of age-qualified blacks statewide were registered to vote, whereas 66.7% of whites were registered. The District Court found these statewide depressed levels of black voter registration to be present in all of the disputed districts and to be traceable, at least in part, to the historical pattern of statewide official discrimination.

Second, the court found that historic discrimination in education, housing, employment, and health services had resulted in a lower socioeconomic status for North Carolina blacks as a group than for whites. The court concluded that this lower status both gives rise to special group interests and hinders blacks' ability to participate effectively in the political process and to elect representatives of their choice.

Third, the court considered other voting procedures that may operate to lessen the opportunity of black voters to elect candidates of their choice. It noted that North Carolina has a majority vote requirement for primary elections and, while acknowledging that no black candidate for election to the State General Assembly had failed to win solely because of this requirement, the court concluded that it nonetheless presents a continuing practical impediment to the opportunity of black voting minorities to elect candidates of their choice. The court also remarked on the fact that North Carolina does not have a sub-district residency requirement for members of the General Assembly elected from multimember [478 U.S. 30, 40] districts, a requirement which the court found could offset to some extent the disadvantages minority voters often experience in multimember districts.

Fourth, the court found that white candidates in North Carolina have encouraged voting along color lines by appealing to racial prejudice. It noted that the record is replete with specific examples of racial appeals, ranging in style from overt and blatant to subtle and furtive, and in date from the 1890's to the 1984 campaign for a seat in the United States Senate. The court determined that the use of racial appeals in

political campaigns in North Carolina persists to the present day and that its current effect is to lessen to some degree the opportunity of black citizens to participate effectively in the political processes and to elect candidates of their choice.

Fifth, the court examined the extent to which blacks have been elected to office in North Carolina, both statewide and in the challenged districts. It found, among other things, that prior to World War II, only one black had been elected to public office in this century. While recognizing that "it has now become possible for black citizens to be elected to office at all levels of state government in North Carolina," 590 F. Supp., at 367, the court found that, in comparison to white candidates running for the same office, black candidates are at a disadvantage in terms of relative probability of success. It also found that the overall rate of black electoral success has been minimal in relation to the percentage of blacks in the total state population. For example, the court noted, from 1971 to 1982 there were at any given time only two-to-four blacks in the 120-member House of Representatives - that is, only 1.6% to 3.3% of House members were black. From 1975 to 1983 there were at any one time only one or two blacks in the 50-member State Senate - that is, only 2% to 4% of State Senators were black. By contrast, at the time of the District Court's opinion, blacks constituted about 22.4% of the total state population. [478 U.S. 30, 41]

With respect to the success in this century of black candidates in the contested districts, see also Appendix B to opinion, post, p. 82, the court found that only one black had been elected to House District 36 - after this lawsuit began. Similarly, only one black had served in the Senate from District 22, from 1975-1980. Before the 1982 election, a black was elected only twice to the House from District 39 (part of Forsyth County); in the 1982 contest two blacks were elected. Since 1973 a black citizen had been elected each 2-year term to the House from District 23 (Durham County), but no black had been elected to the Senate from Durham County. In House District 21 (Wake County), a black had been elected twice to the House, and another black served two terms in the State Senate. No black had ever been elected to the House or Senate from the area covered by House District No. 8, and no black person had ever been elected to the Senate from the area covered by Senate District No. 2

The court did acknowledge the improved success of black candidates in the 1982 elections, in which 11 blacks were elected to the State House of Representatives, including 5 blacks from the multimember districts at issue here. However, the court pointed out that the 1982 election was conducted after the commencement of this litigation. The court found the circumstances of the 1982 election sufficiently aberrational and the success by black candidates too minimal and too recent in relation to the long history of complete denial of elective opportunities to support the conclusion that black voters' opportunities to elect representatives of their choice were not impaired.

Finally, the court considered the extent to which voting in the challenged districts was racially polarized. Based on statistical evidence presented by expert witnesses, supplemented to some degree by the testimony of lay witnesses, the court found that all of the challenged districts exhibit severe and persistent racially polarized voting. [478 U.S. 30, 42]

Based on these findings, the court declared the contested portions of the 1982 redistricting plan violative of 2 and enjoined appellants from conducting elections pursuant to those portions of the plan. Appellants, the Attorney General of North Carolina and others, took a direct appeal to this Court, pursuant to 28 U.S.C. 1253, with respect to five of the multimember districts - House Districts 21, 23, 36, and 39, and Senate District 22. Appellants argue, first, that the District Court utilized a legally incorrect standard in determining whether the contested districts exhibit racial bloc voting to an extent that is cognizable under 2. Second, they contend that the court used an incorrect definition of racially polarized voting and thus erroneously relied on statistical evidence that was not probative of polarized voting. Third, they maintain that the court assigned the wrong weight to evidence of some black candidates' electoral success. Finally, they argue that the trial court erred in concluding that these multimember districts result in black citizens

having less opportunity than their white counterparts to participate in the political process and to elect representatives of their choice. We noted probable jurisdiction, 471 U.S. 1064 (1985), and now affirm with respect to all of the districts except House District 23. With regard to District 23, the judgment of the District Court is reversed.

II

SECTION 2 AND VOTE DILUTION THROUGH USE OF MULTIMEMBER DISTRICTS

An understanding both of 2 and of the way in which multimember districts can operate to impair blacks' ability to elect representatives of their choice is prerequisite to an evaluation of appellants' contentions. First, then, we review amended 2 and its legislative history in some detail. Second, we explain the theoretical basis for appellees' claim of vote dilution. [478 U.S. 30, 43]

A

SECTION 2 AND ITS LEGISLATIVE HISTORY

Subsection 2(a) prohibits all States and political subdivisions from imposing any voting qualifications or prerequisites to voting, or any standards, practices, or procedures which result in the denial or abridgment of the right to vote of any citizen who is a member of a protected class of racial and language minorities. Subsection 2(b) establishes that 2 has been violated where the "totality of circumstances" reveal that "the political processes leading to nomination or election . . . are not equally open to participation by members of a [protected class] . . . in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." While explaining that "[t]he extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered" in evaluating an alleged violation, 2(b) cautions that "nothing in [2] establishes a right to have members of a protected class elected in numbers equal to their proportion in the population."

The Senate Report which accompanied the 1982 amendments elaborates on the nature of 2 violations and on the proof required to establish these violations.⁷ First and foremost, the Report dispositively rejects the position of the plurality in *Mobile v. Bolden*, 446 U.S. 55 (1980), which [478 U.S. 30, 44] required proof that the contested electoral practice or mechanism was adopted or maintained with the intent to discriminate against minority voters.⁸ See, e. g., S. Rep., at 2, 15-16, 27. The intent test was repudiated for three principal reasons - it is "unnecessarily divisive because it involves charges of racism on the part of individual officials or entire communities," it places an "inordinately difficult" burden of proof on plaintiffs, and it "asks the wrong question." *Id.*, at 36. The "right" question, as the Report emphasizes repeatedly, is whether "as a result of the challenged practice or structure plaintiffs do not have an equal opportunity to participate in the political processes and to elect candidates of their choice."⁹ *Id.*, at 28. See also *id.*, at 2, 27, 29, n. 118, 36.

In order to answer this question, a court must assess the impact of the contested structure or practice on minority electoral opportunities "on the basis of objective factors." *Id.*, at 27. The Senate Report specifies factors which typically may be relevant to a 2 claim: the history of voting-related discrimination in the State or political subdivision; the extent to which voting in the elections of the State or political [478 U.S. 30, 45] subdivision is racially polarized; the extent to which the State or political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group, such as unusually large election districts, majority vote requirements, and prohibitions against bullet voting; the exclusion of members of the minority group from candidate slating processes; the extent

to which minority group members bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process; the use of overt or subtle racial appeals in political campaigns; and the extent to which members of the minority group have been elected to public office in the jurisdiction. *Id.*, at 28-29; see also *supra*, at 36-37. The Report notes also that evidence demonstrating that elected officials are unresponsive to the particularized needs of the members of the minority group and that the policy underlying the State's or the political subdivision's use of the contested practice or structure is tenuous may have probative value. *Id.*, at 29. The Report stresses, however, that this list of typical factors is neither comprehensive nor exclusive. While the enumerated factors will often be pertinent to certain types of 2 violations, particularly to vote dilution claims,¹⁰ other factors may also be relevant and may be considered. *Id.*, at 29-30. Furthermore, the Senate Committee observed that "there is no requirement that any particular number of factors be proved, or that a majority of them point one way or the other." *Id.*, at 29. Rather, the Committee determined that "the question whether the political processes are 'equally open' depends upon a searching practical evaluation of the 'past and present reality,'" *id.*, at 30 (footnote omitted), and on a "functional" view of the political process. *Id.*, at 30, n. 120. [478 U.S. 30, 46]

Although the Senate Report espouses a flexible, fact-intensive test for 2 violations, it limits the circumstances under which 2 violations may be proved in three ways. First, electoral devices, such as at-large elections, may not be considered per se violative of 2. Plaintiffs must demonstrate that, under the totality of the circumstances, the devices result in unequal access to the electoral process. *Id.*, at 16. Second, the conjunction of an allegedly dilutive electoral mechanism and the lack of proportional representation alone does not establish a violation. *Ibid.* Third, the results test does not assume the existence of racial bloc voting; plaintiffs must prove it. *Id.*, at 33.

B

VOTE DILUTION THROUGH THE USE OF MULTIMEMBER DISTRICTS

Appellees contend that the legislative decision to employ multimember, rather than single-member, districts in the contested jurisdictions dilutes their votes by submerging them in a white majority,¹¹ thus impairing their ability to elect representatives of their choice.¹² [478 U.S. 30, 47]

The essence of a 2 claim is that a certain electoral law, practice, or structure interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by black and white voters to elect their preferred representatives. This Court has long recognized that multimember districts and at-large voting schemes may "operate to minimize or cancel out the voting strength of racial [minorities in] the voting population."¹³ *Burns v. Richardson*, 384 U.S. 73, [478 U.S. 30, 48] 88 (1966) (quoting *Fortson v. Dorsey*, 379 U.S. 433, 439 (1965)). See also *Rogers v. Lodge*, 458 U.S. 613, 617 (1982); *White v. Regester*, 412 U.S., at 765; *Whitcomb v. Chavis*, 403 U.S. 124, 143 (1971). The theoretical basis for this type of impairment is that where minority and majority voters consistently prefer different candidates, the majority, by virtue of its numerical superiority, will regularly defeat the choices of minority voters.¹⁴ See, e. g., Grofman, Alternatives, in *Representation and Redistricting Issues* 113-114. Multimember districts and at-large election schemes, however, are not per se violative of minority voters' rights. S. Rep., at 16. Cf. *Rogers v. Lodge*, *supra*, at 617; *Regester*, *supra*, at 765; *Whitcomb*, *supra*, at 142. Minority voters who contend that the multimember form of districting violates 2 must prove that the use of a multimember electoral structure operates to minimize or cancel out their ability to elect their preferred candidates. See, e. g., S. Rep., at 16.

While many or all of the factors listed in the Senate Report may be relevant to a claim of vote dilution through submergence in multimember districts, unless there is a conjunction of the following circumstances, the use of multimember districts generally will not impede the ability of minority voters to

elect representatives of their choice.¹⁵ Stated succinctly, [478 U.S. 30, 49] a bloc voting majority must usually be able to defeat candidates supported by a politically cohesive, geographically insular minority group. Bonapfel 355; Blacksher & Menefee 34; Butler 903; Carpeneti 696-699; Davidson, *Minority Vote Dilution: An Overview* (hereinafter Davidson), in *Minority Vote Dilution* 4; Grofman, *Alternatives* 117. Cf. Bolden, 446 U.S., at 105, n. 3 (MARSHALL, J., dissenting) ("It is obvious [478 U.S. 30, 50] that the greater the degree to which the electoral minority is homogeneous and insular and the greater the degree that bloc voting occurs along majority-minority lines, the greater will be the extent to which the minority's voting power is diluted by multimember districting"). These circumstances are necessary preconditions for multimember districts to operate to impair minority voters' ability to elect representatives of their choice for the following reasons. First, the minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district.¹⁶ If it is not, as would be the case in a substantially integrated district, the multimember form of the district cannot be responsible for minority voters' inability to elect its candidates.¹⁷ Cf. Rogers, 458 [478 U.S. 30, 51] U.S., at 616. See also, Blacksher & Menefee 51-56, 58; Bonapfel 355; Carpeneti 696; Davidson 4; Jewell 130. Second, the minority group must be able to show that it is politically cohesive. If the minority group is not politically cohesive, it cannot be said that the selection of a multimember electoral structure thwarts distinctive minority group interests. Blacksher & Menefee 51-55, 58-60, and n. 344; Carpeneti 696-697; Davidson 4. Third, the minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it - in the absence of special circumstances, such as the minority candidate running unopposed, see, *infra*, at 57, and n. 26 - usually to defeat the minority's preferred candidate. See, e. g., Blacksher & Menefee 51, 53, 56-57, 60. Cf. Rogers, *supra*, at 616-617; Whitcomb, 403 U.S., at 158-159; *McMillan v. Escambia County, Fla.*, 748 F.2d 1037, 1043 (CA5 1984). In establishing this last circumstance, the minority group demonstrates that submergence in a white multimember district impedes its ability to elect its chosen representatives.

Finally, we observe that the usual predictability of the majority's success distinguishes structural dilution from the mere loss of an occasional election. Cf. *Davis v. Bandemer*, post, at 131-133, 139-140 (opinion of WHITE, J.); Bolden, *supra*, at 111, n. 7 (MARSHALL, J., dissenting); Whitcomb, *supra*, at 153. See also Blacksher & Menefee 57, n. 333; Note, *Geometry and Geography: Racial Gerrymandering and the Voting Rights Act*, 94 *Yale L. J.* 189, 200, n. 66 (1984) (hereinafter Note, *Geometry and Geography*). [478 U.S. 30, 52]

III

RACIALLY POLARIZED VOTING

Having stated the general legal principles relevant to claims that 2 has been violated through the use of multimember districts, we turn to the arguments of appellants and of the United States as amicus curiae addressing racially polarized voting.¹⁸ First, we describe the District Court's treatment of racially polarized voting. Next, we consider appellants' claim that the District Court used an incorrect legal standard to determine whether racial bloc voting in the contested districts was sufficiently severe to be cognizable as an element of a 2 claim. Finally, we consider appellants' contention that the trial court employed an incorrect definition of racially polarized voting and thus erroneously relied on statistical evidence that was not probative of racial bloc voting.

A

THE DISTRICT COURT'S TREATMENT OF RACIALLY POLARIZED VOTING

The investigation conducted by the District Court into the question of racial bloc voting credited some testimony of lay witnesses, but relied principally on statistical evidence presented by appellees' expert

witnesses, in particular that offered by Dr. Bernard Grofman. Dr. Grofman collected and evaluated data from 53 General Assembly primary and general elections involving black candidacies. These elections were held over a period of three different election years in the six originally challenged multimember districts.¹⁹ Dr. Grofman subjected the data to two complementary methods of analysis - extreme case analysis and bivariate ecological [478 U.S. 30, 53] regression analysis²⁰ - in order to determine whether blacks and whites in these districts differed in their voting behavior. These analytic techniques yielded data concerning the voting patterns of the two races, including estimates of the percentages of members of each race who voted for black candidates.

The court's initial consideration of these data took the form of a three-part inquiry: did the data reveal any correlation between the race of the voter and the selection of certain candidates; was the revealed correlation statistically significant; and was the difference in black and white voting patterns "substantively significant"? The District Court found that blacks and whites generally preferred different candidates and, on that basis, found voting in the districts to be racially correlated.²¹ The court accepted Dr. Grofman's expert opinion that the correlation between the race of the voter and the voter's choice of certain candidates was statistically significant.²² Finally, adopting Dr. Grofman's terminology, [478 U.S. 30, 54] see Tr. 195, the court found that in all but 2 of the 53 elections²³ the degree of racial bloc voting was "so marked as to be substantively significant, in the sense that the results of the individual election would have been different depending upon whether it had been held among only the white voters or only the black voters." 590 F. Supp., at 368.

The court also reported its findings, both in tabulated numerical form and in written form, that a high percentage of black voters regularly supported black candidates and that most white voters were extremely reluctant to vote for black candidates. The court then considered the relevance to the existence of legally significant white bloc voting of the fact that black candidates have won some elections. It determined that in most instances, special circumstances, such as incumbency and lack of opposition, rather than a diminution in usually severe white bloc voting, accounted for these candidates' success. The court also suggested that black voters' reliance on bullet voting was a significant factor in their successful efforts to elect candidates of their choice. Based on all of the evidence before it, the trial court concluded that each of the districts experienced racially polarized voting "in a persistent and severe degree." *Id.*, at 367.

B

THE DEGREE OF BLOC VOTING THAT IS LEGALLY SIGNIFICANT UNDER 2

1

Appellants' Arguments

North Carolina and the United States argue that the test used by the District Court to determine whether voting patterns in the disputed districts are racially polarized to an extent cognizable under 2 will lead to results that are inconsistent with congressional intent. North Carolina maintains [478 U.S. 30, 55] that the court considered legally significant racially polarized voting to occur whenever "less than 50% of the white voters cast a ballot for the black candidate." Brief for Appellants 36. Appellants also argue that racially polarized voting is legally significant only when it always results in the defeat of black candidates. *Id.*, at 39-40.

The United States, on the other hand, isolates a single line in the court's opinion and identifies it as the court's complete test. According to the United States, the District Court adopted a standard under which legally significant racial bloc voting is deemed to exist whenever "the results of the individual election

would have been different depending upon whether it had been held among only the white voters or only the black voters in the election." Brief for United States as Amicus Curiae 29 (quoting 590 F. Supp., at 368). We read the District Court opinion differently.

2

The Standard for Legally Significant Racial Bloc Voting

The Senate Report states that the "extent to which voting in the elections of the state or political subdivision is racially polarized," S. Rep., at 29, is relevant to a vote dilution claim. Further, courts and commentators agree that racial bloc voting is a key element of a vote dilution claim. See, e. g., *Escambia County, Fla.*, 748 F.2d, at 1043; *United States v. Marengo County Comm'n*, 731 F.2d 1546, 1566 (CA11), appeal dismissed and cert. denied, 469 U.S. 976 (1984); *Nevett v. Sides*, 571 F.2d 209, 223 (CA5 1978), cert. denied, 446 U.S. 951 (1980); *Johnson v. Halifax County*, 594 F. Supp. 161, 170 (EDNC 1984); *Blacksher & Menefee*; *Engstrom & Wildgen*, 465, 469; *Parker* 107; Note, *Geometry and Geography* 199. Because, as we explain below, the extent of bloc voting necessary to demonstrate that a minority's ability to elect its preferred representatives is impaired varies according to several factual circumstances, the degree of bloc voting which constitutes the threshold of legal significance will vary [478 U.S. 30, 56] from district to district. Nonetheless, it is possible to state some general principles and we proceed to do so.

The purpose of inquiring into the existence of racially polarized voting is twofold: to ascertain whether minority group members constitute a politically cohesive unit and to determine whether whites vote sufficiently as a bloc usually to defeat the minority's preferred candidates. See *supra*, at 48-51. Thus, the question whether a given district experiences legally significant racially polarized voting requires discrete inquiries into minority and white voting practices. A showing that a significant number of minority group members usually vote for the same candidates is one way of proving the political cohesiveness necessary to a vote dilution claim, *Blacksher & Menefee* 59-60, and n. 344, and, consequently, establishes minority bloc voting within the context of 2. And, in general, a white bloc vote that normally will defeat the combined strength of minority support plus white "crossover" votes rises to the level of legally significant white bloc voting. *Id.*, at 60. The amount of white bloc voting that can generally "minimize or cancel," S. Rep., at 28; Register, 412 U.S., at 765, black voters' ability to elect representatives of their choice, however, will vary from district to district according to a number of factors, including the nature of the allegedly dilutive electoral mechanism; the presence or absence of other potentially dilutive electoral devices, such as majority vote requirements, designated posts, and prohibitions against bullet voting; the percentage of registered voters in the district who are members of the minority group; the size of the district; and, in multimember districts, the number of seats open and the number of candidates in the field.²⁴ See, e. g., *Butler* 874-876; *Davidson* 5; *Jones, The Impact of Local Election Systems on Black Political Representation*, 11 *Urb. Aff. Q.* 345 (1976); *United States Commission [478 U.S. 30, 57] on Civil Rights, The Voting Rights Act: Unfulfilled Goals* 38-41 (1981).

Because loss of political power through vote dilution is distinct from the mere inability to win a particular election, *Whitcomb*, 403 U.S., at 153, a pattern of racial bloc voting that extends over a period of time is more probative of a claim that a district experiences legally significant polarization than are the results of a single election.²⁵ *Blacksher & Menefee* 61; Note, *Geometry and Geography* 200, n. 66 ("Racial polarization should be seen as an attribute not of a single election, but rather of a polity viewed over time. The concern is necessarily temporal and the analysis historical because the evil to be avoided is the subordination of minority groups in American politics, not the defeat of individuals in particular electoral contests"). Also for this reason, in a district where elections are shown usually to be polarized, the fact that racially polarized voting is not present in one or a few individual elections does not necessarily negate the conclusion that the district experiences legally significant bloc voting. Furthermore, the success of a