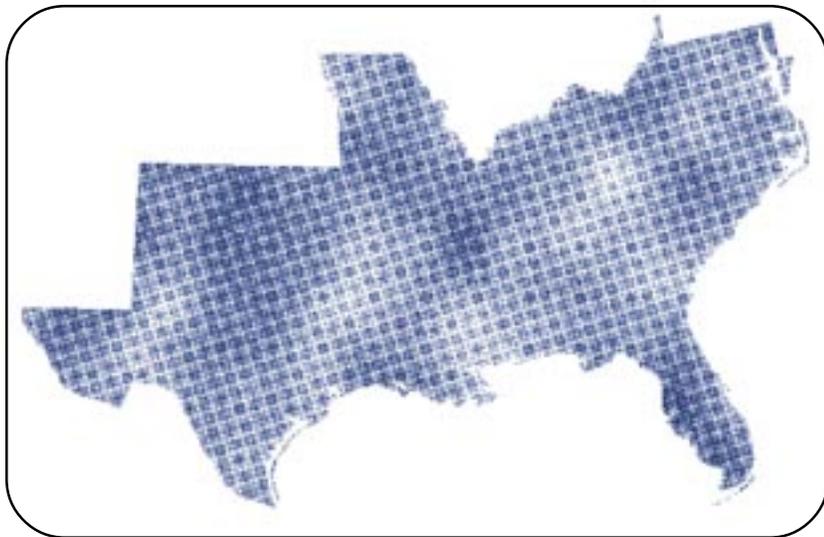


SLC Special Series Report  
**Drawing the Map:  
Redistricting in the South**



Prepared by  
Daniel J. O'Connor III for the  
Southern Legislative Conference  
of The Council of State Governments



# **Drawing the Map: Redistricting in the South**

**A Special Series Report  
of the  
Southern Legislative Conference**

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Southern Office  
The Council of State Governments

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This Special Series Report was prepared by Daniel J. O'Connor III for the Southern Legislative Conference of The Council of State Governments, under the Chairmanship of Speaker Jody Richards, Kentucky.

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## Introduction

While the beginning of the year 2000 was the occasion of lavish festivities throughout America and the rest of the world, to the federal government, the advent of a new year brought a more immediate concern and task, that being to conduct the decennial census. Since 1790, the United States, as required by Article 1, Section 2 of the U.S. Constitution, has conducted a census every 10 years, tabulating the nation's population for the purpose of allocating congressional districts among the states. Although judging from recent television advertisements, the census these days may seem to be important largely for the purpose of allocating federal funds to state and local governments, the data from the census still is used to allocate congressional seats among the 50 states and is used by the states to redraw the boundaries of political districts such as state legislative lines, city council lines and the like.

Although the census response date was April 1, the U.S. Secretary of Commerce has until December 31 of this year to report the total population by state to the president. By April 1 of next year, the secretary also must report census results to those responsible for state legislative redistricting and to the governors, with this data containing population figures for areas within the state. The April 1 reports will provide the basis for state and local redistricting efforts, along with realignment of congressional districts within each state. With many states and localities claiming that undercounting of residents in 1990 cost them federal dollars and seats in Congress, extra efforts are being made during this decennial census to minimize any undercount. With the release of detailed census data, states next year and lasting probably into 2002 will be busy redrawing the boundaries of their congressional, state and local legislative districts.

While not diminishing the importance of the presidential and vice presidential contests this fall, the only offices on the ballot in every state and the District of Columbia, the degree to which either Bush or Gore will be successful in obtaining congressional approval of their agenda rests not only on congressional elections this year but also on congressional redistricting conducted by state legislatures in 2001 and 2002. In other words, the lines drawn by state legislatures could have a major impact on which party will control the House for the 2002-2010 election cycles. "One of the biggest fears of the national Democratic party is that we win the House in 2000, only to lose it back in 2002," because of new Republican-leaning boundaries, according to the general counsel at IMPAC 2000, an

organization coordinating redistricting efforts for Democrats.<sup>1</sup> Of course, Republicans, should they maintain control of the U.S. House this November, also want to ensure that they do not lose seats in the 2002 election cycle because of unfavorable redistricting plans enacted by state legislatures.

The 2000 election cycle will include elections for state legislatures in most states (only a few states—Alabama, Louisiana, Maryland, Mississippi, New Jersey and Virginia—have no state legislative seats up this November), with legislatures in most states drawing both congressional and state legislative boundaries for the coming decade. Unsurprisingly, then, both major parties are making efforts to win additional seats this year to strengthen their numbers in the upcoming redistricting battles.

Though traditionally a region with Democratic majorities in most state and local legislative bodies, today the South (here defined as the 16 states of the Southern Legislative Conference, or SLC) is a major battleground between Democrats and Republicans, with Republicans having state legislative majorities in a few southern states and approaching that status in some others. However, partisanship has not been the only subject traditionally considered in Southern redistricting battles; the issues of race and urban/rural representation also have been at the forefront. This report will explain the reapportionment and redistricting process in the 16-state region of the Southern Legislative Conference, examining the following:

- ▶ Forces which have shaped reapportionment in the modern South;
- ▶ The number of congressional and state legislative seats at stake;
- ▶ How states conduct redistricting of congressional and state legislative seats, and the degree to which minorities and Republicans have boosted their numbers over the last decade; and
- ▶ 2001-2002 redistricting questions to be answered.

## **Forces That Have Shaped Reapportionment in the South**

### **The 1960s—“One person, one vote” and the Voting Rights Act**

Before the 1960s, the redrawing of political districts in the South, and indeed in the remainder of the United States, was an easier, less complicated task, and in some places, an infrequently accomplished task: “Prior to the mid 1960s, some legislatures had not been reapportioned in several decades,” noted an author writing about Georgia politics.<sup>2</sup> The federal courts, in the rare instances they addressed the subject of apportionment, initially seemed weary of involving themselves in the matter. In 1946, for instance, by a 4-3 vote, the U.S. Supreme Court in *Colgrove v. Green* (328 U.S. 549), refused to find as unconstitutional a large population disparity in Illinois’s congressional districts. Of the four justices in the majority, three found that the case involved questions which were beyond the power of federal courts to decide; in other words, not justiciable because they were “political questions.”<sup>3</sup> Nor does the U.S. Constitution elaborate in great detail on the subject, indeed mentioning nothing at all about apportionment of state legislatures, although the document has long required that a decennial census be conducted for the apportionment of seats in the U.S. House of Representatives.

As for apportionment of Congress itself, the institution passed a number of laws between 1840 and 1930 on this matter, which on paper would have seemed to guarantee congressional districts of equal size. For instance, an 1872 law required that districts be as equal in population as practicable, while the 1911 Reapportionment Act included not just an equal population requirement but also a requirement that districts be “...composed of contiguous and compact territory...”<sup>4</sup> But provisions such as these were dropped to improve the odds of passing the Apportionment Act of 1929, and the Supreme Court ruled that the earlier provisions were no longer in effect.<sup>5</sup> Also, in 1901 and 1910, the House rejected moves to deny seating to members on the grounds their districts were out of conformance with federal standards.

States tended to make their own decisions prior to the 1960s when it came to apportionment of federal, state and local political districts. With such discretion, states often apportioned districts based not on population (“one man, one vote”) but on geography. In South Carolina, for instance, the number of state senators (46) equals the number of

counties in that state, a reminder of an earlier time when each county in that state, regardless of population, was entitled to one state senator.<sup>6</sup> The 1945 Georgia Constitution mentioned a “county unit system” for representation of that state’s House of Representatives. Under that system, the eight most populous counties had three representatives each; the 30 next most populous counties had two representatives each, and the remaining counties (121) had one representative each. Had such a system been in effect in Georgia in the 1990s, the state’s eight largest counties, then (in 1990) accounting for 43 percent of the state’s population, nonetheless would have had only 12 percent (24 representatives) of the members of the state House of Representatives.<sup>7</sup> Missouri’s 1875 Constitution gave each county at least one state representative. This type of “geographical representation” was not unique to the South; Wyoming, upon entering the Union in 1889, guaranteed each county at least one state senator and representative, while Utah’s original 1889 constitution assured each county of one representative in the state’s lower chamber.<sup>8</sup>

If there was relatively little public concern visible in the early 1960s about apportionment—the United States at that time being more concerned with issues such as civil rights and containing Communist expansion around the globe—it was still no secret that rural areas often got the better end of the deal when it came to representation. For instance, a 1962 study of legislative apportionment by two University of Virginia professors concluded that while most central cities (except in the South) were just slightly underrepresented, suburban areas virtually everywhere “had suffered a severe drop in the value of the individual vote since World War II.”<sup>9</sup> The study also showed that virtually all rural areas were overrepresented. In the South, the largest cities (Atlanta, Birmingham, Dallas, Houston and Miami) were at the time the most underrepresented in the nation.

Although the apportionment court battles of the 1960s seemed to be more concerned with numerical equality than partisan implications, the impact of “one person, one vote” from a partisan perspective was not completely dismissed. In noting, for instance, the underrepresentation of the South’s urban areas, one publication noted that “It is in these cities that the rapidly growing Southern Republican party is based, while the highly overrepresented rural areas in the South are the stronghold of the conservative...wing of the Democratic party.”<sup>10</sup> Forty years ago, the concept of a growing Southern Republican party might have seemed more fantasy than reality. Although several Southern states had voted Republican in the 1952, 1956 and 1960 presidential elections, Democrats still controlled most statewide offices in the region in the early 1960s. Republican strength at that time was largely limited to the mountainous areas of the South-Eastern Kentucky and Eastern Tennessee, Virginia’s Shenandoah Valley and portions of West Virginia and North Carolina. As Table 1 shows, Republican representation in Southern legislatures after the 1962 elections was miniscule in all states and non-existent in a few:

<b>Partisan Composition of Southern State Legislatures after the 1962 Election</b>				
<b>State</b>	<b>Senate (D)</b>	<b>Senate (R)</b>	<b>House (D)</b>	<b>House (R)</b>
Alabama	35	0	104	2
Arkansas	35	0	99	0
Florida	37	1	90	5
Georgia	52	2	203	2
Kentucky	29	9	74	26
Louisiana	39	0	105	0
Maryland	22	7	117	25
Mississippi	49	0	140	0
Missouri	25	9	101	62
North Carolina	48	2	99	21
Oklahoma	38	6	95	25
South Carolina	44	0	124	0
Tennessee	27	6	78	21
Texas	31	0	143	7
Virginia	38	2	94	5
West Virginia	23	9	76	24

Source: *1963 Congressional Quarterly*, p. 1168. Please note that both the Arkansas House of Representatives and the Virginia House of Delegates at that time also included one independent.

A more equitable reapportionment of state legislatures (and congressional districts), favorable to fast-growing urban areas, could lead to greater Republican gains in the region and the development of a two-party system common to other parts of the United States.

In any event, the concept of “one person, one vote,” so universal today in the United States, was quite foreign to much of the country as recent as 40 years ago. With a variety of apportionment styles, the impact of one’s vote could be enhanced or diminished, depending on the circumstances. Table 2 shows the disparity in size of state House of Representatives districts in the 16 states of the Southern Legislative Conference as of January 1964 (“percent” refers to the percentage of the population that theoretically could elect control of the House).

<b>House of Representatives District Sizes, Southern States, 1964</b>				
<b>State</b>	<b>Average Size of House District</b>	<b>Largest District</b>	<b>Smallest District</b>	<b>Percent</b>
Alabama	30,818	50,718	10,726	37.9%
Arkansas	17,863	31,686	4,927	33.3%
Florida	44,210	66,788	2,868	26.9%
Georgia	19,235	185,422	1,876	22.2%
Kentucky	30,382	40,480	20,166	44.8%
Louisiana	31,019	57,622	6,909	33.1%
Maryland	21,836	37,879	6,541	42.3%
Mississippi	15,558	26,361	3,576	41.2%
Missouri	26,502	53,015	3,936	20.3%
North Carolina	37,968	82,059	4,520	27.1%
Oklahoma	19,242	62,787	4,496	29.5%
South Carolina	19,214	29,490	8,629	46.0%
Tennessee	36,031	50,105	22,275	39.7%
Texas	62,864	105,725	33,987	38.7%
Virginia	39,669	95,064	21,825	40.5%
West Virginia	18,604	252,925	4,391	39.8%

Source: *1964 Congressional Quarterly Almanac*, p. 394 (with data provided by the National Municipal League and 1960 Census figures).

In every Southern state at that time, a minority of the population could, in theory, elect control of a state House; in some states (Arkansas, Florida, Georgia, Louisiana, Missouri, North Carolina and Oklahoma), a third or less of the population could have had control of their House. A similar story held true for state Senate districts, although because senators represented larger constituencies than representatives, the gap in maximum and minimum-size Senate districts was even greater, as depicted in Table 3:

<b>State Senate Average District Sizes, Southern States, 1964</b>				
<b>State</b>	<b>Average Senate District</b>	<b>Largest Senate District</b>	<b>Smallest Senate District</b>	<b>Ratio of Largest to Smallest Dist.</b>
Alabama	93,278	634,864	31,715	20.0 to 1
Arkansas	51,036	80,993	35,983	2.3 to 1
Florida	115,152	467,525	17,711	2.6 to 1
Georgia	73,021	85,594	57,937	1.5 to 1
Kentucky	79,951	120,720	62,048	1.9 to 1
Louisiana	83,513	248,427	31,174	8.0 to 1
Maryland	106,920	492,428	15,481	31.8 to 1
Mississippi	44,452	187,045	20,987	8.9 to 1
Missouri	127,053	160,288	96,477	1.7 to 1
North Carolina	91,123	272,111	45,031	6.0 to 1
Oklahoma	52,916	346,038	13,125	26.4 to 1
South Carolina	51,796	216,382	8,629	25.1 to 1
Tennessee	108,093	133,248	83,031	1.6 to 1
Texas	309,022	1,243,158	147,454	8.4 to 1
Virginia	99,174	163,401	61,730	2.6 to 1
West Virginia	58,138	252,925	74,384	3.4 to 1

Source: *1964 Congressional Quarterly Almanac*, page 395. Please note that the table takes into account the existence of multimember districts (i.e., legislative districts that elect two or more legislators.)

In two SLC states-Florida and Maryland-less than 20 percent of the population could determine control of the state Senate. On the other hand, there was not as great a disparity in a few Southern states; in Arkansas, Kentucky, Missouri, Tennessee and West Virginia, it took more than 40 percent (but less than 50 percent) of the state’s population to control the Senate.

A number of Supreme Court decisions made in the early and mid 1960s, however, would shake the foundations of states as pertained to redistricting. Ramifications of these decisions are still felt today across America.

***Baker v. Carr* (1962): Federal courts are authorized to rule on malapportioned state legislatures**

In March of 1962, the U.S. Supreme Court issued its landmark decision in *Baker v. Carr*. The case was initiated by voters in metropolitan areas of Tennessee, including the then- mayor of Nashville. Plaintiffs noted that the Tennessee Legislature had refused to reapportion its seats since 1901, even though the State Constitution required reapportionment every 10 years based on the number of qualified voters; thus, those living in the state’s urban areas claimed they were “denied the equal protection of the laws accorded them by the 14<sup>th</sup> Amendment by virtue of the debasement of their votes.”<sup>11</sup> Plaintiffs also wanted the state to conduct an election “at-large” for the Legislature or, as an alternative, to hold an election with equitably apportioned districts based on the most recent census. A lower federal court had refused to rule on the merits of the case, claiming a lack of jurisdiction on the matter.

However, in a 6 to 2 decision, the U.S. Supreme Court ruled that Tennesseans had the right to challenge apportionment of their Legislature in the federal courts; in other words, such matters were “justiciable” in federal court. Speaking for the majority, Justice Brennan noted that “the question here is the consistency of state action with the Federal Constitution,” and that “it has been open to courts since the enactment of the 14<sup>th</sup> Amendment to determine...that...discrimination reflects no policy, but simply arbitrary and capricious action.”<sup>12</sup> Justice Clark, also in the majority, stated his belief that it could be demonstrated “that a patent violation of the U.S. Constitution has been shown, and that an appropriate remedy may be formulated...Tennessee apportionment is a crazy quilt without rational basis.”<sup>13</sup>

Although outnumbered, the two dissenters in this case were no less outspoken. Justice Frankfurter said this particular case was basically a political controversy, “which by the nature of the subject, is unfit for federal judicial action...the relationship between population and legislative representation (is) a wholly different matter from denial of the franchise to individuals because of race, color, religion or sex.”<sup>14</sup> Justice Harlan indicated he could find nothing in the U.S. Constitution requiring state legislatures to be structured with approximate equality among all voters: “There is nothing in the Federal Constitution to prevent a state, acting not irrationally, from choosing any electoral legislative structure it thinks best suited to the interests, temper and custom of its people.”<sup>15</sup>

While finding state legislative apportionment justiciable, the U.S. Supreme Court neither specified what actions the lower federal court might take nor offered any specific guidelines. Left undefined was the term “constitutional apportionment.” How badly malapportioned would a legislature have to be for federal courts to involve themselves in the matter? What if a state had initiative and petition (then as now less common in the South than in other regions) whereby voters could, if they so desired, write into law a new reapportionment of a legislature, one which might even include unequal reapportionment?

Even with those questions unanswered following the ruling (another court decision would answer those questions in 1964), it did not take long for new suits to come before courts on the matter of apportionment. By the end of 1962, court challenges to legislative apportionments had been filed in 25 states.<sup>16</sup> In Georgia that year, a three-judge federal court required the General Assembly to reapportion one of its houses according to population no later than January 1963, the beginning of the state’s legislative session. In response, Georgia legislators in October of 1962 enacted into law a plan which reapportioned the state Senate according to population. In the summer of 1962, a three-judge federal court ordered reapportionment of both the Alabama Senate and House, the first time a federal court had actually reapportioned a legislature.<sup>17</sup> Similar to Tennessee, the Alabama Legislature had not reapportioned itself since 1901, despite a decennial reapportionment requirement in the State Constitution. The court accepted a House reapportionment plan whereby that chamber’s seats were apportioned partly on geography (at least one seat for each of the state’s 67 counties) and partly on population (the remaining 39 seats allotted by population). With regard to the Senate, judges instituted a plan by which each senator represented between one and three counties. Elsewhere in the South that year, Maryland was required to reapportion its House to add more suburban and urban seats, and a three-judge federal court required Virginia’s General Assembly by the end of January of 1963 to reapportion both its Senate and House on the basis of population.

### ***Gray v. Sanders (1963): So long to the county unit system***

As noted earlier, Georgia for many years had operated a “county unit” system for apportionment of the state’s House of Representatives and for determining winners in statewide and congressional primary elections. With the most counties of any state east of the Mississippi River (159) and a large rural population, the system clearly favored rural areas. So favorable was the system to rural counties that in the 1930s, a rural governor could say that in the Democratic primary he did not need to win the votes of anyone residing in counties with streetcar tracks, then limited to a small number of Georgia counties (cities), and his statement was beyond scrutiny.<sup>18</sup>

In March of 1963, however, the U.S. Supreme Court ruled 8 to 1 that Georgia's county unit system of voting in statewide and congressional primary elections was unconstitutional, claiming that this system deprived voters equal protection guaranteed under the U.S. Constitution's 14<sup>th</sup> Amendment. Writing for the majority, Justice Douglas noted that "once the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote...The concept of political equality from the Declaration of Independence, to Lincoln's Gettysburg Address, to the 15<sup>th</sup> {which prohibited states from barring blacks from voting}, 17<sup>th</sup> {providing for direct popular election of U.S. senators} and 19<sup>th</sup> {guaranteeing suffrage for women} Amendments can mean only one thing—one person, one vote."<sup>19</sup>

Although the Court's decision did not address the question of unequal size among congressional and state districts, the verdict seemed to be a precursor to additional scrutiny of districts not drawn on the basis of population. Indeed, a year later, the Court announced landmark decisions concerning apportionment of congressional and state legislative districts.

### ***Wesberry v. Sanders* (1964): Congressional districts must be equal in population**

As noted earlier in this report, congressional districts were anything but equal in population within the 50 states prior to the 1960s. Even today, there is not absolute equality in the sense of every district having to be roughly equal in population; because each state is guaranteed a minimum of one congressional district, and of course state populations vary widely, it is impractical to require every district in the United States to be absolutely equal in size. Wyoming, the smallest state in 1990 (453,588 persons) has the same representation (one congressman) as Montana (799,065 persons), with Montana today being the most populous state with only one congressman.<sup>20</sup>

Today, of course, congressional districts within states must be as equal as possible when reapportionment is conducted, but 40 years ago the disparity in district sizes within states was often large. For example, the smallest congressional district in the United States in 1962 was in Michigan, where that state's 12<sup>th</sup> District, with 177,431 persons, was 59 percent smaller than the then statewide average of 434,622 and more than four times smaller than the state's then-largest (and America's third largest) district, the 16th.<sup>21</sup> In Ohio at that time, the state's largest congressional district was three times larger in population than its smallest district.<sup>22</sup> But it was in the South that the disparity at that time was the greatest, with the region actually exceeding all others with regard to the proportion of malapportioned congressional districts.<sup>23</sup> Of the 20 largest districts in the country, seven were in Southern cities, and of the 20 smallest, 11 were in Southern rural areas.<sup>24</sup>

Three months after the *Baker v. Carr* decision, a three-judge federal court in Atlanta dismissed a suit which challenged Georgia's congressional redistricting on the grounds that the districts were so unequal in population as to deprive citizens of equal protection under the laws. The Court gave several reasons for not providing relief, among them being that the case presented "a political question involving a coordinate branch of the Federal Government" and that it was possible Congress might afford the relief.<sup>25</sup> Also that year, federal courts declined to order congressional redistricting in New York City and Wisconsin following the filing of suits challenging those districting plans.

In 1964, however, the U.S. Supreme Court, in *Wesberry v. Sanders*, ruled that congressional districts must be as equal in population as possible. This decision was the first instance in which the Court had applied the principle of "one person, one vote" on a nationwide basis. Making this ruling by a 6 to 3 vote, the Court overturned the 1962 ruling by the Atlanta federal court which had upheld Georgia's congressional redistricting law. The majority based its decision on the portion of the U.S. Constitution (Article 1, Section 2) which requires representatives to be apportioned among the states by population and chosen by the people of those states. According to the majority, "We do not believe that the Framers of the Constitution intended to permit...vote-diluting discrimination to be accomplished through the device of districts containing widely varied numbers of inhabitants. To say that a vote is worth more in one district than in another would not only run counter to our fundamental ideas of government, it would cast aside the principle of a House...elected 'by

the people', a principle tenaciously fought for and established at the Constitutional Convention."<sup>26</sup> In dissenting, Justice Harlan (who had also dissented in *Baker v. Carr*) stated that the U.S. Constitution did not mandate population to be the sole criterion of congressional districting, while Justice Stewart claimed that the Constitution did not require that districts be nearly as equal as possible in population.<sup>27</sup>

Several states undertook that year to make their congressional districts, if not equal in size, at least somewhat closer to equal than in previous years. Georgia legislators approved a new plan for the state's 10 congressional districts that gave increased representation to the Atlanta region and under which the greatest variation from the average district size of 394,312 was 16 percent.<sup>28</sup> Alabama abolished its "nine-eight" plan (under which representatives ran "at-large" as opposed to being elected by district) and approved a plan by which the greatest variation from the average district size of 408,342 was 21 percent.

Even these particular congressional districting plans, with wide variations in size, could not stand up to scrutiny. But modest as such plans were at the time, they represented a break from a past.

### ***Reynolds v. Sims* (1964): All state legislative districts must be drawn based on population**

Given the Court's decision in *Wesberry v. Sanders*, it probably was not too surprising a few months later when it ruled in favor of those seeking equitably apportioned state legislative districts. In June of 1964, the U.S. Supreme Court issued a number of reapportionment decisions, finding unconstitutional the state legislative apportionments of six states. The leading case came to be known as *Reynolds v. Sims*, an Alabama suit decided by an 8 to 1 margin, while there were five related cases from other states. A week later, the Supreme Court also nullified legislative apportionments in nine other states. The Court ruled that both chambers (Senate and House) of a bicameral (two-chamber) state legislature must be apportioned on population (initially there was some question as to whether just one chamber in a bicameral body had to be apportioned based on population); that districts must be based substantially on population even if mathematical exactness in drawing districts was impossible; and that the "federal analogy" was not applicable as a "sustaining precedent" for state legislative reapportionment.<sup>29</sup> Nor was the Court majority swayed by popular democracy, that is, the people of a given state, through referendum and petition, approving an apportionment plan based on factors other than population. According to the Court majority, "A citizen's constitutional rights can hardly be infringed upon because a majority of the people choose to do so."<sup>30</sup> In dissenting, Justice Harlan found judicial entry into the apportionment debate to be "profoundly ill-advised and constitutionally impermissible," disagreeing with the majority's interpretation of the Equal Protection Clause.

The *Baker* and *Reynolds* decisions together helped touch off a number of actions seeking legislative reapportionment. In 1964 alone, actions seeking legislative apportionment were filed in 39 states, 12 of those in the South—Alabama, Arkansas, Florida, Georgia, Louisiana, Maryland, Missouri, Oklahoma, Tennessee, Texas, Virginia and West Virginia.<sup>31</sup> In 32 of those states, including Alabama, Florida, Georgia, Maryland, Oklahoma, Tennessee, Texas, Virginia and West Virginia, courts (either state or federal) had found legislative reapportionment plans unconstitutional.<sup>32</sup> In one Southern state that year, Oklahoma, judges actually prescribed new legislative district lines, while most Southern states facing legal action were ordered to reapportion no later than the next legislative election (the year 1966 in most states).

### **Efforts to circumvent the Court's "one person, one vote" ruling**

It is worth noting that as routine as "one person, one vote" seems today, the concept generated much controversy among elected Democratic and Republican officials both in Congress and at the state and local level. Democratic Congressman William Tuck of Virginia denounced the Supreme Court's state legislative apportionment decisions, noting that they "mark a new and shocking interference by the federal judiciary with the right of the sovereign states to conduct their domestic affairs."<sup>33</sup> The 1964 Republican presidential candidate, Barry Goldwater, denounced the Supreme Court's interference in this area, and several

politicians raised concerns that the Court's decisions would subject rural areas to, in effect, a sort of tyranny of the majority. As one Illinois congressman stated at that time, if his state were to be reapportioned by the Court's guidelines, "Illinois will be subject to Chicago (Democratic) machine politics from this day forward."<sup>34</sup>

There was no lack of proposals to overturn the Supreme Court's "one man, one vote" decision with regard to legislative apportionment. Virginia's Congressman Tuck introduced legislation, HR 11926, to deny federal courts (including the Supreme Court) all jurisdiction over state apportionment.<sup>35</sup> The 1964 national Republican platform pledged support for a constitutional amendment, as well as legislation, that would allow states with bicameral legislatures to apportion one chamber "on bases of their choosing, including factors other than population."<sup>36</sup> A year later, a proposed constitutional amendment (Senate Joint Resolution 2) which would have permitted states to apportion one of their legislative chambers based on factors other than population, was defeated in the U.S. Senate by seven votes. Other legislation to give states leeway in legislative apportionment failed as well, and with the passage of a generation since these court rulings, the "one person, one vote" requirement for legislative (and congressional) apportionment is firmly established.

While the preceding Supreme Court decisions heralded a revolution in drawing new boundaries for political districts across the United States, a statute passed by Congress in 1965 was to have particular relevance to the South. Although it was subsequently amended three times, it still has a major impact in apportioning districts in the region: the Voting Rights Act.

### **Voting Rights Act of 1965: Southern voter registration and electoral districts come under federal scrutiny**

Although today this Act has more impact in the South when applied to redistricting, the original push for this legislation was focused on the basic right to vote, namely, black enfranchisement. While the U.S. Constitution forbids denial of the right to vote based on race, in the South, the use of literacy tests and other devices minimized the black vote for nearly 100 years. Blacks who even attempted to register to vote often were met with harassment and actual, if not threatened, violence. In 1940, as America was on the eve of entering World War II, only 3 percent of the five million Southern blacks of voting age were registered to vote.<sup>37</sup>

Several federal court decisions in the mid 1940s spurred renewed interest in black voter registration. In 1944, the U.S. Supreme Court, in *Smith v. Allright* [321 U.S. 649], declared the Texas "white primary" unconstitutional, while two years later the Court upheld a federal district court ruling which had invalidated the Georgia white primary (*Chapman v. King*).<sup>38</sup> The latter decision prompted a surge in black voter registration in Georgia, especially in urban areas; in Atlanta, for instance, the number of registered black voters increased by 600 percent (from 3,000 to 21,000) in 1946 alone.<sup>39</sup> Efforts were made, however, by segregationists to disenfranchise some of the newly registered black voters, and black voter registration remained low in many areas in the South well into the 1960s.

Although much of the early focus of the civil rights movement was focused on access to public accommodations and school desegregation, efforts were underway in the first half of the 1960s to register blacks to vote. During a two-and-a-half year period between 1962 and 1964, the number of registered black voters in the 11 states that supported the South in the Civil War increased by nearly 50 percent.<sup>40</sup> Generally, black voter registration made more progress in the "border states" than in the Deep South; for instance, in Tennessee, 69 percent of blacks of voting age were registered to vote in 1964, similar to the 72 percent figure for whites.<sup>41</sup> At the other end of the spectrum, only seven percent of voting-age blacks were registered in Mississippi, and just 23 percent in Alabama. Table 4 provides data on voter registration in selected SLC states as of November 1964, nine months before the passage of the Voting Rights Act.

<b>1964 Voter Registration Data—Selected SLC States</b>				
<b>State</b>	<b>Black Voters (Nov. 1964)</b>	<b>% Eligible Blacks Registered</b>	<b>% Eligible Whites Registered</b>	<b>Unregistered Blacks of Voting Age</b>
Alabama	111,000	23.0%	70.7%	370,000
Arkansas	105,000	54.4%	71.7%	88,000
Florida	300,000	63.7%	84.0%	170,000
Georgia	270,000	44.0%	74.5%	343,000
Louisiana	164,700	32.0%	80.4%	350,000
Mississippi	28,500	6.7%	70.1%	394,000
North Carolina	258,000	46.8%	92.5%	293,000
South Carolina	144,000	38.8%	78.5%	227,000
Tennessee	218,000	69.4%	72.9%	96,000
Texas	375,000	57.7%	53.2%	275,000
Virginia	200,000	45.7%	55.9%	237,000
<b>Totals/Avg. %.</b>	<b>2,174,200</b>	<b>43.3%</b>	<b>73.2%</b>	<b>2,843,000</b>

Source: *1965 Congressional Quarterly Almanac*, p. 537.

Despite the increase in black voter registration in the region, the percentage of eligible blacks registered to vote remained far behind that of whites; as Table 4 indicates, only 43 percent of voting age blacks in the region were registered to vote in November of 1964, compared with 73 percent of whites. In areas where resistance to black voter registration was greatest, progress was slow, often requiring litigation.

After a voter registration march was met with violence in Selma, Alabama in March of 1965, and following reports of continued barriers in registering black voters, Congress passed the Voting Rights Act that summer. The landmark legislation contained several key provisions:

- ▶ A suspension of “literacy tests” (initially for five years);
- ▶ Criminal penalties for interfering with voter registration activities;
- ▶ Authorization for the U.S. attorney general to appoint federal examiners to supervise voter registration in states or political subdivisions where a test or similar voter qualifying device was in effect as of November 1, 1964 and where less than 50 percent of voting age residents were registered to vote on that date or actually voted in the 1964 election; and
- ▶ “Preclearance” requirements (“Section 5”) for those “covered” jurisdictions seeking to impose new voting changes. For these purposes, a “covered” jurisdiction was one where vote registration or turnout fell below the 50 percent figure (as listed in the preceding paragraph) and a literacy or other test/qualification was employed to screen potential voters. The preclearance requirement affected Alabama, Georgia, Louisiana, Mississippi, South Carolina and Virginia, along with portions (selected counties) of North Carolina. These areas seeking to enact or administer any voting qualification or prerequisite to voting, or standard, practice or procedure would be required to seek preapproval from the U.S. attorney general or the federal District Court for the District of Columbia. Basically, the covered entity would have to demonstrate that a proposed voting change would not have a racially discriminatory purpose and would not make minority voters worse off than they were prior to the change.

The Act had an immediate impact on black voter registration. In the last five months of 1965, black voter registration increased by 40 percent in the five-state region of Alabama, Georgia, Louisiana, Mississippi and South Carolina.<sup>42</sup> Perhaps less apparent at that time, however, was the long-term significance of the Section 5 preclearance requirement. References to this provision were scant in congressional hearings, and during the hearings the term “voting qualification/practice” specified to include redistricting, annexation or even at-large voting. As a political scientist put it, “No one could imagine the future scrutiny to which such changes would be subjected under Section 5.”<sup>43</sup> Thirty-five years later, the Department of Justice still reviews tens of thousands of voting changes brought under that section, between 14,000 and 22,000 per year over the 1990s.<sup>44</sup> Despite the large number of voting changes brought to the Department of Justice under Section 5, since 1965 the attorney general has objected to just about 1 percent of voting changes submitted.<sup>45</sup>

As noted, in 1965 few probably imagined the scope of voting changes that would come under Section 5. But a subsequent court case would make clear just how wide that scope was to be.

***Allen v. State Board of Elections* [393 U.S. 544]**

This case came as a result of several election-related changes made in Mississippi following passage of the Voting Rights Act, including the changing of some offices from elected to appointed and instituting multimember electoral districts. The question before the U.S. Supreme Court was whether such changes were subject to the preclearance requirement of the Voting Rights Act. In 1969, the Supreme Court ruled in favor of plaintiffs challenging these changes, noting that the Voting Rights Act should be given “the broadest possible scope.” According to the Court majority, “Congress intended to reach any state enactment which altered the election law of a covered state in even a minor way.”<sup>46</sup> As one author put it, the decision “established the necessary precedent for challenges to the legality of the entire ‘second generation’ of disenfranchisement devices-switching to at-large elections, redistricting...abolishing elective offices, or any other change that alters the state’s election laws...”<sup>47</sup> This decision, in effect, left little doubt remaining as to whether redistricting plans were subject to federal scrutiny.

## The 1970s—Renewal of the Voting Rights Act and Challenges to Multimember Districts

Although the central tenet of the 1965 Voting Rights Act, protection for all citizens from procedures that would deny the right to vote because of race or color, was permanent, there were several temporary provisions set to expire in 1970. Provisions banning literacy tests and the preclearance requirement imposed on several Southern states wishing to make voting changes were among those temporary stipulations. When renewal was debated in 1970, there was some question whether these provisions would be renewed, including the preclearance requirement. The election of a more conservative president and Congress led some to believe that preclearance might be eliminated or otherwise relaxed. The Nixon Administration, in fact, proposed banning literacy tests nationwide and eliminating the preclearance requirement (Section 5). Under the proposal, if voting discrimination were suspected anywhere in the United States (not just in selected Southern states), the U.S. attorney general could enjoin the changes in a federal district court, pending a trial. The administration basically wanted only changes “arousing suspicion” to be subject to review. Furthermore, the president wanted to remove the power of review of voting changes from the Department of Justice, terminating the Washington, D.C.’s federal court exclusive jurisdiction and shifting the burden of proof in voting changes to federal authorities. In other words, the idea was to require the federal government to bear the burden of proof that a voting change *is* discriminatory, as opposed to making the affected state or locality prove that a voting change is not discriminatory.

While the administration’s bill narrowly prevailed in the House, the legislation ran into heavy resistance in the Senate. The compromise legislation that eventually cleared both chambers not only retained the original preclearance requirement, which originally applied to states that had literacy tests and a turnout below 50 percent in 1964, but strengthened it to include those states and counties where turnout had dropped below 50 percent in the 1968 presidential election, expanding the preclearance requirement to several areas outside the South. The legislation also banned literacy tests for another five years.

The Act came up for renewal again in 1975. Unlike in 1970, there was never any serious question or doubt about whether preclearance provisions would be extended; the 1974 midterm elections had elected many congressman and senators who were more inclined to support an extension. In reality, the only question was to what extent, if any, the preclearance provisions should be expanded to include more states and localities outside the South. The Section 5 preclearance requirement had by then, in effect, become the central component of the Act. The then-chairman of the United States Commission on Civil Rights described the preclearance provision as the “centerpiece of the statute.”<sup>48</sup>

In 1975, Mexican-Americans sought protection under an extended Voting Rights Act, especially supportive of having Texas covered under the Act. While Texas, unlike several other Southern states, had never employed a literacy test to screen potential voters, and overall evidence of Mexican-American disfranchisement was thin, witnesses testifying at hearings in 1975 complained that economic pressure often kept Mexican-Americans from participating actively in politics. There were stories, for instance, of a Mexican-American who had lost his job for engaging in political organizing, or whites who boycotted the business of a Mexican-American candidate. The testimony was enough to convince Congress to expand the Act to include persons of Spanish heritage and three other groups—Asian-Americans, Alaskan natives and Native Americans. Henceforth, all of Alaska, Arizona and Texas, along with scattered counties in various states such as Florida and Oklahoma, came under the statute’s preclearance provisions. In other words, federal review would be required before they could annex, redistrict their political bodies or make any other changes in electoral procedure. As amended, the Act also would apply to states or counties meeting the traditional low voter turnout test and that, additionally, conducted elections only in English and in which more than 5 percent of the voting-age population were members of one of the aforementioned language groups.

## Multimember districts come under scrutiny

With the Voting Rights Act obviously successful by the mid 1970s in promoting black voter registration, emphasis began to shift toward “making one’s vote count,” in other words, addressing districting plans that could dilute minority voting strength. In particular, the use of multimember districts began to come under attack.

While multimember districts had been common in the South even before the Supreme Court decisions of the 1960s, they remained common in a number of states in the 1970s and today still are used in a number of states. Basically, a multimember district is one with several representatives, while a single-member district consists of one district with one member (representative or senator). As an example of how this would work, assume a state with five million people and a 50-member Senate. Under the prevailing “one man, one vote” interpretation, with a single-member district plan, each senator would represent 100,000 residents (5,000,000 persons divided by 50 senators). However, a multimember district of two senators could be created by crafting a 200,000-person district, in which the two senators would be elected “at-large” (i.e., the entire district would elect two senators). Similarly, in a 300,000-person district, three senators would be elected, and so on.

The use of multimember districts in the South has been controversial. As one author about redistricting and reapportionment in Virginia wrote years ago, “Multimember districts have been demonstrated to dilute the voting strength of both partisan and racial minorities.”<sup>49</sup> Assume again a state of five million people with a 50-member Senate, all elected from single-member districts, with each senator representing 100,000 people. Assume also that one district is 60 percent black/40 percent white, another just 10 percent black but 90 percent white. In a system of single-member districts, the first district would have a black majority and might be more likely to elect a black senator, while the second district might be more inclined to elect a white senator. However, if both districts were merged to create a two-senator multimember district, the result would be a district only 35 percent black and 65 percent white, a district which, if very racially polarized (i.e., blacks voting mostly for the black candidate, whites voting mostly for the white candidate) would most times elect a white candidate, thereby making it difficult for minority candidates to win. A similar case could be made on partisan grounds. Mixing a 60 percent (in voting history) Republican single-member district with an 80 percent single-member Democratic district would result in a multimember district 60 percent Democratic. In other words, by using multimember districts, partisan and racial minorities can have their voting power diluted by submerging their voting strengths into larger districts with another partisan/racial majority.

This is not to say that multimember districts are without their defenders. Supporters can claim that use of these districts encourages broader appeal to voters. Because an elected official in a multimember district represents a larger and presumably broader constituency, he or she is more likely to draft legislation with a more mainstream position. The assumption here is that single-member districts, because of their size, are more susceptible to control from special interest groups. Still, in the last 30 years, the concern over adequate representation for minority groups has seemed to carry more weight in Southern voting rights cases.

In the 1960s, a number of suits were filed challenging the constitutionality of multimember districts, but the U.S. Supreme Court consistently rejected such challenges. In 1971, Indiana’s legislative redistricting went before the Supreme Court in *Whitcomb v. Chavis* [403 U.S. 124]. The case involved a challenge to multimember districts in Marion County (Indianapolis), which consisted of a multimember district electing eight state senators and 15 state representatives. While Marion County was then (and still is) majority-white and a Republican stronghold, the county at that time had a significant black population, and those seeking redress claimed the districts diluted the votes of black voters. While a lower court had struck down multimember districts in Indianapolis, noting their potential for discrimination, the Supreme Court reversed the lower court decision. Basically, the Court acknowledged that while the validity of such districts is justiciable, multimember districts

are not per se unconstitutional; the challenger has the burden of proving that such districts operate unconstitutionally to dilute or even negate the voting strength of a racial or political group. However, finding no suggestion that Marion County's multimember Senate and House districts were designed or operated purposefully to promote racial or economic discrimination, the Supreme Court refused to invalidate the county's multimember districts.<sup>50</sup>

But the Court had more to say on this issue. In *Connor v. Johnson* [402 U.S. 690], the Court issued a ruling promoting the use of single-member districts. The case pertained to a challenge of Mississippi's legislative redistricting in which a number of multimember districts were retained. Plaintiffs, arguing that such districts diluted minority voting strength, appealed to the Supreme Court, seeking redress in the form of single-member districts. The Supreme Court sided with plaintiffs, adopting a rule requiring single-member districts in court-ordered plans, agreeing that "when district courts are forced to fashion apportionment plans, single-member districts are preferable to large multimember districts as a general matter."<sup>51</sup> The *Connor v. Johnson* decision represented the first time that the Court had ruled against multimember districts; while the Court was not necessarily declaring such districts unconstitutional, it made clear its preference for single-member districts. Indeed, in the mid 1970s, objections to multimember districts prompted the creation of single-member districts in counties with large concentrations of blacks, along with the institution of single-member districts in several state legislatures such as Alabama and Mississippi. In 1973, the Court in *White v. Regester* [412 U.S. 755] upheld a district court's invalidation of multimember state House districts in Texas, districts which were alleged to discriminate against black and Mexican-American voters.

But the debate over multimember districts did not end in the 1970s. Several Southern states, such as North Carolina and Virginia, continued to use such districts during that decade. Indeed, in the 1980s, the challenge to a North Carolina multimember redistricting plan would result in another landmark Supreme Court decision, *Thornburg v. Gingles*.

## The 1980s: The Voting Rights Act, Multimember Districts and Political Gerrymandering

The upcoming renewal of the Voting Rights Act in 1982 was a matter of apprehension to some of its supporters, who worried that the extension was in peril because of the election of a conservative president and a Congress more conservative than the preceding one. In the end, however, a 25-year renewal was easily approved in both the Senate and House, and with one key addition—the enactment of a “results” test.

The “results” test was implemented following the U.S. Supreme Court’s 1980 decision in *Mobile v. Bolden* [446 U.S. 55]. Plaintiffs filed suit against the Alabama city, claiming its at-large election of three city commissioners violated the 14<sup>th</sup> and 15<sup>th</sup> Amendments of the U.S. Constitution, diluting the voting strength of blacks, who then comprised about one-third of the city’s population. Because the city had employed this system of election for county commissioners since 1911, it was not subject to a Section 5 violation of the Voting Rights Act (Section 5 applying only to voting changes made from November 1964 and beyond), though plaintiffs still maintained there was a Section 2 violation (a voting provision denying the right to vote on account of race or color). The Supreme Court ruled that it was not enough to show that an electoral plan had a discriminatory result on minority voters: “Disproportionate effects alone are insufficient to establish a claim of unconstitutional racial vote dilution.”<sup>52</sup> Instead, plaintiffs must prove that an electoral plan or device has the intent or purpose of discriminating against a class of voters. The majority opinion claimed that the Equal Protection Clause of the 14<sup>th</sup> Amendment does not protect any political group from electoral defeat and rejected claims of vote dilution, noting that because the city’s commission at that time was elected at-large, there could not be any claim that the concept of “one person, one vote” had been violated.

The *Mobile* decision concerned many minorities; proving discriminatory intent was difficult because such required proof of what was on the mind of public officials when they adopted a particular electoral plan. Direct proof of intent might be impossible to obtain because officials might not always specify the actual purpose of an electoral plan. “A plausible, non-racial justification can be offered for almost any racially discriminatory voting law,” noted one author of a book on voting rights.<sup>53</sup> Furthermore, some electoral devices might have been adopted so long ago that few people who implemented the plan would still be alive to testify as to the purpose of adoption of a plan, as certainly would have been the case in *Mobile*, where the electoral system was nearly 70 years old when it was discussed in the U.S. Supreme Court.

Supporters of an amended Voting Rights Act in 1982 thus pushed for a change in Section 2 of that law, the “results” test. In short, supporters wanted to be able to challenge an electoral law based on whether or not the provision had the effect of discriminating against minority voters. In other words, no longer would plaintiffs have to prove that an electoral device was intended to disenfranchise minority voters; if such a scheme had the effect of doing so, even if unintended, it was open to challenge. Congress overwhelmingly approved a 25-year extension of the Voting Rights Act, which included the Section 5 “preclearance” requirement.<sup>54</sup> Of more importance, however, was an amendment to Section 2, which specified that a voting qualification, standard, practice or procedure could be established if political processes were not equally open to participation by members of a protected class of citizens in that those persons had “less opportunity than other members of the electorate...to elect representatives of their choice.”<sup>55</sup>

The inclusion of a revised Section 2 satisfied many who were seeking increased opportunities for election of minorities to office; as one author noted in 1990, “(the revised) Section 2 has been phenomenally successful in eliminating racially discriminatory barriers to equal minority political participation. It has been used...to strike down such voting procedures as discriminatory congressional redistricting and legislative reapportionment plans...”<sup>56</sup> This is not to say that the revised Section 2 did not have its detractors; while the revised statute stated that nothing in its provisions “establishes a right to have members of a protected class elected in numbers equal to their proportion in the population,” critics

expressed concern that the revised Section 2 would have the effect of mandating “proportional representation.” For example, if a unit of government (state, county, city, etc.) had a minority population of 20 percent, but only 5 percent of its elected officials were minorities, a unit of government might be required to change its electoral system, creating enough districts where minorities were a majority so that minorities in theory would be guaranteed 20 percent of the seats in a legislative or other governmental body. Those opposed to racial and ethnic quotas saw the new Section 2 as furthering this concept.

Because the 1982 Voting Rights Act was approved after most states had completed their redistricting process for the 1980s, the new provisions came too late to have much impact on congressional and legislative lines for that decade. Thus, concern about the ambiguous language of Section 2 was a bit more muted following its passage. Though not as important from a legal standpoint, there also was some question as to what effect a revised Section 2 would have on partisan composition in legislative bodies. Writing shortly before the 1991-1992 redistricting battles, one author, however, predicted that the revised Section 2 would prove beneficial for Republicans:

“The 1982 amendments to LBJ’s (Lyndon Baines Johnson’s) Voting Rights Act...were authored by Democrats. But this legislation, in the bright light of 20-20 hindsight, has become a Republican gold mine. The law requires that wherever the Census Bureau finds a large enough concentration of blacks or Hispanics to elect a member of Congress, or of the state legislature, the redistricting map must be drawn to create a district in which the minority population constitutes a majority of voters...No matter how ridiculously shaped the district looks, minority strength is the key factor...Further, in areas where voting rights violations have been proven in the past and where there are enough black or minority voters, lawmakers must create “super majority” districts. These will have a population that is 60-65 percent black or Hispanic to compensate for lower minority turnout on election day.

“The reason this brings joy to Republican hearts is simple. It gives the GOP a powerful tool to limit the ability of Democrats to parcel out minorities to a large number of districts which would provide the margin of victory for white Democrats...”<sup>57</sup>

If Democrats did not seem overly concerned in the 1980s about the partisan implications of the revised Voting Rights Act, this was perhaps because the party had fared well at redistricting in the early 1970s and 1980s. Republicans had not won control of the House since 1952, when the Eisenhower landslide had swept many Republicans into office. Even Republican control of the U.S. Senate between the 1980 and 1986 elections had been seen as something of an aberration, a result of the Reagan landslide of 1980 in which several Democratic incumbents had suffered narrow defeats. Going into the 1991-1992 redistricting battles, Democrats controlled many more state legislatures than did Republicans, including both legislative chambers in 25 states compared with only eight for the Republicans, and 16 states where the parties split control of legislatures.<sup>58</sup>

***Thornburg v. Gingles* [478 U.S. 30]**

This case arose out of the North Carolina General Assembly’s 1982 legislative redistricting plan. A number of registered black voters in the state filed suit, challenging one single-member district and six multimember districts on the grounds that the plan impaired the ability of citizens to elect “representatives of their choice,” in violation of the newly amended Section 2 of the Voting Rights Act. A district court found in favor of the voters. The Supreme Court specified a three-point test, a list of circumstances which must be present for minority voters to claim that multimember districts serve to minimize or negate their ability to elect the candidates of their choosing. The minority group must demonstrate that:

- ▶ it is sufficiently large and geographically compact to constitute a majority in a single-member legislative district;

- ▶ it is politically cohesive; and
- ▶ the majority votes sufficiently as a bloc to defeat the preferred candidate of the minority group.

The *Thornburg* decision did not put an end to use of multimember districts either in the South or the rest of the country, since the Court continued to abide by its earlier rulings that such districts were not inherently unconstitutional. Nonetheless, the continuing trend in the South into the 1990s was the elimination of many of these districts. Virginia, after years of debates and litigation over the use of multimember legislative districts, adopted all single-member districts for the 1982 redistricting of its House of Delegates. Georgia eliminated its remaining multimember districts in its House of Representatives in 1992. Several Southern states employing a large number of multimember districts in the 1980s reduced their number in the 1990s. As examples, the number of multimember districts in the 100-member Arkansas House was reduced from 10 to two, while in North Carolina, the number of multimember districts in the 50-member Senate was reduced from 13 to eight and the number of multimember districts in the 120-member House was reduced from 30 to 17. By 1998, only four of the 16 states of the Southern Legislative Conference continued to employ multimember legislative districts (Arkansas, Maryland, North Carolina and West Virginia), and in two of those states (Arkansas and Maryland), multimember districts were in use only for the House, with North Carolina and West Virginia continuing to use multimember districts for both the Senate and House.<sup>59</sup>

### ***Davis v. Bandemer*: Do federal courts have the power to consider political gerrymandering cases?**

Political gerrymandering, a practice dating back to the 1800s, came before the Supreme Court in 1986 in a case named *Davis v. Bandemer* [478 U.S. 109]. The case involved reapportionment of the Indiana Legislature, which, in 1981, was under Republican control. At that time, Republican majority adopted a legislative redistricting plan which included single-member districts in the Senate and a combination of single-member and multimember districts in the House. Indiana Democrats filed suit in 1982, alleging the 1981 plan was gerrymandered, designed to disadvantage Democrats through a mixture of single-member and multimember House districts, and therefore a violation of the 14<sup>th</sup> Amendment's equal protection clause. According to Democrats, the 1982 state House elections were evidence of gerrymandering—Democrats won 52 percent of the total votes cast statewide in state House races but won only 43 percent of the seats in that chamber. The district court, relying on the 1982 results, saw that year's elections as evidence of vote dilution and ordered legislators to come up with a new plan.

In June of 1986, the U.S. Supreme Court ruled that political gerrymandering was indeed justiciable under the 14<sup>th</sup> Amendment. However, the Court did not find unconstitutional discrimination in this instance, noting that reliance on a single election (in this instance, the 1982 election) to prove unconstitutional discrimination was unsatisfactory. Furthermore, the majority ruled that a lack of proportional, in this case, party representation alone does not constitute impermissible discrimination under the equal protection clause. Instead, unconstitutional discrimination was said to occur “only when the electoral system is arranged in a manner that will consistently degrade a voter's influence on the political process as a whole.”

Dissenting justices who did not find political gerrymandering to be justiciable claimed the equal protection clause does not confer group rights to an equal share of political power. They expressed concern about the “costs of judicial intervention” if courts were to be forced to dictate district lines based on supposed claims of group rights to representation, whether they be political, ethnic, or occupational groups.

At first glance, the Court's decision may appear to give hope to parties who believe they are the victims of political gerrymandering, in the sense that such plans can come under federal scrutiny. Indeed, in states such as Tennessee and Virginia in the 1990s, Republicans went to court alleging gerrymandering. In reality, however, the “yes...but” decision of the Court in this instance indicated little enthusiasm for consideration of such

lawsuits. Furthermore, it made clear that minimal evidence, such as results from one election cycle, would not suffice to uphold a claim of unconstitutional political gerrymandering. Given how political gerrymandering can backfire on the party initiating such action, it is not surprising that federal courts do not want to make a habit out of drawing legislative lines. There have been cases when such gerrymandering has backfired. In Indiana, for instance, despite controlling congressional redistricting in the 1980s, the Republicans held only two of 10 congressional seats by 1990, having created too many marginal seats during redistricting. In Virginia, Republicans were able to win control of the House of Delegates in 1999 even though the redistricting plan adopted by Democrats in 1991 had removed some Republicans from office through gerrymandering.

## The 1990s: Racially-drawn districts and Undercounting

While redistricting is supposed to occur at the beginning of each decade, in some states, redistricting battles continued well into the 1990s. An explanation of redistricting for individual Southern states is found later in the report, but the major question for the decade, still unresolved as of this writing, was how far a state had to go in maximizing minority representation in its congressional delegation, state legislature and other political subdivisions. The Voting Rights Act, as last amended in 1982, was now being interpreted as requiring states to maximize minority representation, although the Act also specified that there was no right for protected classes to have “proportional representation.”

What made maximizing minority voting representation especially problematical was that minority population in the South often is dispersed. The matter was especially acute in North Carolina, where the state was required to draw two majority black congressional districts even though this meant the enactment of odd-shaped political districts. Nor was the dispersal of minority voters the only problem in creating compact districts. In many cases, incumbency protection (i.e., protecting white incumbents while at the same time creating more minority districts) also dictated district shapes. In other words, it might be possible to create more compact minority districts if white Democratic incumbents were not so insistent on retaining a sizable minority base in order to improve their chances of re-election.

The pressure to maximize minority voting strength was by no means limited to the South in the early 1990s. In Illinois and New York, for instance, new Hispanic-majority congressional districts were implemented. The final result was the creation of 32 black-majority districts nationwide (19 of them in the South) and 20 Hispanic-majority districts (nine in the South).<sup>60</sup> All 19 black-majority congressional districts in the South elected blacks, while Hispanics won seven of the nine Hispanic-majority seats (two were won by whites) in the South.

The irregular shapes of many of the newly-created majority-minority districts caught the attention of many observers, however, with some expressing concern that districts were now being drawn to segregate voters by race. Even before the 1992 election cycle had concluded, lawsuits already were being filed to challenge redistricting plans.

In North Carolina, white voters dismayed by the new congressional reapportionment plan filed suit against it, claiming that the new map with its two majority-black districts violated the Equal Protection Clause of the U.S. Constitution, in effect diluting their vote. This case became known as *Shaw v. Reno* [509 U.S. 630]. In a 5 to 4 ruling in June of 1993, the Court, while not striking down the North Carolina plan, reinstated the suit, returning it to a lower federal court for further proceedings. By the end of 1993, however, the *Shaw* decision, which appeared to open the door to challenges of apportionment plans based mainly on race (especially minority districts with highly irregular boundaries), already was having an effect; in the closing days of that year, a special panel of federal judges invalidated Louisiana’s 1992 congressional plan, which had included a new majority black district (63 percent black in voting-age population) with highly irregular boundaries. Within a month after the decision, a federal court had overturned South Carolina’s congressional redistricting plan as well.

The *Shaw* decision left many state officials wondering how they could draw districts that would minimize a proliferation of lawsuits, but they appeared almost to be in a no-win situation when it came to drawing minority districts. “What the court has done is ensure that states can be sued by someone either way—if they draw too few minority districts or too many,” noted a deputy attorney general from North Carolina after the decision.<sup>61</sup> Nor did the Court in its decision provide any guidance as to definition of a “bizarre” district.<sup>62</sup> In any event, however, the decision began to prompt more questioning of odd-shaped districts, especially among white voters in areas which had been split up to make way for majority black districts.

In June of 1995, the U.S. Supreme Court struck down Georgia's congressional district map. In *Miller v. Johnson* [000 U.S. U10268], the Court in a 5 to 4 decision found the districts to be racially gerrymandered in violation of the 14th Amendment. In 1990, the state had had only one majority-black congressional district, the compact Atlanta-based 5<sup>th</sup> Congressional District. Under heavy pressure from the Department of Justice, the state had drawn two additional majority black districts in 1992. However, because Georgia's black population is widely dispersed outside of Atlanta, it was impossible to draw additional majority black congressional districts which were relatively compact. One district, for instance, the 1992 and 1994 11<sup>th</sup> District, stretched nearly 300 miles from suburban Atlanta to Savannah, in many places just a few miles wide or less, in the process splitting many counties in two and in some instances into three or four sections.<sup>63</sup>

While the odd shape of new black-majority districts in the South certainly caught the Court's attention two years earlier, the Court's decision in *Miller* meant that the justices had "moved beyond district shape to cast heavy doubt on any district lines for which race was the 'predominant factor'," wrote an observer of the decision.<sup>64</sup> In finding a violation of the Equal Protection Clause, Justice Kennedy found that the goal of expanding access to the political system for minorities was "neither assured nor well served...by carving electorates into racial blocs."<sup>65</sup> Kennedy noted that a district's apparent odd shape was not even a necessary prerequisite to challenging a district on equal protection grounds; instead, demonstrating race to be the "predominant factor" would be the new standard for such challenges. Absent a compelling reason for drawing such a district, the Court's course from here was that such a district would be found unconstitutional.

In dissenting, Justice Ginsburg noted the long history of whites' efforts to restrict black voting power. Moreover, echoing the concerns of then-Justice Harlan a generation earlier, she expressed concern that federal judges could become involved in complex map-drawing that ought to be left to legislatures. "The court's disposition renders redistricting perilous work for state legislatures," she wrote.<sup>66</sup> Indeed, the Court did not specify how race would be defined to be the "predominant factor" in redistricting. In other words, when was race a factor, and when was it the factor in enacting a redistricting plan? In any event, the Court's decision-and other ongoing suits-would result in new lines in several states in the mid 1990s and late 1990s.

The Voting Rights Act also came under court scrutiny in a more recent court case, *Reno v. Bossier Parish School Board* [98-405]. This case, involving redistricting of a school board in Louisiana, brought before the U.S. Supreme Court the question of whether Section 5 of the Voting Rights Act (the "preclearance" provisions) forbids preclearance of a redistricting plan enacted with a discriminatory but nonretrogressive purpose—in other words, could the Department of Justice reject a plan under Section 5 only if adoption of such a plan left minorities worse off than before. Government lawyers argued that the Department should be able to veto redistricting proposals based on broader grounds, such as a plan having a discriminatory purpose.

In yet another narrow 5 to 4 decision, the Supreme Court, in January of 2000, ruled that the U.S. Department of Justice cannot veto a proposed voting plan unless that plan leaves blacks in a worse position than before. Writing for the majority, Justice Scalia wrote that Section 5 "does not prohibit preclearance of a redistricting plan enacted with a discriminatory but nonretrogressive purpose." As Justice Scalia claimed, a proposed voting change cannot be denied preclearance simply because a violation of Section 2 is established. While dissenting justices, noting the past voting discrimination in the South, urged broader federal authority to intervene with such voting changes, Justice Scalia expressed concern that such a reading would "exacerbate the substantial federalism costs that the preclearance procedure already exacts."

It should be noted that even with the *Bossier* ruling, discriminatory voting practices could be challenged under Section 2 of the Voting Rights Act. However, there is no preclearance requirement under Section 2, under which a change must be challenged after enactment. Under Section 5, which applies only to a limited number of states or portions of

states, a proposed change cannot take effect unless previously approved by the attorney general or the federal district court in Washington.

In the late 1990s the question of how to most accurately count the populace became another controversy. Article I, Section 2 of the Constitution specifies an actual enumeration of persons for apportionment purposes, while Section 2 of the 14<sup>th</sup> Amendment mentions that representatives (congressmen) are to be apportioned among states “according to their respective numbers, counting the whole number of persons in each state.”

Of course, as America’s population has grown larger, counting every person has become problematical. In the 1990 Census, more than eight million people (mainly minorities) were missed, and four million people (mainly whites) were counted twice.<sup>67</sup> The 1990 Census, even though the most expensive in history, was said to have been the first in 50 years to produce a less accurate count than the previous Census.<sup>68</sup>

With the 1990 results in mind, there has been some push to include sampling with the traditional Census “head count.” The Census Bureau, joined by Democrats, wants to supplement the traditional “head count” with data to be obtained from a randomly selected national sample of 314,000 households, with information obtained from those households to be used to adjust population totals and make the 2000 Census more accurate.<sup>69</sup> Complete accuracy may appear to be difficult to achieve. Noting that there will never be 100 percent accuracy because some people refuse to be included, Census Bureau Director Kenneth Prewitt stated recently that “the census is an estimate of the truth.”<sup>70</sup>

The issue of sampling has resulted in intense debate over its legality, with support for and opposition to its use largely falling on partisan lines. Democrats hope that the use of sampling will increase the count of persons living in areas supportive of that party, helping the party to retain or gain seats in legislative bodies. Republicans, on the other hand, oppose the use of sampling for that very reason. The debate has intensified in state legislatures, which in most states are responsible for redrawing congressional and state legislative districts after each census. As of early June 2000, six state legislatures (Alaska, Arizona, Colorado, Kansas, New Jersey and Virginia) have banned the use of statistically-adjusted census data in realigning congressional and state legislative districts.<sup>71</sup> Similar measures, have passed in at least one legislative chamber in Louisiana, Michigan and Utah.<sup>72</sup>

The U.S. Supreme Court has had some opportunities to weigh in on the issue of undercounting. At the beginning of the 1990s, plaintiffs representing undercounted areas sought statistical adjustments to the actual count based on post-Census surveys. While agreeing to conduct such surveys, the U.S. Department of Commerce declined to report the statistically-adjusted counts as the “official” Census. In the summer of 1991, the secretary of commerce announced there would be no statistical adjustment based on those surveys to the apportionment and redistricting data released earlier that year, his reasoning in part being in deference to the long-standing practice of reliance on an actual enumeration. In 1996, the U.S. Supreme Court, in *Wisconsin v. City of New York* [000 U.S. U10208], upheld the secretary’s decision not to make a statistical adjustment.

Three years later, the Supreme Court, in *(U.S.) Department of Commerce v. U.S. House of Representatives* [98-404], ruled that sampling could not be used in determining population for the purpose of allocating congressional seats among the states. Left unclear, however, was whether sampling could be used to help draw legislative (congressional or state) districts. In response, the Census Bureau has announced it will produce two sets of population figures—one for apportioning U.S. House seats among the states and another set of numbers that could be used to draw congressional and state legislative districts.

# The Number of Congressional and State Legislative Seats at Stake in the South

## Congressional Seats at Stake

Since World War II, the clear trend of substantial population growth in the Sunbelt has impacted national politics by shifting dozens of congressional seats to those two areas and away from the Midwest and Northeast. In 1952, the South and West combined had 255 electoral votes and 197 seats in the U.S. House of Representatives, while the Midwest and Northeast combined had 276 electoral votes and 234 House seats. At that time, the largest state in electoral votes was New York (45), with California and Pennsylvania each tied with 32 electoral votes. Florida, today the nation's fourth largest state (behind California, Texas and New York), at that time had just 10 electoral votes, fewer than Alabama (11), Georgia (12), Missouri (13) and Virginia (12) and the same as Kentucky and Louisiana. Texas in 1952 was a significant player in the Electoral College, but its 24 electoral votes still trailed Illinois (27) and Ohio (25).

With four censuses having been held since 1952, the South over time has picked up 13 congressional seats, giving the region 189 electoral votes, 70 percent of the amount needed (270) to win the presidency. Although the 13-state Western region has picked up more seats during those four decades (40 seats altogether), the West still trails the South in electoral votes (119).<sup>73</sup>

While the South as a region has gained seats in the U.S. House of Representatives since 1952, the gains have been concentrated in just a few states. In fact, only five of the 16 Southern states (Florida, Georgia, Maryland, Texas and Virginia) have had a net gain of seats since that time. Those five states, when combined, had a 26-seat gain between 1952 and 1992, with Florida gaining 15 seats, Texas gaining eight seats, and Georgia, Maryland and Virginia each gaining one seat. Seven states, Alabama, Arkansas, Kentucky, Louisiana, Mississippi, Missouri and West Virginia, have had a combined loss of 13 seats, with West Virginia having lost three seats, Alabama, Arkansas, Kentucky and Missouri lost two seats each, and Louisiana and Mississippi each lost a seat. This pattern is reflective of the South's uneven population growth, with larger increases occurring along the Atlantic coast and in Texas with smaller increases (and in some cases, population decline) in many of the interior Southern states.

Note that population loss is not necessary for a state to lose representation in Congress. A state which grows slowly also is capable of losing seats. Population growth alone does not ensure a gain in representation; it is the rate of growth in a particular state when compared with other states which determines whether a state will gain seats.

Table 5 lists the number of congressional seats in the 16-state SLC region between 1952 and 1992:

<b>Number of U.S. House Seats in SLC States 1952-1992</b>						
<b>State</b>	<b>1952</b>	<b>1962</b>	<b>1972</b>	<b>1982</b>	<b>1992</b>	<b>Net Gain/Loss</b>
Alabama	9	8	7	7	7	-2
Arkansas	6	4	4	4	4	-2
Florida	8	12	15	19	23	+15
Georgia	10	10	10	10	11	+1
Kentucky	8	7	7	7	6	-2
Louisiana	8	8	8	8	7	-1
Maryland	7	8	8	8	8	+1
Mississippi	6	5	5	5	5	-1
Missouri	11	10	10	9	9	-2
North Carolina	12	11	11	11	12	None
Oklahoma	6	6	6	6	6	None
South Carolina	6	6	6	6	6	None
Tennessee	9	9	8	9	9	None
Texas	22	23	24	27	30	+8
Virginia	10	10	10	10	11	+1
West Virginia	6	5	4	4	3	-3
<b>Totals:</b>	<b>144</b>	<b>142</b>	<b>143</b>	<b>150</b>	<b>157</b>	<b>+13</b>

Source: Data compiled by the author.

While census results for 2000 still are being tabulated, according to 1999 estimates, 100,664,255 persons reside in the SLC region, up 11 percent from the 1990 census count of 89,299,626. About two-thirds of the region's population growth between 1990 and 1999 occurred in just four states, Florida, Georgia, North Carolina and Texas, with Florida and Texas accounting for close to half of the region's growth. Nearly 48 percent of the South's population growth during that nine-year period was attributable to natural increase (births minus deaths), with the remaining 52 percent attributable to migration (difference between people moving into and out of the region). In two states, Louisiana and West Virginia, population growth for the 1990s was attributed solely to natural population increase, with more people having moved out of than into each state. At the other extreme, some four-fifths of Florida's population growth between 1990 and 1999 was due to people moving into the state (much of that being international). Listed in Table 6 is population data for the South, comparing 1990 and 1999 and the percentage of population growth attributed to natural increase and migration.

Population growth in the SLC region between 1990-1999						
State	1990 Census	1999 Estimate	Population Increase	% Increase	% Growth Natural	% Growth Migration
Alabama	4,040,389	4,369,862	329,473	7.5%	55.2%	44.8%
Arkansas	2,350,624	2,551,373	200,749	7.9%	42.8%	57.2%
Florida	12,938,071	15,111,244	2,173,173	14.4%	18.9%	81.1%
Georgia	6,478,149	7,788,240	1,310,091	16.8%	40.3%	59.7%
Kentucky	3,686,892	3,960,825	273,933	6.9%	56.2%	43.8%
Louisiana	4,221,826	4,372,035	150,209	3.4%	100.0%	0.0%
Maryland	4,780,753	5,171,634	390,881	7.6%	79.8%	20.2%
Mississippi	2,575,475	2,768,819	193,144	7.0%	74.1%	25.9%
Missouri	5,116,901	5,468,338	351,437	6.4%	58.3%	41.7%
North Carolina	6,632,448	7,650,789	1,018,341	13.3%	37.4%	62.6%
South Carolina	3,486,310	3,885,736	399,426	10.3%	49.3%	50.7%
Tennessee	4,877,203	5,483,535	606,332	11.1%	37.0%	63.0%
Texas	16,986,335	29,044,141	3,057,806	15.3%	57.9%	42.1%
Virginia	6,189,197	6,872,912	683,715	9.9%	57.8%	42.2%
West Virginia	1,793,477	1,806,928	13,451	0.7%	100.0%	0.0%
<b>Totals:</b>	<b>89,299,626</b>	<b>100,664,255</b>	<b>11,364,629</b>	<b>11.3%</b>	<b>47.6%</b>	<b>52.4%</b>

Source: U.S. Census Bureau.

Until census population statistics are released early next year, it is anyone's guess as to the number of congressional seats the region as a whole will gain (keeping in mind some states may lose seats). However, there has been speculation about the subject in the last year, with various interpretations:

- ▶ **Election Data Services (EDS)**, a Washington-based consulting firm, has examined new state population estimates for 1999 and noted that based on those estimates, the size of the congressional delegations of 16 states would be changed, with 10 congressional seats shifted around the nation. The SLC region would gain two seats, with the three Southern states gaining seats being Florida (1), Georgia (1) and Texas (2) and the two Southern states losing seats being Mississippi (1) and Oklahoma (1). The West would see the biggest net gain with six additional seats—Arizona (2), California (1) Colorado (1), Montana (1) and Nevada (1). The Sunbelt's gain would come at the expense of the Northeast, which would lose five seats, and the Midwest, which would lose three seats.<sup>74</sup> Using 1999 estimates and estimating population growth between that time and the 2000 Census, EDS's 2000 projection apportionment study forecasts a slightly different outcome, with Georgia gaining a second seat in reapportionment (as opposed to just one) at the expense of Montana, which would retain only its current at-large congressman. In 1991, Georgia just narrowly missed gaining two seats (instead gaining just one), while in 1981 the state narrowly missed gaining another seat. In both cases an undercount of residents was apparently the cause of those events.
- ▶ The **Population Reference Bureau (PRB)**, another firm based in Washington, also projects a net gain of two congressional seats for the SLC region. According to

their estimates, Florida and Georgia each should gain a seat and Texas should gain two seats, while Mississippi and Oklahoma each would lose a seat. The Bureau differs somewhat from Election Data Services in projecting for the West, with the Bureau not projecting a gain for Colorado this time. Projecting even further into the future, PRB forecasts an overall gain of seven seats in the Southern region between 1990 and 2020 and 17 seats for the West over that time, with the Midwest and Northeast each losing a dozen seats.<sup>75</sup> The biggest loser would be New York state, with a loss of five seats.<sup>76</sup>

While only a handful of Southern states will gain seats in Congress this time, the region as a whole will continue to have a greater say in presidential politics thanks to these additional seats.

## State Legislative Seats at Stake and Timeframe for Redrawing Districts

In the 16 SLC states, there currently are 2,588 state legislators—658 senators and 1,930 representatives. The larger the legislative chamber, the more players there are in drawing up new district lines, complicating the task. In the SLC region, the smallest state Senate has 31 members (Texas), while the largest has 56 members (Georgia). State House sizes vary from 99 members in Tennessee to 180 members in Georgia.

While by law all Southern states must redraw their state legislative boundaries every decade, the level of urgency in doing so varies from state to state because of lengths of legislative terms and election cycles. Virginia has the tightest timetable, in that its House of Delegates will be elected in November 2001 (the Senate, whose members serve four-year terms will not be elected again until 2003). Legislators there will be busy next spring and perhaps next summer in designing new House district boundaries. At the other extreme, the South Carolina Senate, up for election this November, will not be elected under new district lines until 2004.

## **Redistricting 101: State Profiles and Projections for 2001-2002**

Generally, redistricting of state legislative and congressional districts is a matter of interaction between the legislature and the governor. There are, to be sure, exceptions, not just in the South (such as in Arkansas) but elsewhere. Still, the fact that redistricting is mainly a function of legislatures and governors means that both major parties are focusing attention on state legislative races throughout the country this year to try to gain an “upper hand” in redistricting. In many states, the partisan alignments are close, with a shift of just a few seats changing party control.

In the South, one major difference between upcoming redistricting and that of the early 1990s is the changed partisan composition of many Southern state legislatures. In 1991 and 1992, Republicans did not control a single legislative chamber in the 16 SLC states. Of the 32 Southern legislative chambers, only in eight (Florida Senate and House, Missouri House, South Carolina House, Tennessee Senate and House, Texas House and Virginia House) did Republicans hold more than one-third of all seats, and only in three (Florida Senate, Tennessee Senate and House) did Republicans occupy more than two-fifths of all legislative seats. At that time, as had been true for many years, redistricting was mainly the work of Democrats. However, in the first cycle of elections following reapportionment (1991-1992), Republicans made significant gains in Georgia, Mississippi, South Carolina and Virginia. By the beginning of 2000, Republicans had won majorities in the Florida Senate and House, Kentucky Senate, South Carolina House, the Texas Senate and Virginia Senate and House, with the party only two seats short of a majority in the Missouri, South Carolina and Tennessee Senate. Republicans won a majority of seats in the North Carolina House in 1994 and 1996, but Democrats regained control in the 1998 election. Altogether, Republicans now hold one-third or more of legislative seats in 21 of 32 Southern state legislative chambers and more than two-fifths of seats in 15 chambers.

Republican governors also have become more common in the SLC region. In 1991, there were 11 Democratic governors in the region and just five Republican ones; today it is an even split, with eight each.

Listed in Table 7 is information showing party control of SLC state legislatures and governorships as of June 2000.

<b>Partisan control, Southern state legislatures (June 2000)</b>			
<b>State</b>	<b>Senate Majority</b>	<b>House Majority</b>	<b>Governor</b>
Alabama	Democratic	Democratic	Democratic
Arkansas	Democratic	Democratic	Republican
Florida	Republican	Republican	Republican
Georgia	Democratic	Democratic	Democratic
Kentucky	Republican	Democratic	Democratic
Louisiana	Democratic	Democratic	Republican
Maryland	Democratic	Democratic	Democratic
Mississippi	Democratic	Democratic	Democratic
Missouri	Democratic	Democratic	Democratic
North Carolina	Democratic	Democratic	Democratic <sup>77</sup>
Oklahoma	Democratic	Democratic	Republican
South Carolina	Democratic	Republican	Democratic
Tennessee	Democratic	Democratic	Republican
Texas	Republican	Democratic	Republican
Virginia	Republican	Republican	Republican
West Virginia	Democratic	Democratic	Republican

Source: Compiled by the author.

Altogether, if redistricting had been held this past winter, Democrats would have had complete control in six SLC states -Alabama, Georgia, Maryland, Mississippi, Missouri and North Carolina.<sup>78</sup> Republicans would have had control in Texas and Virginia. The remaining eight states would have had some form of split control.

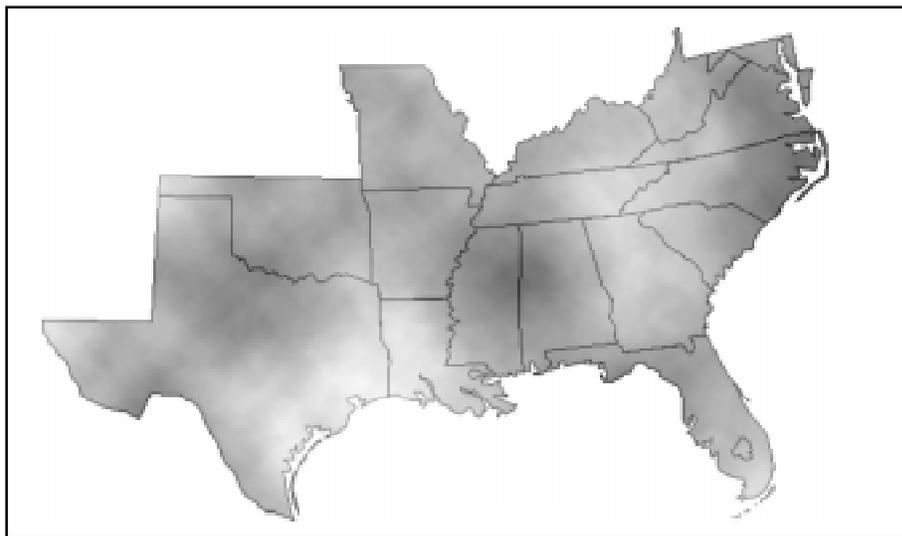
Given the variety of party control situations currently in the South, it is no surprise that this year's legislative elections are a top priority for both parties. Only in Southern states not having any state legislative or gubernatorial elections this year is it certain which parties will be in control for redistricting next year and in 2002. Table 8 lists the number of Southern state legislators on the ballot this November.

<b>Southern State Legislators on the November 2000 Ballot</b>		
<b>State</b>	<b>Senate</b>	<b>House</b>
Alabama	None (Last up in 1998)	None (Last up in 1998)
Arkansas	Half (17)	All (100)
Florida	Half (20)	All (120)
Georgia	All (56)	All (180)
Kentucky	Half (19)	All (100)
Louisiana	None (Last up in 1999)	None (Last up in 1999)
Maryland	None (Last up in 1998)	None (last up in 1998)
Mississippi	None (Last up in 1999)	None (last up in 1999)
Missouri	Half (17)	All (163)
North Carolina	All (50)	All (120)
Oklahoma	Half(24)	All (101)
South Carolina	All (46)	All (124)
Tennessee	Half (16)	All (99)
Texas	Half (15)	All (150)
Virginia	None (Last up in 1999)	None (Last up in 1999)
West Virginia	Half (17)	All (100)

Source: Website of the National Conference of State Legislatures.

## **Southern States Redistricting Highlights: 1990 and Beyond**

Following is a summary for each of the SLC states listing how redistricting is performed; redistricting highlights from the 1990s; and an outlook toward redistricting for the 2001-2002 sessions. The 2001-2002 redistricting outlook is based largely on 1999 population estimates as released by the Census Bureau earlier this year. The actual census count for 2000 will not be released until the end of the year, and it is possible that results of the census may vary widely from previous estimates. The outlook compares the 1990 population of counties in each Southern state with 1999 estimates and uses the growth (or in some instances, decline) in population during that time to analyze areas of each state which will gain legislative and/or congressional seats and which ones may lose seats.



## Alabama

Article IX, Sections 198-200 of the Alabama Constitution require the legislature to reapportion itself, with the legislature also undertaking congressional redistricting. In both instances, the governor has veto power, and state legislative/congressional redistricting plans must obtain preclearance from the Department of Justice or the U.S. District Court for the District of Columbia.

*State Legislative Redistricting in the 1990s:* In 1991, the Alabama Legislature consisted of 28 Democrats and seven Republicans in the Senate, along with 82 Democrats and 23 Republicans in the House. Because the entire Legislature was not up for election again until 1994 (legislators serve four-year terms), legislative redistricting was not as rushed as in other Southern states which had legislative elections in 1992. While legislative reapportionment plans were introduced in the Senate and House, they never came to a vote; instead, a Montgomery circuit court approved a plan eventually adopted that included eight majority-black districts in the 35-member Senate and 24 majority-black districts in the 105-member House. The current partisan composition of the Alabama Senate is 24 Democrats and 11 Republicans, while the House has 69 Democrats and 36 Republicans.

*Congressional Redistricting in the 1990s:* Alabama's U.S. House delegation in 1991 consisted of seven members, five Democrats and two Republicans. There were no majority-black districts at that time, although three districts at the time were 30 percent or more black in population. A plan drawn up by a federal court in 1992 included a new, 67 percent majority black 7<sup>th</sup> Congressional District, running roughly between Birmingham and Montgomery and including much of rural west Alabama. Portions of four other districts were included in this district. Republicans took advantage of the new congressional plan to pick up an additional seat in Birmingham (the 6<sup>th</sup>), a district that had become more Republican because Democratic portions of the district had been placed in the new 7<sup>th</sup> District. Efforts by black activists to obtain a second majority-black district in the state were unsuccessful. Republicans gained two more seats in 1996 following the retirement of two veteran Democrats. In 1997 a lawsuit was filed challenging the boundaries of the majority-black district, but all parties agreed to drop the matter the following year. The current House delegation consists of two Democrats and five Republicans.

*Outlook for 2001-2002 Redistricting:* The state's suburbs, especially those around Birmingham, Huntsville and Montgomery, are expected to gain seats in the state Legislature. One suburban county in the Birmingham area (Shelby County) grew 47 percent between 1990 and 1999, almost enough to gain one seat in the state House of Representatives, while two other counties around Birmingham (Blount and St. Clair) each grew by more than 20 percent. Similarly, Autauga and Elmore Counties, adjoining Montgomery, grew more than 25 percent. On the other hand, 13 counties, mostly rural and located in south Alabama-lost population in the 1990s.

With regard to congressional redistricting, the state's majority-black congressional district (the Birmingham-Montgomery 7<sup>th</sup> District) includes some population-losing counties, and thus will likely have to gain residents from other districts, perhaps from the suburban Birmingham 6<sup>th</sup> District or from the Montgomery-based 2<sup>nd</sup> District. The 7<sup>th</sup> District may also have a smaller black percentage next time to lessen the chances of a racial gerrymandering lawsuit.





# Arkansas

## Arkansas

Article 8 of the Arkansas Constitution mandates creation of a Board of Apportionment, responsible for apportionment of the Arkansas General Assembly. The board consists of the governor, secretary of state, and attorney general. The apportionment plan is then filed with the secretary of state and becomes effective within 30 days unless proceedings for revisions to the plan are instituted in the Arkansas Supreme Court. The General Assembly is responsible for congressional redistricting, though the governor may veto congressional plans.

*Congressional Redistricting in the 1990s:* In 1991, Arkansas's U.S. House delegation consisted of three Democrats and one Republican. Only six counties were shifted in the state's 1991 plan (with Arkansas being the first state to enact congressional redistricting following the 1990 Census). In 1992, Republicans won an additional congressional seat in the state. Although the state's black population is small (16 percent) and dispersed, a lawsuit was filed by the state Republican party co-chairman to create a "black influence" district (43 percent black). However, the state's 1992 plan has continued to remain in effect to this day.

*State Legislative Redistricting:* In 1991, the Arkansas Senate comprised 31 Democrats and four Republicans, while the House had 92 Democrats and eight Republicans. New districts for legislators, as drawn by the Board of Apportionment, included three majority-black districts in the 35-member Senate and 13 majority-black districts in the 100-member House. The partisan composition of the Senate today is little changed from 1991 (now 29 Democrats and six Republicans), although Republicans have made fairly significant inroads in the House, gaining 17 seats in the 1990s (currently 75 Democrats and 25 Republicans).

*Outlook for 2001-2002 Redistricting:* The northwest corner of Arkansas (Ozarks) and suburban Little Rock will benefit the most from state legislative redistricting. Benton and Washington Counties (around Fayetteville) have grown especially fast. Around Little Rock, Faulkner County grew by 33 percent between 1990 and 1999, Saline County grew by 22 percent and White County grew by almost 20 percent. However, nearly two-fifths (28) of the state's 75 counties lost population over that nine-year period, almost all of them south and east of Little Rock.

As for congressional redistricting, the 3<sup>rd</sup> District (Fort Smith/Fayetteville) is the state's most populated congressional district, with 712,287 people residing there in 1999. Three-fifths of Arkansas's growth in the 1990s occurred just in that district, which will have to be reduced in size to meet equal population requirements. While the Little Rock-based 2<sup>nd</sup> District (636,772 persons) has grown at about the statewide average, the slowly-growing rural 1<sup>st</sup> District (612,060 residents) and 4<sup>th</sup> District (590,254 residents) will have to gain population for the 2002 election cycle.

## Florida

Article 3, Section 16 of the Florida Constitution requires the Legislature in the second year following each census by joint resolution to “apportion the state...into not...more than 40 consecutively-numbered senatorial districts...and into not...more than 120 consecutively numbered representative districts.” If during its regular session the Legislature does not adopt a plan, then the governor must call a special apportionment session. If this special session does not result in adoption of a joint resolution, then the attorney general petitions that state’s supreme court to make such apportionment. Within 60 days of that petition, the court files an apportionment order with the secretary of state.

Florida’s Constitution also provides that in the event the Legislature passes a joint resolution of apportionment, the attorney general must petition the state supreme court for a declaratory judgment determining the validity of the apportionment. If the court rules that the apportionment made by the Legislature is invalid, then the Legislature is called into special session to adopt a plan conforming to the judgment of the court. If the special session produces a plan which is invalid according to the court, then the court files with the secretary of state an order making such apportionment.

Legislative and congressional redistricting plans must also receive the approval of the U.S. Department of Justice, pursuant to Section 5 of the Voting Rights Act.

*State Legislative Redistricting:* In 1991, the Florida Senate consisted of 23 Democrats and 17 Republicans, while the House had 74 Democrats and 46 Republicans. Redistricting of the Legislature led to the creation of two majority-black Senate seats (with two others just under 50 percent black). Furthermore, three majority-Hispanic districts were created. In 1992, Republicans reached parity in the Senate and won a majority there in 1994. In 1996, Republicans won a majority in the state House. Today, the Florida Senate has 15 Democrats and 25 Republicans, while the House has 45 Democrats and 75 Republicans.

*Congressional Redistricting in the 1990s:* Florida in 1991 had a U.S. House delegation of 10 Republicans and 9 Democrats—the only Southern state at that time to send a majority Republican delegation to Washington. In 1991, there were no majority-black districts in the state, though three districts had a black population of between 25 and 40 percent. One district, with a majority Hispanic population, was represented by a Cuban-American. Florida gained four seats following the 1990 Census, more than any other state but California. Despite a Democratic majority in both houses, the Legislature was unable to agree on a congressional map. In May of 1992, a federal court adopted a plan, among the features of which were:

- ▶ Three majority-black districts (though only in one were blacks a majority of the voting-age population). One district (the 3<sup>rd</sup>) was 50 percent black (voting-age population), a U-shaped district connecting Gainesville, Jacksonville, Daytona Beach and Orlando; another district (the 17<sup>th</sup>) was located in Miami and was 54 percent black in voting-age population, while another district (the 23<sup>rd</sup>) was 52 percent black in population (though just 46 percent black in voting-age population) and connected a number of black neighborhoods north of Miami, through Fort Lauderdale and Palm Beach. Blacks won all three of these seats in 1992.
- ▶ A second majority-Hispanic district (70 percent Hispanic in voting-age population) was created in the Miami area and won by a Cuban-American.

In 1992, Republicans gained three of the state’s four new congressional seats, resulting in a House delegation of 13 Republicans and 10 Democrats. At that time, Florida was the only state among the country’s 10 largest states with a majority Republican U.S. House delegation.



As in several other Southern states, the battle over congressional redistricting did not end with the 1992 election cycle; four years later, Florida's 3<sup>rd</sup> District was ruled unconstitutional, and new lines came into being.

*2001-2002 Redistricting Outlook:* Based on 1999 estimated population growth, not a single county in Florida has lost population since 1990, unique among Southern states. However, the growth rate has varied across the state. Areas which have grown at a rate below the statewide average of 17 percent include, among others, Dade County (Miami), Escambia County (Pensacola) Leon County (Tallahassee), and Pinellas County (St. Petersburg). Areas that have grown above the statewide average and thus are destined to gain legislators include the Fort Myers/Naples area in southwest Florida, Broward and Palm Beach Counties in southeast Florida, the Ocala-Orlando corridor in central Florida and several counties around Duval County (Jacksonville), such as Nassau County and St. John's County (St. Augustine).

As for congressional redistricting, deciding the location of Florida's new congressional seat will be a battle. Among the districts likely to be reduced because of rapid growth are the Jacksonville-St. Augustine 4<sup>th</sup> District, the Fort Myers-Naples based 14<sup>th</sup> District, and the 15th District southeast of Orlando.

## Georgia

Article 3, Section 2 of the Georgia Constitution requires the General Assembly to apportion its state legislative districts. Legislators also draw the boundaries of the state's congressional districts. The governor has veto authority over both state legislative and congressional redistricting. Redistricting plans must be precleared under Section 5 of the Voting Rights Act.

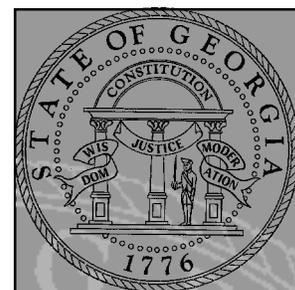
*State Legislative Redistricting in the 1990s:* In 1991, the Georgia Senate had 45 Democrats and 11 Republicans, while the House had 145 Democrats and 35 Republicans. A redistricting plan adopted by legislators in 1992 and approved by the U.S. Department of Justice included 13 majority-black districts in the 56-member Senate and 42 majority-black districts in the 180-member House. Republicans gained approximately 20 seats in the General Assembly in 1992 and a similar number over the next two years through special elections and the 1994 regular election cycle. Subsequent legal action resulted in a redrawing of certain legislative districts in 1996, 1997 and 1998, reducing the number of majority-black Senate and House districts. February 2000 voter registration data indicate that 12 of Georgia's 56 state Senate districts are majority-black, with another seat in suburban Clayton County outside of Atlanta close (49 percent) to being majority-black. Thirty-six of the state's 180 House districts are majority black in voter registration. Currently, the Senate's party composition is 34 Democrats and 22 Republicans, while the House includes 103 Democrats and 77 Republicans.

*Congressional Redistricting in the 1990s:* In 1991, the U.S. House delegation included nine Democrats and one Republican, with one district being majority black (67 percent). Because of large population growth, the state gained an additional congressional in 1990. The following year, under considerable pressure from the Department of Justice, legislators created a 52 percent (voting-age population) black district that included portions of southwest and central Georgia (2<sup>nd</sup> Congressional District) and a 60 percent (also in voting-age population) black district connecting suburban Atlanta with portions of Augusta and Savannah. Another feature of the plan was the creation of a heavily Republican district in northside Atlanta.

Blacks won the two new majority-black seats in 1992, while Republicans picked up three additional seats, two in suburban Atlanta and one along the Georgia coast. The three Republican gains were in large part attributed to redistricting. In one suburban district (the 4<sup>th</sup>) adjoining the-then majority-black 11<sup>th</sup> District, a Republican was elected by less than 2,700 votes (a 1 percent margin). The shift of a few precincts from the 11<sup>th</sup> to the 4<sup>th</sup> would have elected a Democrat in the latter district that year.

In 1994, Republicans picked up three seats, two of which came from defeating incumbents; one Democratic congressman in the 9<sup>th</sup> District became Republican the following year. In June of 1995, the U.S. Supreme Court, in *Miller v. Johnson*, invalidated Georgia's congressional map, claiming the racially-gerrymandered plan was a violation of the Constitution's Equal Protection Clause. The Georgia General Assembly, called into special session that summer to draw a new plan, could not agree on one, forcing a federal court to do so in late 1995. Georgia's new map left only one majority-black district (the Atlanta-based 5<sup>th</sup> District), with the other two black incumbents forced to run in districts which, though majority white, still had a large minority of black voters. The new plan split only six of the state's 159 counties, following county lines everywhere outside the Atlanta area. All 11 incumbents, three Democrats and eight Republicans, were re-elected in 1996 and 1998.

*Outlook for 2001-2002 Redistricting:* Suburban areas around Atlanta and the state's other major cities will gain more state legislative seats, at the expense of rural south Georgia and the urban cores of the state's major cities such as Atlanta, Augusta and Macon. Gwinnett County, the fastest-growing county in the state in numbers (but not percentage) could gain a seat in the state Senate and three in the state House, while northern Fulton County, Forsyth County and several other suburban areas will gain seats as well.



With regard to congressional redistricting, significant alterations are certain in suburban Atlanta. The state's largest district, the 6<sup>th</sup> (which covers the northern suburban arc of the city) is by far the state's largest district and at least a portion of it may be placed in a newly-created district. Similarly, the 3<sup>rd</sup>, 7<sup>th</sup>, 9<sup>th</sup> and 11<sup>th</sup> districts around the city experienced significant population growth and will have to be reduced in size. The two districts in the heart of Metro Atlanta, the suburban, DeKalb-based 4<sup>th</sup> and urban, Fulton-based 5<sup>th</sup> Districts, are not likely to be changed substantially. Four districts in south and east Georgia probably will not require major changes to meet population standards, although lines may be shifted to boost Democratic chances of regaining seats. Three of these four districts-the 1<sup>st</sup>, 8<sup>th</sup> and 10<sup>th</sup>-currently are held by Republicans.

## Kentucky

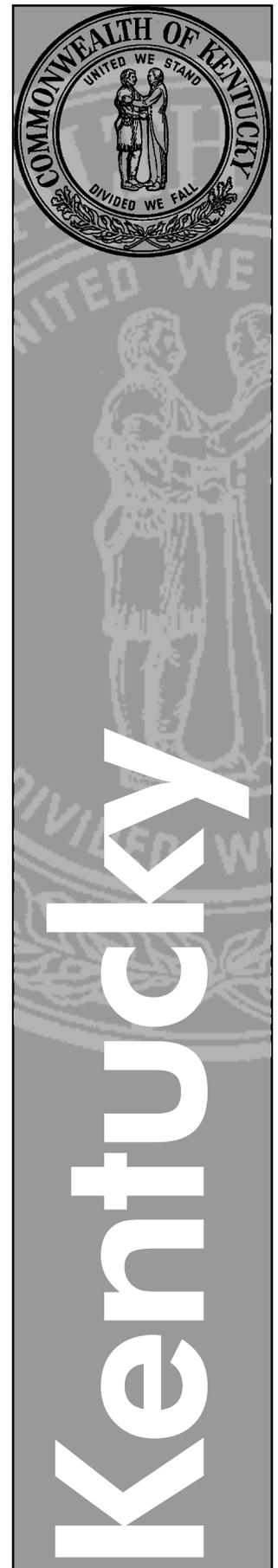
Section 33 of the Kentucky Constitution requires the General Assembly “...every ten years...(to) redistrict the State (legislature)...” Legislators also draw boundaries for the state’s congressional districts.

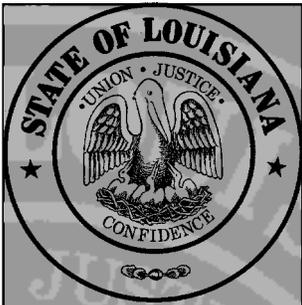
*State Legislative Redistricting in the 1990s:* In 1991, the Senate had 27 Democrats and 11 Republicans, while the House was composed of 68 Democrats and 32 Republicans. There also was one majority-black Senate seat and there were two majority-black House seats. The state completed redistricting in 1991, the final plan including a majority-black Senate district in Louisville and three majority-black House districts, two in Louisville and one in Lexington. Through a combination of winning new seats and party-switching by seated legislators, the Kentucky Senate today is majority Republican (18 Democrats, 20 Republicans), but Democrats retain a large majority in the House, with 65 of the chamber’s 100 seats.

*Congressional Redistricting in the 1990s:* In 1991, Kentucky’s U.S. House delegation consisted of four Democrats and three Republicans. There were no majority-black districts at that time, with six of the then-existing seven districts being less than 10 percent black and a Louisville district being approximately 22 percent black. The state lost a seat following the 1990 Census; one Republican who retired in 1992, was replaced by a Democrat, and the Legislature merged two districts in eastern and southeastern Kentucky into a new mountain-based district. Every district had to gain population because of the loss of a congressional seat, with the Louisville-based 3<sup>rd</sup> District being 18 percent black in population (16 percent in voting-age population) under the state’s 1992 plan. Republicans gained three seats in 1994. Today the state’s U.S. House delegation comprises one Democrat and five Republicans.

*Outlook for 2001-2002 Redistricting:* Much of the state’s population growth in the 1990s has been concentrated in a triangle in northern Kentucky running between Covington, Lexington and Louisville. As some examples, suburban Boone County (outside Covington) grew 45 percent between 1990 and 1999, while Oldham County (outside of Louisville) grew 38 percent and suburban Lexington’s Scott County grew 35 percent. These and a few other fast-growing counties will gain representation at the expense of rural counties at the western and eastern edges of the state; seven of the 13 Kentucky counties that lost population during that nine-year period are in southeastern Kentucky’s 5<sup>th</sup> Congressional District.

With regard to congressional redistricting, no district is likely to need radical alterations to meet the required population standards, although it seems likely the Louisville-based 3<sup>rd</sup> District, the state’s smallest district with regard to registered voters, will have to gain population, as may the rural-based 1<sup>st</sup> and 5<sup>th</sup> Districts.





# Louisiana

## Louisiana

Article 3, Section 6 of the Louisiana Constitution requires the Legislature to “...reapportion the representation in each house...” If the Legislature fails to do so, the state supreme court, upon petition of an elector, is required to reapportion the Senate and House. The Legislature also is responsible for congressional redistricting, which falls under Section 5 (pre-clearance) of the Voting Rights Act.

*State Legislative Redistricting in the 1990s:* In 1991, the Senate had 33 Democrats and six Republicans, while the House had 86 Democrats, 18 Republicans and one independent. 1990s’ redistricting led to the creation of 10 majority-black districts in the Senate and 26 seats in the House.

*Congressional Redistricting in the 1990s:* In 1991, the state’s U.S. House delegation included four Democrats and four Republicans. With virtually no population growth in the 1980s, the state lost a seat following the 1990 Census, forcing two Republican incumbents into the same district. To meet the demands of the revised Voting Rights Act, legislators drew a second majority-black district (63 percent black in voting-age population) a “Z-shaped” district running along the state’s northern and eastern border. Two blacks were elected in 1992 from the state’s majority-black districts.

While the New Orleans-based majority-black district was compact and aroused little debate, the other district soon came under fire. In *Hays v. Louisiana*, a federal judicial panel in the closing days of 1993 declared the then-existing map unconstitutional. In response, the Legislature drew another plan, with the second district reduced from 63 percent to 55 percent black in voting-age population. In August of 1994, a federal court disallowed this new plan but allowed it to be used for the 1994 election cycle. A subsequent redrawing eliminated the black majority in the second district, and the black incumbent then opted not to seek re-election in 1996. Currently, the state’s House delegation in Washington consists of two Democrats and five Republicans.

*2001-2002 Redistricting Outlook:* More than one-third of Louisiana’s parishes (counties) lost population in the 1990s, with about two-thirds of those parishes being in northern and central Louisiana from Alexandria onward. In southern Louisiana, Orleans Parish (New Orleans) has continued to lose population, while adjoining Jefferson Parish remained unchanged. St. Tammany Parish, outside of New Orleans, had the largest absolute gain between 1990 and 1999 (48,000 persons), about one-third of the state’s net gain of approximately 150,000 persons. Ascension and Livingston Parishes near Baton Rouge also had significant growth during that time.

As for congressional redistricting, the New Orleans-based 2<sup>nd</sup> District will have to gain residents, the adjoining 1<sup>st</sup> District being the most likely source of additional residents. Minor changes probably will be needed in the other five districts in order to meet equal population requirements.

## Maryland

Article 3, Section 5 of the Maryland Constitution requires the governor to submit a legislative redistricting plan to the Senate President and Speaker of the House of Delegates, who introduce the plan as a joint resolution to the General Assembly. Legislators may adopt their own plan, which, if adopted within 45 days of the regular session of the General Assembly (in the second year following a census) becomes law. However, if legislators do not adopt their own plan within 45 days, the governor's plan, as presented to the General Assembly, becomes law. The Maryland Constitution also grants to its court of appeals original jurisdiction to review state legislative redistricting (upon petition of any registered voter) and the court may grant relief if it finds the redistricting plan "is not consistent with the requirements of either the Constitution of the United States of America, or the Constitution of the State of Maryland."

*State Legislative Redistricting in the 1990s:* As of 1991, Maryland's Senate included 38 Democrats and nine Republicans, while the House had 116 Democrats and 25 Republicans. The redistricting plan adopted included nine majority-black Senate districts, while the House plan included one single-member majority black district and nine multimember (three seats per district) majority-black districts, for 28 majority-black seats. Currently, the Senate has 33 Democrats and 14 Republicans, while the House has 106 Democrats and 35 Republicans.

*Congressional Redistricting in the 1990s:* Maryland's 1991 House delegation included five Democrats and three Republicans; one district (the Baltimore-based 7<sup>th</sup> District) was 77 percent black. With significant black population growth in suburban Washington D.C., the state's 1992 plan included a second black-majority district (56 percent black in voting-age population) in portions of Montgomery and Prince George's County; a black state senator won that district. Two incumbents, a Democrat and a Republican, were placed in the same district under the plan, with the Republican narrowly winning in 1992; also that year, Republicans picked up a seat in western Maryland. The state's congressional delegation thus consisted of four Democrats and four Republicans after the 1992 election, a ratio which remains unchanged at this time.

*2001-2002 Redistricting Outlook:* Montgomery County, located just outside Washington, D.C., was the state's fastest-growing county in the 1990s in raw numbers (nearly 90,000 new persons). Several other suburban counties, such as Anne Arundel County (Annapolis) and Frederick County, also will benefit from redistricting. On the other hand, the city of Baltimore continues to lose population (a decrease of 103,000 between 1990 and 1999), and the westernmost portion of the state (west of Hagerstown) has experienced little population growth in the 1990s, suggesting state legislative seat losses for the 2002 election cycle.

As for congressional redistricting, the city of Baltimore-based 7<sup>th</sup> District likely will need to gain population, as may the 3<sup>rd</sup> District, with suburban-dominated districts such as the 6<sup>th</sup> and 8<sup>th</sup> likely to contract to meet population requirements.





## Mississippi

Article 13, Section 254 of the Mississippi Constitution requires the Legislature to apportion the state into senatorial and representative districts, with the governor calling a special session if legislators fail to approve a plan during the regular session. If a special session does not result in an adopted plan, then a five-member commission, including the chief justice of the state supreme court, the attorney general, secretary of state, Speaker of the House and President Pro Tempore of the Senate, assumes responsibility for apportioning legislative districts. Mississippi Revised Statute (MRS) 5-3-91 establishes a standing joint legislative committee on reapportionment, consisting of 12 state senators and 12 state representatives, which is responsible for drawing a plan to apportion the Senate and House. The committee's plan then is submitted for legislative approval.

With regard to congressional redistricting, MRS 5-3-121 implements a standing joint congressional redistricting committee, also consisting of 24 legislators, to draw congressional boundaries. The congressional plan then is submitted to the Legislature for approval. Federal approval is required for redistricting of both legislative and congressional districts.

*State Legislative Redistricting in the 1990s:* In 1991, the Senate had 43 Democrats and nine Republicans, while the House had 104 Democrats and 18 Republicans. In the 1990s, redistricting included the creation of 12 majority-black Senate districts and 37 House districts. Republicans made inroads in both chambers in the 1990s, and they now occupy 18 seats in the Senate and 33 seats in the House.

*Congressional Redistricting in the 1990s:* In 1991, Mississippi had an all-Democratic House delegation of five members. One district, based in the Delta, was majority-black. Minor changes were made in congressional boundaries in 1992, affecting just 13 of the state's counties. Republicans gained one seat in 1994 and 1996 when veteran Democratic incumbents retired. A seat in southwest Mississippi went to the Republicans when the Democratic incumbent switched parties, but in 1998 Democrats regained the seat. Mississippi's U.S. House delegation thus stands at three Democrats and two Republicans.

*2001-2002 Redistricting Outlook:* The eastern portion of the state is likely to gain seats at the expense of the western edge. The state's three major growth areas include DeSoto County (the Mississippi suburbs of Memphis, Tennessee), the suburbs of Jackson (Madison and Rankin Counties) and the Gulf Coast in and around Biloxi. In absolute numbers, the state's fastest-growing county between 1990 and 1999 was DeSoto County, which gained nearly 35,000 persons, a 50 percent increase, with Rankin and Madison Counties ranking second and third, respectively. Counties along or near the Mississippi River are expected to lose seats. Eighteen of the 24 counties in the state which lost population during that period are located along or west of Interstate 55 (concentrated in the Delta area north of I-20 and west of I-55).

As for congressional redistricting, as one observer recently stated, "The big battle here is making sure everyone answers the census so the state won't lose a congressional seat."<sup>79</sup> Some projections have the state losing a congressional seat because of sluggish growth in the 1990s. All but four of the state's 24 counties that lost population in the 1990s were either in the Delta-based 2<sup>nd</sup> or Jackson-based 4<sup>th</sup> Districts. In 1990, each district had about 515,000 residents. If the state loses a seat, the average district size (based on a statewide population of nearly 2.8 million) will approach 700,000, with the state's remaining districts requiring a major overhaul, with none of the existing districts having anywhere close to that number. However, if the state keeps all five seats, only modest boundary changes likely would be needed.

## Missouri

Article 3, Section 2 of the Missouri Constitution provides for apportionment of the Missouri House, while Article 3, Section 7 provides for the apportionment of the Missouri Senate. In both instances, an apportionment commission is appointed, as follows:

*State Senate:* The state committee of each of the two parties casting the highest vote for governor at the last election selects a list of 10 persons, then submits the list to the governor, who then appoints a 10-member commission (five from each party). The commission, within six months of appointment, files a final plan with the secretary of state. If the commission fails to meet this deadline, the state supreme court then appoints a commission of six judges (appointed from the judges of Missouri's appellate courts) to complete the task.

*State House:* The congressional district committee of each of the two parties casting the highest vote for governor in the last preceding election chooses two members of its party as nominees for reapportionment commissioners. The governor then appoints a commission consisting of individuals from each list (a Democrat and Republican from each district), thus creating the commission. This commission, within six months of appointment, must file a final apportionment plan with the secretary of state. Should it fail to do so, then for that purpose a commission of six members is appointed by the State Supreme Court from among the judges of the appellate courts of that state to create an apportionment plan.

The Missouri Constitution prohibits the members of both the Senate and House apportionment commissions from holding office in the Legislature for four years following the filing of a final plan of apportionment. Also prohibited is submission of any reapportionment plan to a referendum.

*State Legislative Redistricting in the 1990s:* In 1991, the Senate had 23 Democrats and 11 Republicans, while the House had 98 Democrats and 65 Republicans. Legislative redistricting for the 1990s included four majority-black Senate districts and 14 majority-black House districts. Today the Missouri Senate has 18 Democrats and 16 Republicans, while Democrats also retain a narrow majority in the House, holding 85 seats to 76 for Republicans, one independent and one vacancy.

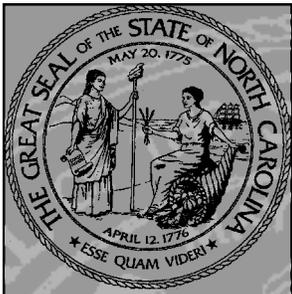
*Congressional Redistricting in the 1990s:* The state's 1991 U.S. House delegation included six Democrats and three Republicans and included a 56 percent black district in the St. Louis area. Though with only one majority-black district at that time, the state also had (between 1987 and 1995) a second black congressman who was elected from a district in Kansas City which was 26 percent black. The state's 1992 plan made minor changes to the nine districts, affecting only a small number of counties; however, one district in suburban St. Louis changed just enough to help elect a Republican over an incumbent Democrat in 1992, while an incumbent Republican in northwest Missouri lost to a Democrat that year. Republicans gained another seat in 1996, leaving the current delegation at five Democrats and four Republicans.

*2001-2002 Redistricting Outlook:* In the Legislature, rural areas will continue to lose representation, especially counties in the northern portion of the state (north of the Missouri River) and in the "boot heel" (southeastern corner of Missouri). The city of St. Louis, with a population loss of over 60,000 since 1990, could lose three seats in the state House. St. Louis County (a separate entity from the city of St. Louis), with minimal population growth between 1990 and 1999 (about 2,700 new residents) may lose representation. Most of the state's growth has been in three areas—southwest Missouri (the Springfield/Branson area), the Kansas City suburbs (Cass, Clay and Platte Counties) and the St. Louis suburban counties of Franklin, Jefferson and St. Charles (with St. Charles alone having grown by nearly 68,000 persons between 1990 and 1999). Accordingly, those three areas will see additional representation.

Congressional redistricting will push the St. Louis 1<sup>st</sup> District further out, which in turn will force the suburban 2<sup>nd</sup> and 3<sup>rd</sup> Districts outward.



# MISSOURI



# North Carolina

## North Carolina

Article 2, Sections 3 and 5 of the North Carolina Constitution requires the General Assembly to apportion the Senate and House of Representatives. Legislators also devise boundaries for congressional districts. Article 2, Section 22 of the State Constitution denies the governor any authority to veto congressional or state legislative redistricting plans adopted by the General Assembly, but such plans, under the Voting Rights Act, still must be approved by the U.S. Department of Justice.

*State Legislative Redistricting in the 1990s:* When redistricting began in 1991, the Senate and House were both controlled by the Democrats, 36 to 14 in the Senate and 82 to 38 in the House. Plans adopted by the Legislature in the summer of 1991 were rejected by the U.S. Department of Justice in the final weeks of that year, leading to a special legislative session beginning in the final days of 1991 and continuing into the winter of 1992. Legislators then adopted redistricting plans (later approved by the U.S. Department of Justice) that created seven minority-majority Senate districts and 19 House minority-majority seats (17 single-member districts and one two-member district). In November of 1992, seven blacks were elected to the Senate (two from majority-white multimember districts), while 18 were elected to the House (including one from a multimember white district). Additionally, a Native American was elected. The total of 26 minority legislators was an increase of six over the 20 serving in 1991.

In July of 1996, a complaint was filed in the U.S. Western District Court in Statesville, North Carolina, *Daly v. High*, challenging the constitutionality of various state legislative (and congressional) districts. The case was transferred to the Eastern District a year later, where in April of 1998 the three-judge panel denied a motion to prohibit elections in the challenged state legislative and congressional districts. Accordingly, 1998 state legislative elections were held under the lines approved by the U.S. Department of Justice six years earlier. With redistricting on the horizon, however, the challenges to these districts is becoming more of a moot point, with the districts being required to change anyway by the 2002 election cycle.

*Congressional Redistricting in the 1990s:* Following the 1990 elections, the state's U.S. House delegation included seven Democrats and four Republicans, a statistic was sure to change in 1992 because of the gain of one seat following the 1990 Census. In 1991, there were no majority-black districts in the state, though three districts at the time had black percentages of between 25 percent and 40 percent.

Little did legislators know in 1991 how protracted congressional redistricting would be in the state, a process that continues today. The first plan created a majority-black district; however, the Department of Justice rejected that map in December of 1991, also demanding a second majority-black district. In response, two districts were created—one (the 1<sup>st</sup> District) a 53 percent black (in voting-age population) district in the state's northeastern section, the other (the 12<sup>th</sup>) also a 53 percent black (in voting-age population) district running up the length of Interstate 85 between Charlotte and Durham which in time came to be known as the "I-85" district.<sup>80</sup> While the 12<sup>th</sup> District's irregular lines aroused much debate, the district, along with the 1<sup>st</sup>, won approval from the Department of Justice. In November of 1992, the two districts elected the first black representatives to represent North Carolina since 1901.

Even before the 1992 election, however, the state's Justice-approved congressional plan already was the topic of legal action. One case, *Pope v. Blue*, challenged the constitutionality of the new congressional map, claiming the plan was not compact and did not respect communities of interest. A three-judge federal panel dismissed the case, but days later another case, *Shaw v. Barr*, was filed. Plaintiffs claimed that the new plan was unconstitutional for the same reason. Furthermore, the plaintiff's attorney contended that William Barr (then the U.S. attorney general in the final year of the Bush Administration) had misinterpreted the Voting Rights Act to require "racial quotas" in representation. The case was dismissed by a three-judge panel

in 1992, but the decision was appealed to the U.S. Supreme Court, which in June of 1993 reversed the dismissal by a 5-4 vote and remanded it to the district court. The following year, the district court dismissed the case, holding that while the plan was a racial gerrymander, it was “narrowly tailored” to serve a compelling state interest.

The district court ruling was not the end of the story. In 1996, the U.S. Supreme Court reversed the district court’s 1994 ruling, invalidating the I-85 12<sup>th</sup> District, although elections that year were permitted to be conducted under the old 1992 plan. Legislators in 1997 adopted a new plan under which the 1<sup>st</sup> District was reduced from 53 percent to 47 percent black in voting-age population and the 12<sup>th</sup> District was reduced from 53 percent to 43 percent black in voting-age population. A lower court, however, overturned that plan, and in 1998 legislators adopted a new plan which reduced the 12<sup>th</sup> District to 33 percent black in voting-age population. Both black incumbents were re-elected in 1998.

The 1998 congressional plan will not be used in 2000. In 1999, in *Hunt v. Cromartie* [98-85], the U.S. Supreme Court reversed a lower court ruling which had invalidated the 1997 congressional plan. The net effect was to reinstate the 1997 congressional plan. The lower court held a trial, however, and again declared the 1997 plan unconstitutional. The state of North Carolina appealed that decision to the U.S. Supreme Court, which granted the state a stay. The appeal of the lower court’s decision is still before the Supreme Court, but because that process is expected to continue until after the 2000 general election, the 1997 plan appears to be the final congressional plan to be used before the state designs new lines for the 2002 election cycle.

*2001-2002 Redistricting Outlook:* Most of the state’s growth in the 1990s came in the Piedmont region, between Charlotte and Raleigh along Interstate 85. Nearly 30 percent of the state’s population growth occurred in its two largest counties, Mecklenburg (Charlotte) and Wake (Raleigh). Many counties adjoining those large cities also have had significant growth since 1990, such as Iredell and Union Counties outside of Charlotte and Chatham and Franklin Counties outside of Raleigh. Outside of the Piedmont, the coastal Wilmington area has experienced large population increases, as have several counties in the mountains. Counties losing population, of which there were only five in the 1990s, were confined to the eastern side of the state. As in other states, rural representation will diminish.

After a decade of court challenges, whether congressional redistricting in North Carolina will be less tumultuous this decade is unclear. To a large degree, it depends on what happens to the controversial 12<sup>th</sup> District.



## Oklahoma

While the Legislature is responsible for both state legislative and congressional redistricting, failure to redistrict the Legislature in a timely manner results in legislative apportionment being performed by an Apportionment Commission consisting of the attorney general, superintendent of public instruction and the state treasurer.

*State Legislative Redistricting in the 1990s:* In 1991, the Senate had 37 Democrats and 11 Republicans, while the House had 69 Democrats and 32 Republicans. Redistricting in the 1990s included the creation of two majority-black Senate districts and three majority-black House districts. Republicans made slight inroads in the Legislature in the 1990s, though it still remains heavily Democratic, the Senate having 33 Democrats and 15 Republicans, while the House has 65 Democrats and 36 Republicans.

*Congressional Redistricting in the 1990s:* In 1991, the state's U.S. House delegation included four Democrats and two Republicans. The state came very close to losing a seat following the 1990 Census but managed to retain all six seats for the 1990s. No district in 1991 was majority-black (only one was even as much as 10 percent black), nor was there any opportunity to create one during 1991 reapportionment because of the state's small black population (only seven percent in 1990). Oklahoma was among the earliest Southern states to finish congressional redistricting, with a new congressional plan signed into law in May of 1991. The Legislature made only minor changes in the district lines.

*2001-2002 Redistricting Outlook:* More than a third of the state's counties lost population between 1990 and 1999, the majority of those counties being in the western section of the state. The state's growth has been the greatest along the Interstate 44 corridor between Oklahoma City and Tulsa. The counties with those two cities have accounted for about 40 percent of the state's growth since 1990, with surrounding counties showing impressive totals. Cleveland County, just south of Oklahoma City, gained nearly 30,000 residents between 1990 and 1999, the third highest in the state in numbers, while Rogers County, outside of Tulsa, had the fastest percentage growth rate (28 percent) during that time. Thus, it seems evident that suburban Oklahoma City and Tulsa will gain legislative representation.

As for congressional representation, Oklahoma may lose a seat for the 2002-2010 election cycle, and it is unclear how the map would look if the state actually loses a sixth seat. If the state retains all six seats, the current districts probably could remain intact with relatively minor adjustments, but the western rural 6<sup>th</sup> District most likely would need to gain residents.

## South Carolina

Article 3, Section 3 of the South Carolina Constitution assigns to the General Assembly the task of apportioning the state House of Representatives. With regard to the State Senate, while that chamber originally was apportioned by county (one district for each of the state's 46 counties) and not population, today that body also is apportioned by the General Assembly. Congressional redistricting also is performed by the General Assembly as required under the South Carolina Code. The governor has the power to sign or veto state legislative or congressional districting plans. Redistricting plans must be approved by the U.S. Department of Justice.

*State Legislative Redistricting in the 1990s:* In 1991, the Senate had 35 Democrats and 11 Republicans, while the House had 80 Democrats, 42 Republicans, one independent and one vacancy. The redistricting plan adopted in court for the 1992 election created 11 majority-black Senate districts and 31 majority-black House districts. Legislators later drew new districts for the Senate and House, which in turn were challenged on the grounds of racial gerrymandering and resulted in additional changes. Currently, eight of the state's 46 Senate districts are majority black in voter registration, as are 27 of the state's 124 House districts. Republicans won a majority in the House in 1994 and retain control today. The Senate remains Democratic, although only narrowly after Republican gains in the 1990s. Today, the Senate has 24 Democrats and 22 Republicans, while the House has 59 Democrats and 64 Republicans.

*Congressional Redistricting in the 1990s:* In 1991, the state's U.S. House delegation included four Democrats and two Republicans. A court drew a new majority-black district for the 1992 election (after legislative action failed to produce a plan), connecting portions of Charleston, Columbia and the "low country" of that state (58 percent black in voting-age population). Republicans gained an additional seat in 1992, though redistricting was not a factor in that outcome. A federal court overturned the state's congressional plan in July of 1993, but no more than slight changes were made to the state's districts following that ruling. Republicans gained an additional seat in 1994 when the long-time Democratic incumbent retired and retained a seat in the Charleston area when the Republican incumbent left the seat to run for governor. No seats changed party control in either 1996 or 1998.

*Outlook for 2001-2002 Redistricting:* While only three of the state's 46 counties lost population between 1990 and 1999, the next round of redistricting will continue the trend of more urban representation. Lexington County, a suburb of Columbia, had the largest gain in numbers (though not percentage), gaining more than 41,000 persons during that period, with Greenville County in second with about 39,000 new residents. The fastest-growing counties (in percentage terms) were Beaufort County (Hilton Head), which grew 31 percent, and Horry County (Myrtle Beach), which grew 24 percent.

As for congressional redistricting, the fate of the majority-black 6<sup>th</sup> Congressional District could have a major impact on the next redistricting round. This Columbia-Charleston-Florence district, created in 1992 at the request of the Department of Justice, may be difficult to retain for the 2002-2010 election cycle because of its odd shape and the widespread acknowledgement that it was drawn for racial reasons. As one observer said last year, "There's not as much pressure as last time to create a majority-black (congressional) district."<sup>81</sup> One possibility is that a realigned 6<sup>th</sup> District would include Horry County (Myrtle Beach), which in turn could make the current Republican-leaning 1<sup>st</sup> and 2<sup>nd</sup> Districts more Democratic. The Columbia—Hilton Head 2<sup>nd</sup> District has the most registered voters (400,257) in the state, while the Columbia-Charleston 6<sup>th</sup> District has the fewest (326,542).



South Carolina

## Tennessee:

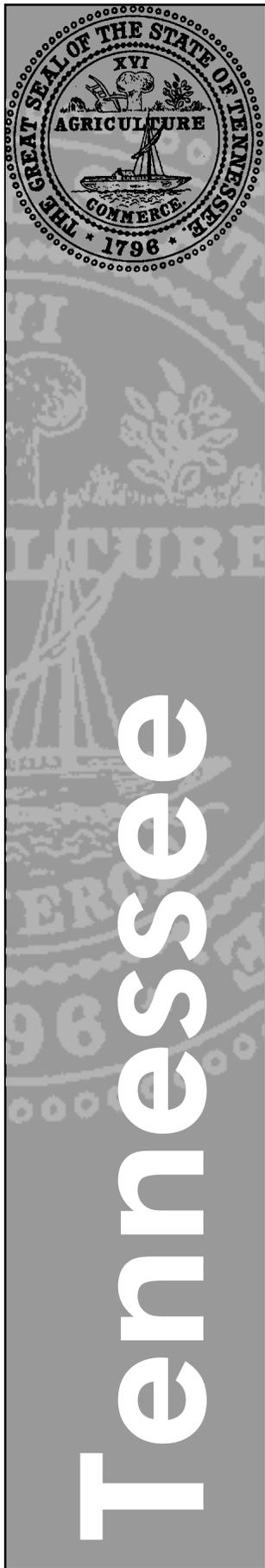
The Tennessee Constitution (Article 2, Section 4) addresses state legislative redistricting by requiring that “after each decennial census... (that) the General Assembly shall establish senatorial and representative districts.” The Tennessee Code also requires the Legislature to draw the boundaries of the state’s congressional districts. The governor may sign or veto redistricting bills.

*State Legislative Redistricting in the 1990s:* In 1991, the Senate had 19 Democrats and 14 Republicans, while the House had 57 Democrats and 42 Republicans. Legislative redistricting for the 1990s included three majority-black Senate districts and 11 majority-black House districts. Republicans briefly controlled the Senate in the mid 1990s but today Democrats hold an 18-15 majority, while the House has 59 Democrats and 40 Republicans. Redistricting plans for both the Senate and House were challenged in court; the Senate plan for alleged violation of Section 2 of the Voting Rights Act, the House plan on grounds of political gerrymandering and supposed violation of the principle of “one person, one vote.” The House redrew its districts in 1994, although subsequent proceedings in court upheld the Senate plan.

*Congressional Redistricting in the 1990s:* In 1991, the state had six Democrats and three Republicans in its U.S. House delegation. One district, based in Memphis was majority- black (65 percent). Minor alterations were made to all districts, with little apparent impact. Tennessee in 1992 was the largest state to re-elect all its congressmen.<sup>82</sup> Two years later, Republicans picked up two seats vacated by longtime Democratic incumbents. The U.S. House delegation today remains at four Democrats and five Republicans.

*2001-2002 Redistricting Outlook:* Only one county lost population between 1990 and 1999, a rural county in the western part of the state. The state’s fastest growing area, suburban Nashville, will be the biggest beneficiary from legislative redistricting; two seats in the state House are likely to shift to a seven-county region surrounding Davidson County. Other fast-growing areas of the state include suburban Knoxville and suburban Memphis. Among those areas which have experienced relatively slow growth are Hamilton County (Chattanooga) and rural counties in the state’s northwestern corner.

As for congressional redistricting, the state’s fastest-growing districts, the suburban/rural 6<sup>th</sup> District around Nashville and the Memphis to Nashville 7<sup>th</sup> District, will have to shrink. On the other hand, three districts—the Chattanooga-based 3<sup>rd</sup>, the Nashville-based 5<sup>th</sup> and the inner-city Memphis 9<sup>th</sup> will have to add residents, as will the rural-dominated 8<sup>th</sup> District in northwest Tennessee. For the purpose of meeting equal population standards, the mountain-based 1<sup>st</sup>, Knoxville-based 2<sup>nd</sup> and the sprawling, mostly rural 4<sup>th</sup> District are likely to require minimal changes, either losing or gaining a small number of people.



## Texas

Article 3, Section 28 of the Texas Constitution requires the Legislature to “apportion the state into senatorial and representative districts...” If the Legislature fails to do so during the regular session after publication of census data, then a five-member Legislative Redistricting Board, consisting of the lieutenant governor, speaker of the House, attorney general, comptroller of public accounts and commissioner of the general land office) is responsible for completing the task. A three-member majority is required to enact a plan.

Legislators also are responsible for redrawing the boundaries of congressional districts after each census. Legislative-adopted redistricting plans (whether for Congress or state legislature) must be approved by the U.S. Department of Justice.

*State Legislative Redistricting in the 1990s:* In 1991, the Senate had 23 Democrats and eight Republicans, while the House had 93 Democrats and 57 Republicans. With Texas having a relatively small black population (only 12 percent in 1990), only one majority-black Senate district was drawn under redistricting, though a 48 percent black/26 percent Hispanic district also was created. Additionally, seven majority-Hispanic Senate districts were created. The adopted House plan included 10 majority-black House districts and 31 majority-Hispanic districts. Republicans won a majority in the Senate in 1996 and today retain a slim (16-15) majority. Democrats retain control of the House, though narrowly, with 72 Republicans and 78 Democrats.

*Congressional Redistricting in the 1990s:* In 1991, the U.S. House delegation consisted of 19 Democrats and eight Republicans. At that time, there were no majority-black districts, though there were six districts with black populations of between 20 percent and 35 percent. The state had one black congressman who represented a Houston-area district that was 35 percent black and 42 percent Hispanic. There were five Hispanic-majority districts, four of which were represented by Hispanics.

The state gained three seats following the 1990 Census. Legislators created two seats that were each about 50 percent black in population and increased from five to seven the number of seats with a majority-Hispanic voting-age population. In the 1992 election, a heavily black Dallas District elected a black representative, while the number of Hispanic congressmen increased from four to five. Republicans won an additional seat by defeating an incumbent Democrat in south Texas, resulting in a delegation of 21 Democrats and nine Republicans.

In the summer of 1994, a federal court ruled that three of the state’s districts—two predominately black districts and one Hispanic district—were racially gerrymandered and therefore unconstitutional. Thirteen of the state’s 30 districts were redrawn two years later.

*2001-2002 Redistricting Outlook:* Nearly 75 of the state’s 254 counties have lost population since 1990, with the largest losses being in northwest Texas, roughly along or north of I-20 and west of Fort Worth. While traditionally fast-growing counties such as Dallas (Dallas), Harris (Houston) and Tarrant (Fort Worth) continue to grow, increasingly the fastest growth rates are shifting to more distant counties. In the Dallas area, Collin County grew 73 percent between 1990 and 1999, while outside of Houston, Fort Bend County grew 57 percent. The Austin area continues to boom, with Travis County (Austin city) up 26 percent, and growth is rapidly filling in the roughly 80 miles that separate Austin and San Antonio. Other urban areas seeing large increases include El Paso and the Rio Grande corridor between Laredo and Brownsville.

As for congressional redistricting, given that the largest population increases have been in the Dallas-Fort Worth and Houston areas, these probably will have the greatest chance of picking up the additional seats. Much will depend on this November’s results; the Senate has a narrow Republican majority, while the House has a narrow Democratic majority. Republicans will control the governorship. If Republicans retain



control of the Senate and win control of the House, the party would have complete control of the redistricting process and thus would be in a position to draw more Republican-friendly districts. If however, one or both chambers is in Democratic hands after the November election, then a compromise would be a more probable result, with neither party able to implement its own version of a favorable redistricting plan.

## Virginia

Article 2, Section 6 of the Virginia Constitution requires the General Assembly to reapportion its Senate and House, along with the state's congressional districts. The Virginia Code of Laws provides for a Joint Reapportionment Committee of eight members (five representatives and three senators) responsible for timely reception of precinct population data for reapportionment and performing other duties which may promote the orderly redistricting of congressional and state legislative districts (along with local election districts). The governor has veto power over both congressional and state legislative districts. Under the Voting Rights Act, legislative and congressional redistricting plans must be approved by the Department of Justice.

*State Legislative Redistricting in the 1990s:* In 1991, the Senate had 30 Democrats and 10 Republicans, while the House had 59 Democrats, 39 Republicans and two independents. Prior to the 1991 redistricting, the Virginia Senate had two-majority black districts (though only one was majority-black in voting-age population), while the House had nine majority-black districts (both in total population and voting-age population). The General Assembly ultimately drew a plan which included five majority-black districts in the 40-member Senate and 12 majority-black districts in the 100-member House. This plan was approved by the U.S. Department of Justice in the summer of 1991 and used for that year's November elections. The first election under the 1991 plan produced large gains for Republicans, who increased their numbers to 18 in the 40-member Senate and to 41 in the House. Republicans gained another six seats in the House in 1993 (the Senate was not up for election that year) and after the 1999 election cycle had achieved a slight majority in each chamber (21-19 in the Senate, 52-47, with one independent, in the House). A lawsuit was filed in state court in the early 1990s challenging the compactness of some Senate districts, but the case was dismissed. Also unsuccessful was a Republican lawsuit against the House-passed redistricting plan, which lumped a number of Republicans together in the same districts.

*Congressional Redistricting in the 1990s:* In 1991, Virginia's U.S. House delegation consisted of six Democrats and four Republicans. Because of rapid population growth, the state gained an additional seat for the 1990s. The General Assembly created a new suburban district in northern Virginia and a new, 61 percent black (in voting-age population) district connecting Richmond and Norfolk and some rural counties in the Tidewater area. The majority-black district elected the first black congressman from the state since the 1890s. The new suburban district elected a Democrat, but in 1994 a Republican won the seat. In 1997, the majority-black 3<sup>rd</sup> Congressional District was found to be unconstitutional. In response, the General Assembly redrew the district, reducing its black voting-age population percentage from 61 percent to a fraction over 50 percent, while making minor adjustments to four surrounding districts.

*2001-2002 Redistricting Outlook:* Northern Virginia will be the biggest winner in legislative redistricting. Some 45 percent of the state's population growth between 1990 and 1999 occurred in the region, which now accounts for 27 percent of Virginia's population (up from 25 percent in 1990).<sup>83</sup> Other high-growth areas include suburban Richmond (such as in Chesterfield and Hanover Counties) and Hampton Roads (such as the city of Chesapeake and York County). Areas with population losses include many rural counties bordering or near Kentucky and West Virginia and several of the state's larger cities, such as Norfolk, Richmond and Roanoke.

As for congressional redistricting, the suburban Richmond 7<sup>th</sup> District and the suburban Washington 10<sup>th</sup> District are by far the largest districts in the state (based on voter registration data) and will have to lose population. The rural-dominated 5<sup>th</sup>, 6<sup>th</sup> and 9<sup>th</sup> Districts will take in more territory. The fate of the majority-black 3<sup>rd</sup> District likely will influence surrounding districts. The 3<sup>rd</sup> District includes all or portions of several population-losing localities, such as Norfolk and Richmond, and after the 1998 realignment has a slight black majority. While Republicans, who now control the General Assembly, would like to see the district stay mostly intact (aiding Republican chances



Virginia

in four surrounding districts), it is unclear, given the district's population loss, whether a majority-black district can be retained for the 2002-2010 election cycle that does not resort to the odd-shaped boundaries which came under U.S. Supreme Court scrutiny here and in other states in the 1990s.

## West Virginia

Article 6, Sections 4 through 10 of the West Virginia Constitution specifies requirements for the Legislature to apportion its chambers, while legislators also redraw congressional districts. The governor has veto power in both instances.

*State Legislative Redistricting in the 1990s:* In 1991, the Senate had 33 Democrats and one Republican, while the House had 74 Democrats and 26 Republicans. West Virginia, with only a three percent black population in 1990, did not create any majority-black legislative districts during the last redistricting process. Instead, one 30 percent black district was included in the House plan. Currently the Senate has 29 Democrats and five Republicans, with the House having 75 Democrats and 25 Republicans. Legislative redistricting came under court scrutiny, with plaintiffs questioning population deviations among districts and making claims of partisan gerrymandering, but Senate and House redistricting plans were upheld.

*Congressional Redistricting in the 1990s:* West Virginia in the early 1990s was the third of three Southern states (the other two being Kentucky and Louisiana) to lose a congressional seat. All four Democratic incumbents planned to run again in 1992, even with only three seats available. That year, the incumbents of the old (1980s) 1<sup>st</sup> and 2<sup>nd</sup> Districts faced off in the Democratic primary in the new (1990s) 1<sup>st</sup> District, with the incumbent from the old 2<sup>nd</sup> District losing. The state's U.S. House delegation today remains unchanged at three Democrats and no Republicans. With a small black population, there was no opportunity to draw a majority-black district in the state during the 1992-2000 election cycles. A suit filed against the congressional redistricting plan, claiming population deviation among districts, was dismissed.

*2001-2002 Redistricting Outlook:* Two-fifths of the state's 55 counties lost population between 1990 and 1999, with most of the losses coming in the coal-mining counties in the south and counties along the Ohio River in the northern portion of the state. Kanawha County (Charleston) also has lost population. On the other hand, the two areas benefiting the most from upcoming redistricting will include Putnam County (suburban Charleston) and the eastern panhandle counties in and around Martinsburg (Berkeley and Jefferson Counties, which are growing thanks to their proximity to Washington, D.C.).

As for congressional redistricting, while the state will not lose a seat this time (unlike during the 1991-1992 round), adjustments will have to be made to all three districts. The Charleston-based 2<sup>nd</sup> District, which also includes the fast-growing counties along the I-81 corridor (Martinsburg area) gained just over 33,000 persons between 1990 and 1999, while the northern 1<sup>st</sup> District (Parkersburg/Wheeling) lost approximately 6,000 residents and the southern 3<sup>rd</sup> District lost about 14,000 residents.



# West Virginia

## **2001-2002 Redistricting: Some Questions Still to be Answered:**

### **How will minorities fare this time?**

Few can dispute the impact of the 1991-1992 redistricting on minority representation, the large number of new minority districts resulting in a record number of minorities elected to various posts. Several states-Alabama, Florida, North Carolina, South Carolina and Virginia-elected black congressmen for the first time in decades, while states that already had black congressmen-Georgia, Louisiana, Maryland and Texas-added more black representation. The impact filtered down to the state legislative levels as well, with the prevailing interpretation of the Voting Rights Act resulting in the maximization of districts where minorities constituted a majority.

Federal court decisions on race-based redistricting since the mid 1990s, however, have looked unfavorably toward racially-gerrymandered districts, leaving minorities wondering if upcoming redistricting actually will reduce their numbers in elective positions. Results since 1996 have been mixed; in Louisiana, the elimination of a black-majority district in 1996 dissuaded a black incumbent from running again, his perception being that he could no longer win in a majority-white district.<sup>84</sup> On the other hand, that very same year and in 1998, two black U.S. representatives from Georgia won re-election in strongly majority-white districts after the Supreme Court in 1995 had invalidated their majority-black districts. Similarly, a black North Carolina Democratic congressman won re-election in 1998 in a majority-white district, while that same year a black Democratic congressman in Virginia won in a landslide victory even though his district had only a slight black majority.

There is disagreement as to the significance of blacks winning in majority-white constituencies, however. Some cite these elections as evidence of an emerging colorblind society, where voters less often base their voting decisions on race. Others, however, are skeptical, claiming that other circumstances explained those victories. Critics claim that blacks were able to win in majority-white districts because of the traditional benefits associated with incumbency, while in one Georgia district, a black incumbent was said to have won her majority-white seat by a combination of incumbency, an increasing black population in the district and the presence of an unusually large number of white liberals.

While a dramatic increase in minority representation seems unlikely in the next few years, a few factors may serve to minimize losses of minority representation across the

South. For one, some districts have such a high percentage of minority voters that a modest reduction in minority strength will have little impact on re-election chances. In other words, reducing a district from 90 percent black to 70 percent black (perhaps, for instance, to shore up a minority incumbent whose district has lost population or stagnated) is not likely to result in the legislator of the 90 percent black district losing re-election. For another, there is more flexibility in population sizes at least for state legislative districts. While congressional districts must be as equal as possible, state legislative districts may deviate 5 percent either way. For example, if an “ideal” state legislative district has 40,000 persons, it is lawful for district sizes to range between 38,000—5 percent below 40,000—and 42,000—5 percent above 40,000. Thus it is possible that more minority districts can be preserved by “minimizing” their district populations, while creating larger districts in Republican areas or for white Democrats. Thirdly, the movement of minorities into certain suburbs has increased minority percentages in many districts, in some cases to a majority black composition.

Obviously it is easier to preserve minority districts in compact urban areas and more difficult to preserve such districts in sparsely-populated rural areas, where odd-shaped districts may be required to obtain a majority-minority district. However, with the majority of residents in each Southern state living in urban areas, even the loss of minority representation in odd-shaped rural districts is unlikely to lead to a large reduction in minority representation in Southern state legislatures.

## **Will Republicans find redistricting as beneficial to them as it was in the 1990s?**

After initial redistricting in 1991 and 1992, Republicans and black Democrats both seemed to be the big winners, with white Democrats being the big losers. Republicans made substantial inroads in the Georgia General Assembly, for instance, in the 1992 and 1994 general election, and in 1996 in the state House. In Virginia, the first state Senate election after 1991 reapportionment produced a record Republican gain of eight seats. Similar stories could be told for other states such as Florida and South Carolina. At the congressional level, perhaps nowhere were the fruits of redistricting more evident than in Georgia. The congressional delegation changed from a 9-1 Democratic majority on the eve of the 1992 election to an 8-3 Republican majority by the summer of 1995, with many analysts agreeing that the creation of three majority-black congressional districts helped to make surrounding districts more Republican.

Continued population growth in Southern suburbs in the 1990s, at least at first glance, seems to have favored the party as well, with Republicans traditionally faring better in the suburbs than in the region’s central cities and rural areas. In Georgia, for example, of the 28 largest Senate districts in voter registration (winter 2000), 20 were represented by Republicans, while Democrats represented 26 of the state’s 28 smallest Senate districts. To demonstrate the disparity in district sizes after 10 years of growth, the largest Senate district (located mostly in suburban Atlanta’s Gwinnett County), with nearly 122,000 active registered voters, had nearly four times as many registered voters as the smallest district (in Columbus), with 32,000 active registered voters.<sup>85</sup> Similarly, the state’s largest congressional district, the northside Atlanta 6<sup>th</sup> District, in February 2000, had 60 percent more registered voters (almost 430,000) than the mostly rural, southwest Georgia-based 2<sup>nd</sup> District (262,000).<sup>86</sup> As another example, in Virginia (June 2000), 14 of the 20 largest Senate districts are held by Republicans, while 13 of the 20 smallest ones are held by Democrats. The largest Senate district, in suburban Washington, D.C., had nearly 140,000 active registered voters, compared with barely 50,000 in the smallest one in the Norfolk-Virginia Beach area.<sup>87</sup>

Because many Republican legislative districts are “overpopulated” (with regard to equal population requirements), they will have to be subdivided, resulting in more Republican-leaning districts. Conversely, underpopulated Democratic districts will have to be merged, resulting in Democratic losses.

Republicans obviously have a much stronger presence in Southern legislatures than they did 10 years ago, and even if they continue to be outnumbered in most Southern state legislatures for the 2001-2002 session, they still can form coalitions with Democratic factions to have some impact on district lines. No longer is redistricting just a matter left to white Democrats, as would have been the case as recent as 40 years ago.

On the other hand, some factors work against Republicans receiving a huge dividend in redistricting across the South, or at least in some Southern states:

- (1) *Court rulings discouraging racially-gerrymandered districts:* Any number of stories in the early 1990s focused on what was perceived to be an odd alliance of conservative Republicans and liberal black Democrats, each agreeing to further the other's aims in obtaining more favorable political districts. The alliances, even if unofficial and even where still outnumbered by white Democrats in some states, nonetheless often achieved their goals. In 1992, redistricting could explain the gain of congressional seats for both blacks and Republicans in Alabama, Florida and Georgia. In some states, such as North Carolina and Virginia, where congressional redistricting initially resulted in gains for blacks but not for Republicans, the latter still benefited from the removal of blacks from their districts, making them more Republican. In Virginia, for example, one Republican congressman in 1990 won re-election in 1990 with just 51 percent of the vote, at that time his district being 30 percent black. Two years later, with many of his black precincts moved to a new majority-black district, the Republican incumbent (his district now just 18 percent black) won in a 58 percent landslide.<sup>88</sup>

However, the mid 1990s' court rulings on racially-gerrymandered districts potentially can hinder the effectiveness of a black Democratic-white Republican redistricting alliance. As the author of a political newsletter wrote in June of 2000, "Democrats...will benefit from court rulings that have limited the power of legislatures to create districts with large African-American or Hispanic majorities. As a result, a larger number of districts will have significant populations of minority voters, strengthening the Democrats' chances."<sup>89</sup> In other words, minority populations may be more widely distributed among districts instead of concentrated in just a select few districts, helping to boost Democratic candidates.

Georgia may be the best example of how a wider distribution of minority voters can impact Democrats and Republicans. In 1994, the Republican candidate for governor, though losing statewide, carried eight of the state's then-existing 11 congressional districts (seven of which were won by Republican congressional candidates that year).<sup>90</sup> Four years later, with a new congressional map imposed by court order, the same Republican candidate won only four of the state's 11 districts; while Republican congressmen, with the advantages of incumbency, were able to retain four of the seven districts that voted for the Democratic candidate for governor. The very fact that such districts were at least voting Democratic for governor suggested that in the event of a vacancy, Democrats would have a chance of winning those congressional seats.

- (2) *Demographic changes in southern suburbs:* Many Americans equate central cities with Democrats and suburban areas with Republicans, with rural areas generally Republican in the Midwest and West and Democratic in the South. The general equation of suburbs with Republican votes has been a common perception in America since World War II, and years ago, America's suburbs tended to be heavily white and Republican. Yet across the United States, demographic changes are occurring in many suburban areas, working to the advantage of Democrats.

In the Atlanta area, Democrats have defeated five suburban Republican state representatives since 1990 and picked up a suburban Senate seat in 1998; all six of these suburban districts have a high percentage (though not a majority) of minority voters. The Atlanta area's suburban DeKalb County, a Republican bastion in the 1960s and 1970s, voted 2-1 for President Clinton over Republican Bob Dole in 1996. Nine of the 15 House

districts located entirely within the county are majority-black, with Democrats holding 12 of the 15 seats. Traditionally, the “doughnut theory” has been used to describe politics in the region—the hole (or center), consisting of the inner city, being Democratic and the ring (suburbia) being Republican.

Changing demographics, however, are diminishing the value of that observation. “Not only is the (Republican) doughnut getting bigger, but the hole is as well,” noted the director of the Georgia General Assembly’s reapportionment office recently.<sup>91</sup> Republican officials acknowledge the changes. As the chairman of the Georgia Republican Party has noted, “It is the changing nature of suburban politics. First-tier counties around the big city will become more competitive.”<sup>92</sup> Republican demographer John Morgan, while dismissing Bob Dole’s weak suburban showings in the 1996 presidential contest as a candidate, and not a party, problem, nonetheless admitted that inner suburbs around large cities are not as Republican as in years past, thanks to demographic changes.<sup>93</sup>

In Maryland, suburban Prince George’s County (located east of Washington, D.C.) is a mostly black suburban area, described by one author as “the nation’s biggest black suburban community...More than any place in America...the home of the black middle class.”<sup>94</sup> Two congressmen, both Democrats, represent portions of the county. Seven of the county’s eight state senators are Democrats, while all 21 delegates in the House representing the county are Democrats. The county was only 14 percent black in 1970 but had increased to 50 percent black by 1990.

This is not to say that Republicans have not had their successes in southern cities; indeed, in many of those areas, Republicans have won additional seats, and in some metro areas, Republicans have a virtual lock on suburbia, including Birmingham, Richmond and Savannah. In some cities, though, suburbs are likely to mirror a two-party system, while some may even turn Democratic.

- (3) *The Power of Incumbency*: A common perception, more often than not true, is that it is easier for a party to win an “open seat” (i.e., a seat where no incumbent is running) than to defeat an incumbent. Because of higher name identification and associated financial advantages, rare is the election in which a large number of incumbents lose. In 1998, for instance, only six of 401 U.S. House incumbents on the general election ballot were defeated, a re-election rate of just under 99 percent. The trend is no less real at the state legislative level. “In most legislative bodies, more than 90 percent of the incumbents who seek re-election win another term...any legislator who is doing his or her job satisfactorily should be able to use the privileges of incumbency as a springboard to a long career,” wrote a columnist last year regarding term limits in Maine.<sup>95</sup>

Even when not planning to seek re-election to their particular post, incumbents often use the redistricting process to draw favorable districts for another post, a state representative, for instance, trying to draw a favorable state Senate district or a state legislator trying to draw a favorable congressional district. In Georgia, six of seven new U.S. representatives elected for the first time in 1992 had served in the General Assembly during the 1991-1992 session, when redistricting was considered. The campaign manager for one incumbent, who lost a primary in 1992, attributed his loss to the victor’s position in the state legislature.<sup>96</sup> In Texas that year, the chairman of the Senate committee on redistricting won a seat in the U.S. House. Altogether, of the 31 new congressmen elected from the South in 1992—the first election cycle after 1990s’ redistricting, 16 were serving in the state legislature at the time of their election to Congress, and another four had served in the Legislature at some time in the previous decade.<sup>97</sup> A recent newspaper editorial, though citing Virginia in particular, could well have been addressing other states in stating that “When drawing electoral maps for the U.S. House and the Virginia General Assembly, the parties seek to (1) maximize their own strength, (2) create safe seats, and (3) protect incumbents. The results make most districts uncompetitive.”<sup>98</sup>

Two years ago in the Georgia House, 155 of 157 incumbents were re-elected—a 99 percent re-election rate. Even in 1994, a year of Republican gains in Georgia and elsewhere, 94 percent of House incumbents were re-elected. Re-election rates sometimes drop in elections immediately following reapportionment, but even then, incumbents typically return to office. In the November 1991 legislative elections in Virginia—conducted just months after the state enacted a new redistricting plan—90 percent of legislators were re-elected. In Georgia, despite the realignment of many districts in 1992, 92 percent of legislators seeking another term were re-elected that year.

It is not “written in stone” that incumbents in the future will continue to get re-elected at very high rates. Still, in the absence of special circumstances, there is no apparent reason why the trend will not continue. Republicans typically have fared better when there are “open seats.” In North Carolina two years ago, a 24-year veteran Democratic congressman retired and was replaced by a Republican; in 1996, two retiring Alabama Democratic congressmen and one retiring Mississippi Democratic congressman were replaced by Republicans. Similar events happened in 1994 in Florida, Georgia, Kentucky, Mississippi, North Carolina, Oklahoma, South Carolina and Tennessee and in 1992 in Florida, Georgia and Virginia. This trend often can be found in state legislatures as well. In Georgia, for example, Republicans, between 1992 and 1998, won 14 Senate seats from Democrats, while losing three of their own to the Democrats during that same period. Of those 14 seats gained, only five resulted from defeating Democratic incumbents, while eight resulted from open seats. One was the result of a party switch.

All in all, then, Republicans are more likely to make future gains through “open seats”, whether created through redistricting or the retirement of veteran Democrats in marginal districts. Thus, the fewer Democratic incumbents, the more likely the GOP can pick up seats in the next round of redistricting.

## **What impact will term limits have on redistricting?**

A new factor which had much less relevance 10 years ago than today is the imposition of term limits in several states. This revolution began in 1990, with Oklahoma the first Southern state to enact term limits. Twenty-one states adopted term limits for legislative and other positions in the 1990s, although in three (Massachusetts, Nebraska and Washington), term limits were voided by judicial action. Arkansas, Florida and Missouri voters approved term limits in 1992, while Louisiana voters did likewise in 1995. While term limits in the five Southern states vary in details, the goal is the same—discourage persons from making a career out of elective office. Term limits began to have an impact in Arkansas in 1998, when half of the state’s House members could not seek re-election.<sup>99</sup> This year, nearly two-fifths of the Arkansas Senate will be ineligible to seek re-election, as will nearly half of the Florida House, more than one quarter of the Florida Senate, and eight of the 163 members of the Missouri House.<sup>100</sup> Thus in these five Southern states, redistricting of state legislatures and/or congressional lines will be in the hands of term-limited state legislators.

The imposition of state legislative term limits probably will prompt an especially heightened interest in upcoming redistricting in several Southern states. With the Supreme Court having voided several state initiatives to impose term limits on their respective congressional delegations, state legislators in term-limited states might be encouraged to seek federal office, where one can be re-elected for an indefinite period of time, or other state or local posts unaffected by term limits. With numerous state legislators coming under term limits in the first decade of the 21<sup>st</sup> century, for those seeking more years in elective office, the 2001-2002 redistricting cycle offers the only opportunity to shape new district lines for the coming decade.

## Conclusion

Few other issues are as contentious in a state legislature as redistricting, where a shift of a few precincts in a redistricting plan can significantly influence one's political opportunity, a reason why most legislators doubtless are glad this issue (unless there is protracted litigation) only arises once a decade. With rising Republican strength over the last decade, the redistricting battles in many southern states over the next two years will take on more significance than in previous decades, when Democratic numbers were so overwhelming that the party had little to fear from redistricting. For minority officeholders, the upcoming redistricting process might be viewed with some apprehension, given recent court rulings on racially-gerrymandered districts.

If the factors noted portend an exciting and unpredictable redistricting process for 2001 and 2002, there nonetheless will be the old "tried and true" factors to which at least some Southern states must adhere. All Southern states will be required to create congressional districts which are nearly as equal in population as possible, and all Southern states will be required to draw reasonably equal state legislative districts. Despite court rulings invalidating certain legislative districts, many Southern states still will have to get their redistricting plans approved by the U.S. Department of Justice.

Yet another certainty is that public involvement in redistricting will be even greater than before, thanks to the proliferation of personal computers and the ever-expanding Internet access of the last decade. Even if state legislators by and large maintain the responsibility for redrawing district lines, increasingly the public is obtaining more access to data and is becoming more participatory in the redistricting process.

The South also will see a bigger role in presidential politics, thanks again to a net gain of seats in the U.S. House of Representatives. Perhaps less observed will be the continuing loss of rural representation in a region where, until mid-century, rural residents outnumbered urban ones. Of course, rural legislators even today retain a number of important legislative positions in Southern state capitols, as evidenced by Georgia House Speaker Tom Murphy (who has served as Speaker longer than any other seated presiding officer in the United States), Tennessee Senate President (Lieutenant Governor) John Wilder and Virginia House Speaker Vance Wilkins. Increasingly, however, urban and suburban legislators are obtaining positions of legislative power as well, among the examples being Florida Senate President Toni Jennings, Maryland Senate President Mike Miller, and South

Carolina House Speaker David Wilkins. Although urban and suburban areas in the past often have clashed on issues—perhaps in some cases even more than have urban and rural areas—if united, urban and suburban areas typically can outvote rural ones.

In any event, boredom and indifference are not likely to describe the upcoming redistricting battles in most Southern states. The next two years in many states may seem like an experience on a whitewater river, with lots of turns and twists.

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*Richmond Times Dispatch*

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National Conference of State Legislatures ([www.ncsl.org](http://www.ncsl.org))

Population Reference Bureau ([www.prb.org](http://www.prb.org))

U.S. Census Bureau ([www.census.gov](http://www.census.gov))

U.S. Term Limits ([www.ustermimits.org](http://www.ustermimits.org))

U.S. Department of Justice ([www.usdoj.gov](http://www.usdoj.gov))

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## Endnotes

<sup>1</sup> Sample, Herbert A. “Dividing up the American Pie,” *State Legislatures* magazine, December 1999, p. 20.

<sup>2</sup> Arnold Fleischmann and Carol Pierannunzi, *Politics in Georgia* (Athens: University of Georgia Press, 1997), p. 11.

<sup>3</sup> A fourth justice in the majority said that while federal courts did have the power to rule on congressional apportionment, he felt that such power should be employed only in the most compelling circumstances, which he found to be absent in this case.

<sup>4</sup> “Court Decision on House of Representatives Districts Brings Action in 1964 on Seats in Six States,” *1964 Congressional Quarterly Almanac*, p. 386.

<sup>5</sup> The 1929 apportionment law established a permanent system of apportioning the 435 House seats following each census.

<sup>6</sup> Although long since voided by court decisions requiring electoral districts to be roughly equal in population, Article 3, Section 6 of the South Carolina Constitution still specifies that “the Senate shall be composed of *one* member from *each* County...”

<sup>7</sup> Georgia also employed a county unit system for statewide and congressional primary elections, in which a candidate could win the popular vote but “lose” the nomination by running poorly in rural areas, which had more unit votes. The county unit system was invalidated by the U.S. Supreme Court in 1963 through its *Gray v. Sanders* decision.

<sup>8</sup> Information on apportionment schemes for Missouri, Utah and Wyoming are derived from the dissent of Justice Harlan in the 1964 *Reynolds v. Sims* decision.

<sup>9</sup> *1962 Congressional Quarterly Almanac*, p. 1054.

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*, p. 1055.

<sup>13</sup> *Ibid.*, p. 1055.

<sup>14</sup> *Ibid.*, p. 1055.

<sup>15</sup> *Ibid.*, p. 1055.

<sup>16</sup> *Ibid.*, p. 1054.

<sup>17</sup> *Ibid.*, p. 1057.

<sup>18</sup> Reference to Governor Eugene (“Gene”) Talmadge (1884-1946), who was Georgia’s chief executive from 1933 to 1937 and from 1941 to 1943. Shortly before his death, he won a fourth term as governor by winning the county unit vote in the Democratic primary, even though he narrowly lost the statewide popular vote. Since Republicans did not begin to contest gubernatorial elections in Georgia until the mid 1960s, the Democratic primary was tantamount to election in Georgia and other Southern states for many years.

<sup>19</sup> *1963 Congressional Quarterly Almanac*, p. 1186.

<sup>20</sup> Montana, in fact, filed suit to retain the second congressional district it had in the 1980s (and had possessed for 80 years); minimal population growth in the 1980s had resulted in the loss of a second seat for the 1990s. As noted by *The Almanac of American Politics 1994*, “...with a population of almost 800,000, the Montana at-large (congressional) district would be 40% larger than (the) average (U.S. district size). However, the U.S. Supreme Court in 1992 refused to grant the state relief, noting that because states can’t have “fractional congressmen,” it was inevitable that any apportionment formula would result in some states having larger than average districts. 1999 population estimates show an even greater disparity, with Montana now having 882,779 persons while Wyoming has 479,602 persons, thus, Montana’s “at-large” district is nearly twice the size of Wyoming’s at-large district.

<sup>21</sup> *1962 Congressional Quarterly Almanac*, p. 1063.

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*, p. 1059.

<sup>26</sup> *1964 Congressional Quarterly Almanac*, p. 385.

<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid.*, p. 386.

<sup>29</sup> *Ibid.*, p. 385. The “federal analogy” was based on the concept that since only seats in the U.S. House of Representatives are based on population, while the U.S. Senate is based on geography, each state has two U.S. senators regardless of its population), states also should be authorized to construct a “little federal system”, one legislative chamber based on population, the other on geography. The Court majority, however, found the federal analogy “...irrelevant to state apportionment arrangements.”

<sup>30</sup> *Ibid.*, p. 385.

<sup>31</sup> *Ibid.*, p. 388.

<sup>32</sup> *Ibid.*, p. 388.

<sup>33</sup> *Ibid.*, p. 390.

<sup>34</sup> *Ibid.*, p. 390 (reference to then-Republican Congressman Paul Findley, who represented a “downstate” district, that is, a district south of Chicago).

<sup>35</sup> Tuck’s legislation, as amended, was approved by the House in August of 1964 by a 218-175 vote. Republicans overwhelmingly supported the measure (122 in favor, 35 opposed). Democrats on the whole opposed the legislation, but there was a wide difference in how Northern and Southern Democrats viewed the legislation; Northern Democrats overwhelmingly opposed the legislation, with just 12 voting for it while 124 voted against it, although Southern Democrats supported it by a 5-1 margin (84 yeas, 16 nays). The legislation died in the Senate, however, when that chamber’s own set of rules, including the filibuster, were enough to finish off HR 11926. In part, the House-approved version of the bill read: “The (federal) district courts shall not have jurisdiction to entertain any petition or complaint seeking to apportion or reapportion the legislature of any state of the Union or any branch thereof, nor shall any order or decree of any district or circuit court now pending and not finally disposed of by actual reapportionment be hereafter enforced.” The chairman of the House Judiciary Committee at that time, Emmanuel Celler, opposed Tuck’s legislation because he believed the legislation would deny a forum for appeal to secure constitutional rights, violate the principle of separation of powers, and nullify the “supremacy clause” of the U.S. Constitution.

<sup>36</sup> *1964 Congressional Quarterly*, p. 1088.

<sup>37</sup> Abigail M. Thernstrom, *Whose Votes Count? Affirmative Action and Minority Voting Rights* (Cambridge, Massachusetts: Harvard University Press, 1987), p. 2.

<sup>38</sup> As the name implies, “white primary” refers to a primary in which only whites were eligible to vote. A 1924 Texas statute prohibited blacks from participating in a Democratic party primary election in that state; though the statute was repealed shortly thereafter, in 1932 the state convention of the Texas Democratic party adopted a resolution under which only whites were eligible for membership in the Democratic party. In 1940, a black was denied the opportunity to participate in that state’s Democratic primary, eventually resulting in litigation before the U.S. Supreme Court. Defenders of the “white primary” argued that the Democratic party was a voluntary association and thus free to select its own membership, including the right to limit participation in the party primary to whites. However, at that time, the Democratic primary in the South was tantamount to election (the general election usually a formality since Republicans seldom contested statewide offices in the South before the 1960s), so by being barred from participating in the party primary, blacks in effect were denied any meaningful voice in electoral politics.

<sup>39</sup> Clarence Stone, *Regime Politics: Governing Atlanta 1946-1988* (Lawrence, Kansas: University of Kansas Press, 1989), p. 14.

<sup>40</sup> *1965 Congressional Quarterly Almanac*, p. 537.

<sup>41</sup> *Ibid.*

<sup>42</sup> *Ibid.*, p. 533.

<sup>43</sup> Thernstrom, p. 21.

- <sup>44</sup> According to the Civil Rights Division Voting Section of the website of the U.S. Department of Justice.
- <sup>45</sup> *Ibid.* Because of the time and costs involving of going before the District Court in Washington, submitting voting changes to the attorney general has been the quicker and less costly alternative over the years.
- <sup>46</sup> Frank R. Parker, *Black Votes Count: Political Empowerment in Mississippi after 1965* (Chapel Hill: University of North Carolina Press, 1990), p. 97.
- <sup>47</sup> *Ibid.*, p. 99.
- <sup>48</sup> Thernstrom, p. 43.
- <sup>49</sup> Thomas R. Morris, "Redistricting and Reapportionment in Virginia," article published for *Virginia Government and Politics*, 1990 third revised edition (Charlottesville: Center for Public Service and the Virginia Chamber of Commerce), p. 191.
- <sup>50</sup> In the 1990s, Indiana eliminated its remaining multimember legislative districts. During the 1980s, the House in that state (100 members altogether) had 16 multimember districts, with up to three members per district.
- <sup>51</sup> Parker, p. 113.
- <sup>52</sup> From majority opinion in *City of Mobile v. Bolden*, 446 U.S. 55 (1980).
- <sup>53</sup> Parker, pp. 177-178.
- <sup>54</sup> Congress in 1982 did change the requirement for jurisdictions to "bail out" (i.e., be removed from coverage) from the Section 5 (preclearance) requirement, with the act now permitting bail out by individual counties within a *fully* covered state. Under the act's original bail out formula, the only option in a fully covered state was for the state *as a whole* to bail out. In Virginia, several jurisdictions in the last three years have filed for and obtained bail out, all in northern Virginia (City of Fairfax and the counties of Frederick and Shenandoah).
- <sup>55</sup> Language from Section 2(b) of the Voting Rights Act, as revised in 1982.
- <sup>56</sup> Parker, p. 179.
- <sup>57</sup> Peter Brown, *Minority Party: Why Democrats Face Defeat in 1992 and Beyond* (Washington, D.C.: Regnery Gateway, 1991), pp. 302-303.
- <sup>58</sup> Sample, p. 20.
- <sup>59</sup> As of 1998, nine states outside the South continued to use multimember legislative districts, including several smaller states such as Idaho, Nevada and North Dakota. The largest state (in population) which today uses multimember districts is New Jersey, whose 80-member House includes 40 multimember districts, each electing two members.
- <sup>60</sup> *1993 Congressional Quarterly Almanac*, p. 22-A
- <sup>61</sup> Wagar, p. 7.
- <sup>62</sup> A justice who dissented in *Shaw* wryly wrote that perhaps the Court, in specifying the nature of a "bizarre" district, would rely on the age-old pornography test of "I'll know it when I see it."
- <sup>63</sup> Traditionally in Georgia, when it came to drawing lines for congressional districts, the state legislature generally avoided dividing any particular county outside the Atlanta area into two or more districts. In the state's 1982-1990 congressional map, for instance, only three of the state's 159 counties-the large Atlanta area counties of DeKalb, Fulton and Gwinnett-were divided into two congressional districts (Fulton's population making it too large to be contained solely within one district). In other words, congressional district lines tended to follow county lines. In the 1992 plan, however, approximately 25 counties, mostly outside the Atlanta area, were split into two or more districts to accommodate the new majority-black districts.
- <sup>64</sup> Holly Idelson, "Court Takes a Harder Line On Minority Voting Blocs," *Congressional Quarterly Weekly*, July 1, 1995, p. 1944.
- <sup>65</sup> *Ibid.*
- <sup>66</sup> *Ibid.*, p. 1945.
- <sup>67</sup> Steven A. Holmes, "G.O.P. Pushes Head Count In Census Fight at State Level," *The New York Times*, June 6, 2000, p. A28.

- <sup>68</sup> Hicks, pp. 22-24.
- <sup>69</sup> *Ibid.*, p. A1.
- <sup>70</sup> Rhonda Cook, "Census workers shift attention to Georgians in new residences," *Atlanta Constitution*, June 15, 2000.
- <sup>71</sup> Holmes, p. A1.
- <sup>72</sup> *Ibid.*
- <sup>73</sup> The West's 40-seat gain between 1952 and 1992 includes six seats gained when Alaska and Hawaii were granted statehood in 1959. Over half of the 40-seat gain is attributable to California, which gained 22 seats during that four-decade period, including an eight-seat gain in the 1960s and a seven-seat gain in the 1970s.
- <sup>74</sup> Election Data Services press release, "Two States Affected by New Census Bureau Estimates," December 29, 1999.
- <sup>75</sup> Under the PRB forecast through 2020, Missouri also would lose a seat. Should the 2020 projections prove to be accurate, California would have 61 seats in the U.S. House of Representatives, compared with second-place Texas with 35 seats.
- <sup>76</sup> Genaro C. Armas, "Western, Southern states forecast to gain House seats in 2020," *Billings Gazette*, June 20, 2000.
- <sup>77</sup> Keep in mind the governor in North Carolina has no veto power over redistricting; the state is listed here simply for party control purposes.
- <sup>78</sup> Keep in mind that the governor in North Carolina has no veto power over redistricting; the state is listed here simply for party control purposes.
- <sup>79</sup> Hastings Wyman, "State Legislative Elections and Congressional Redistricting," *Southern Political Report*, June 5, 2000, p. 3.
- <sup>80</sup> As Michael Barone, author of the biennial *Almanac of American Politics*, wrote on page 969 of the 1994 edition, "The (North Carolina) 12th District is the most egregious example in the nation of the application...that the 1982 revisions of the Voting Rights Act require the maximization of black percentages in certain districts. It is called the I-85 district, because it consists of a series of urban black areas...mostly connected by a line sometimes no wider than I-85." Barone noted that one of the candidates for that seat in 1992, Mickey Michaux, remarked: "I love the district because I can drive down I-85 with both car doors open and hit every person in the district."
- <sup>81</sup> Hastings Wyman, "South Carolina: Is the GOP Rebounding?" *Southern Political Report*, April 13, 1999, pp. 3,4.
- <sup>82</sup> Barone and Ujifusa, p. 1176.
- <sup>83</sup> For the author's purpose, "Northern Virginia" is defined as those counties and cities above the Rappahannock River, here including the counties of Arlington, Fairfax, Fauquier, Loudoun, Prince William and Stafford, along with the independent cities of Alexandria, Fairfax, Falls Church, Manassas and Manassas Park.
- <sup>84</sup> In 1995, the black incumbent ran for governor and lost overwhelmingly to a white Republican, with voting largely following racial lines in that election. Two years before his initial election to Congress from a black-majority district in 1992, the black candidate ran for Congress in a majority-white district and lost overwhelmingly.
- <sup>85</sup> The wide disparity in the number of registered voters in districts is not due just to growth; in theory, two districts of equal population could have widely varying voter registration data because of socioeconomic factors (i.e., one district may have a poorer, less-educated population, therefore less likely to be registered to vote). There may also be other special circumstances explaining low voter registration statistics—the presence of a large prison in a district, the location of a military base in the area with soldiers and officers perhaps registered to vote in other states. Still, the wide disparity in registered voters in Georgia districts tends to conform with Census estimates showing the fastest-growing areas to be suburban Atlanta and other suburban areas around the state's cities, with rural South Georgia and the state's mid-sized cities generally growing very little or not at all.

- <sup>86</sup> Data on Georgia district sizes was provided by the elections division of the Georgia Secretary of State.
- <sup>87</sup> Data on Virginia district sizes was located in the State Board of Elections website.
- <sup>88</sup> Reference to 1st District Congressman Herbert Bateman, originally elected in 1982 but not seeking re-election in 2000.
- <sup>89</sup> Hastings Wyman, "State Legislative Elections and Congressional Redistricting," *Southern Political Report*, June 5, 2000, p. 1.
- <sup>90</sup> The Republican candidate lost statewide, however, because his margins were narrow in several of those districts, while on the other hand the incumbent Democrat won by lopsided margins in three majority-black districts.
- <sup>91</sup> Rhonda Cook, "Changing the Face of Politics," *Atlanta Journal and Constitution*, March 12, 2000.
- <sup>92</sup> Jim Galloway, "The party's shifting in suburban politics," *Atlanta Journal and Constitution*, May 6, 2000.
- <sup>93</sup> Deborah McGregor, managing editor. "End Results, County by County," *1996 Congressional Quarterly Almanac* (Washington, D.C.: Congressional Quarterly, Inc., 1997), pp. 11-18.
- <sup>94</sup> Barone and Ujifusa, p. 582.
- <sup>95</sup> Richard A. Bennett, "Term limits under siege," *Bangor Daily News*, April 27, 1999.
- <sup>96</sup> Rebecca McCarthy, "Jones loses bid for re-election in heated 10th District race," *Atlanta Journal*, July 22, 1992.
- <sup>97</sup> As calculated by the author based on biographies of congressmen and senators as listed in the *1994 Almanac of American Politics*.
- <sup>98</sup> Editorial, "Democracy," in *Richmond Times-Dispatch*, June 25, 2000.
- <sup>99</sup> Information from the website of the National Conference of State Legislatures, [www.ncsl.org](http://www.ncsl.org)
- <sup>100</sup> *Ibid.*

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