

EVERYTHING YOU
ALWAYS WANTED
TO KNOW ABOUT
REDISTRICTING*



**But Were Afraid To Ask!*

ACLU

AMERICAN CIVIL LIBERTIES UNION
VOTING RIGHTS PROJECT

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INTRODUCTION

This pamphlet attempts to answer some of the questions most frequently asked about redistricting: thus the question and answer format. Several caveats are in order. The law in the voting area is always evolving and different courts often interpret the same laws differently. If you have a specific question about redistricting or a problem not adequately covered in this pamphlet, you should seek legal advice.

Redistricting is often thought of as being highly technical and something best left to the politicians and the experts. Nothing could be further from the truth. Every voter has a vital stake in redistricting because it determines the composition of districts that elect public officials at every level of government. Given the advances in modern map drawing technology, it is now possible for everyone to participate directly in the redistricting process. But to be an effective player, you need to know the rules of the game.

For more information or assistance in redistricting, contact the ACLU's Voting Rights Project at the number and address listed on the front of this pamphlet.

REDISTRICTING AND REAPPORTIONMENT

Q: What is redistricting?

Redistricting refers to the process of redrawing the lines of districts from which public officials are elected.¹ Redistricting typically takes place after each census and affects all jurisdictions that use districts, whether for members of Congress, state legislatures, county commissions, city councils, school boards, etc.

Q: Is redistricting different from reapportionment?

Technically, yes, but as a practical matter, no. Reapportionment in its most narrow, technical sense refers to the allocation of representatives to previously established voting areas, as when Congress allocates, or “apportions,” seats in the U.S. House of Representatives to the several states following the decennial census.² But the terms “reapportionment” and “redistricting” are generally used interchangeably and refer to the entire process, at whatever level it takes place, of redrawing district lines after the census.³

ONE PERSON, ONE VOTE

Q: Why bother to redraw district lines?

The U.S. Constitution and the federal courts require it. It's also the fair and

equitable thing to do. Historically, many states did not redistrict to reflect shifts and growth in their populations. As a consequence, the voting power of residents of heavily populated areas was often significantly diluted. In Georgia, for example, in statewide contests a vote in 45 sparsely populated rural counties had 20 times the weight of a vote in urban Fulton County.⁴ The voters from the 103 smallest counties in the state, which had only 22% of the population, also elected a majority of the members of the house.⁵ In a series of cases in the 1960s, one of which coined the phrase “one person, one vote,” the Supreme Court held that the Fourteenth Amendment guaranteed “equality” of voting power and that the electoral systems in states which failed to allocate voting power on the basis of population were unconstitutional.⁶

Q: As far as state and local offices are concerned, how does one person, one vote work?

For state and local offices, one person, one vote requires the jurisdiction to make “an honest and good faith effort” to construct districts which elect representatives as nearly of equal population as is practicable.⁷ Population equality is determined by calculating a district's deviation from ideal district size. Ideal district size is determined by dividing the total population by the number of seats involved. Deviation is determined by calculating the extent to which an actual district is larger (has a “+” deviation) or smaller (has a “-” deviation) than the ideal district size.

Plans with a total population deviation (the sum of the largest plus and minus deviations) under 10% are regarded as complying with one person, one vote.⁸ Plans with deviations between 10% and 16.4% are acceptable *only* if they can be justified “based on legitimate considerations incident to the effectuation of a rational state policy.”⁹ Plans with deviations greater than 16.4% are regarded as unconstitutional and are probably never justifiable.¹⁰

Q: How can a jurisdiction justify a total deviation among districts of greater than 10%?

A state can justify a deviation greater than 10% based on a rational state policy, such as drawing districts that are compact and contiguous (all parts connected and touching), keeping political subdivisions intact, protecting incumbents, preserving the core of existing districts, and complying with the Voting Rights Act.¹¹ Given the ease with which districts of equal population can be drawn using modern redistricting technology, and the fact that a plan with an excessive deviation is an invitation to a lawsuit, a jurisdiction has every incentive to draw a plan with a deviation of less than 10%.

Q: Do the same deviation rules apply to congressional redistricting?

No. The duty to reapportion Congress is imposed by Article I, Section 2 of the U.S. Constitution rather than the

Fourteenth Amendment.¹² The courts have interpreted Article I as imposing a much stricter population equality standard in congressional redistricting. Congressional districts must be “as mathematically equal as reasonably possible.”¹³ Deviations from ideal district size can in theory be justified by a consistently applied state policy. However, in a case from New Jersey, the Supreme Court invalidated a congressional plan that contained a total deviation of only 0.6984% on the grounds that it was possible to draw a plan with a smaller deviation and the state’s asserted policy had not been consistently applied.¹⁴

Given modern technology and the large size of congressional districts, it is generally possible to draw plans that accommodate a state’s policies with virtually no deviations at all. A number of states drew plans after the 1990 census with a deviation of only one person from ideal district size.

Q: How often must a state redistrict?

As a matter of federal law, redistricting is required only once a decade, and only then if districts are malapportioned.¹⁵ States are free to redistrict more often if they wish, but there is little incentive for them to do so. Redistricting is time consuming and disruptive. There are generally no more accurate data available than the preexisting federal census. And incumbents are disinclined to change the districts from which they were elected. Indeed, some states have enacted laws

prohibiting redistricting more frequently than once every ten years.¹⁶

MINORITY VOTE DILUTION

Q: What is minority vote dilution?

Vote dilution, as opposed to vote denial, refers to the use of redistricting plans and other voting practices that minimize or cancel out the voting strength of racial and other minorities. In the words of the Supreme Court, the essence of a vote dilution claim “is that a certain electoral law, practice, or structure interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by black and white voters to elect their preferred representatives.”¹⁷

Q: What are some of the techniques used in redistricting plans to dilute minority voting strength?

Three techniques frequently used to dilute minority voting strength are “cracking,” “stacking,” and “packing.” “Cracking” refers to fragmenting concentrations of minority population and dispersing them among other districts to ensure that all districts are majority white. “Stacking” refers to combining concentrations of minority population with greater concentrations of white population, again to ensure that districts are majority white. “Packing” refers to concentrating as many minorities as possible in as few districts as possible to minimize the number of majority-minority dis-

tricts.¹⁸ All of these techniques may result in a districting plan that violates the Voting Rights Act, as well as the Fourteenth Amendment.¹⁹

Q: Is vote dilution prohibited by the Constitution?

Yes. A reapportionment plan that dilutes minority voting strength is unconstitutional if it was conceived or operated as a *purposeful* device to further racial discrimination.²⁰ Race need not be the sole or main purpose, but only a motivating factor in the decisionmaking process.²¹

Q: Does the Voting Rights Act prohibit vote dilution in redistricting?

Yes. Two provisions of the Voting Rights Act, Section 2²² and Section 5,²³ prohibit the use of voting practices or procedures, including redistricting plans, that dilute minority voting strength.

Q: Who is protected by the Voting Rights Act?

When it was first enacted, the Voting Rights Act prohibited discrimination based on “race or color.”²⁴ In 1975 Congress extended the protection of the Act to language minorities, defined as American Indians, Asian-Americans, Alaskan Natives, and persons of Spanish Heritage.²⁵

SECTION 2 OF THE VOTING RIGHTS ACT

Q: What does Section 2 provide?

Section 2 provides that a voting practice is unlawful if it “results” in discrimination, *i.e.*, if, based on the totality of circumstances, it provides minorities with “less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.”²⁶ Although Section 2 does not require proof of racial purpose, practices which were enacted or are being maintained for the purpose of discriminating on the basis of race or language minority status would also be unlawful under the statute.

Q: Why did Congress dispense with the requirement of proving racial purpose under Section 2?

Congress did not require proof of racial purpose for a statutory violation for several reasons, the most important of which was that, to ask whether public officials acted out of bias or intended to discriminate against a minority group, was to ask the “wrong question.” The relevant inquiry, according to Congress, was whether minorities “have equal access to the process of electing their representatives.” The intent requirement was also “unnecessarily divisive” because it required plaintiffs to allege and prove that local officials, or indeed entire communities, were racists. Finally, the

requirement of proving the subjective motives of a legislative body imposed an “inordinately difficult” burden of proof on minority plaintiffs.²⁷ As Judge John Minor Wisdom wrote in an early voting case, requiring proof of an unconstitutional legislative purpose was “to burden the plaintiffs with the necessity of finding the authoritative meaning of an oracle that is Delphic only to the court.”²⁸

Q: How do you prove a violation of the results standard of Section 2?

The most important case interpreting Section 2 is *Thornburg v. Gingles*,²⁹ in which the Supreme Court invalidated multi-member legislative districts in a redistricting plan adopted by North Carolina after the 1980 census. The Court identified three factors, known as the “*Gingles* factors,” that are of primary importance in determining a violation of the statute when the racial makeup of an election district is challenged: (1) whether “the minority group . . . is sufficiently large and geographically compact to constitute a majority in a single-member district;” (2) whether “the minority group . . . is politically cohesive,” *i.e.*, tends to vote as a bloc; and (3) whether “the majority votes sufficiently as a bloc to enable it - in the absence of special circumstances . . . usually to defeat the minority’s preferred candidate.”³⁰

The legislative history further provides that “a variety of factors, depending upon the kind of rule, practice, or procedure called into question” are also relevant in determining a violation.³¹ Typical factors identified in the Senate report include: the

extent of any history of discrimination in the jurisdiction that touched the right of the members of the minority group to participate in the democratic process; the extent to which the jurisdiction uses devices that may enhance the opportunity for discrimination, such as majority vote requirements or anti-single shot provisions; whether the members of the minority group bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process; whether political campaigns have been characterized by overt or subtle racial appeals; and, the extent to which members of the minority group have been elected to public office in the jurisdiction.³² A court's ultimate duty is to determine whether in light of the *Gingles* factors and the totality of circumstances a challenged practice dilutes minority voting strength.³³

Q: How compact must a district be to satisfy Section 2 and the first *Gingles* factor?

The Supreme Court has said that a district need not be the winner “in endless ‘beauty contests’” to meet the compactness standard of Section 2.³⁴ Instead, a district complies with Section 2 if it “is *reasonably* compact and regular, taking into account traditional redistricting principles such as maintaining communities of interest and traditional boundaries.”³⁵

There are various social science measures of compactness, such as the perimeter measure and the dispersion measure,³⁶ but most courts have applied an intuitive,

“eyeball” test, *i.e.*, if a district looks reasonably compact and is similar in shape to other districts drawn by the jurisdiction it is deemed compact within the meaning of Section 2 and the first *Gingles* factor.³⁷ Some courts have placed more emphasis on how a district would function in the political process, rather than on how it looks. The functional approach takes into account such things as transportation networks, media markets, the existence of recognized neighborhoods, *etc.*, to determine whether it is possible to organize politically and campaign effectively in the district.³⁸

Q: What is the test for determining if a minority is a “majority” in a district?

Most courts have held that a majority means that the minority is 50% plus 1 of the voting age population (VAP) in a district on the theory that only those of voting age have the potential to elect candidates of their choice within the meaning of Section 2.³⁹ The Supreme Court, however, hasn't decided whether total population, VAP, or some other measure, such as citizen VAP, should be used in determining if a minority is a majority in a district.⁴⁰

Q: If a minority is too small to be a majority in a district, can it bring a Section 2 claim on the ground that its ability to influence elections has been diluted?

The Supreme Court hasn't decided that issue. In *Gingles* the Court left open the

question of whether a minority group that was not sufficiently large and compact to constitute a majority in a district could bring a vote dilution claim if it could show that its ability “to influence elections” had been impaired.⁴¹ In a subsequent decision the Court assumed, but without deciding, that a minority could satisfy the first *Gingles* factor if it was “a sufficiently large minority to elect their candidate of choice with the assistance of cross-over votes from the white majority.”⁴²

Q: How does a court determine whether a minority is politically cohesive within the meaning of the second *Gingles* factor?

The Supreme Court held in *Gingles* that political cohesion can be shown by evidence “that a significant number of minority group members usually vote for the same candidates.”⁴³ Elsewhere in the opinion the Court said that racial bloc voting and political cohesion could be established “where there is ‘a consistent relationship between [the] race of the voter and the way in which the voter votes.’”⁴⁴ Most courts have applied a common sense rule that if a majority of minority voters vote for the same candidates a majority of the time the minority is politically cohesive.

Q: How pervasive must white bloc voting be to satisfy the third *Gingles* factor?

The third *Gingles* factor (also referred to as whether white bloc voting is “legally

significant”) is satisfied if the majority votes sufficiently as a bloc to enable it “usually” to defeat the minority’s preferred candidate.⁴⁵ The fact that some minority candidates may have been elected does not foreclose a Section 2 claim. Instead, in the words of the Supreme Court, where a challenged scheme “generally works to dilute the minority vote, it cannot be defended on the ground that it sporadically and serendipitously benefits minority voters.”⁴⁶

Q: Can two minority groups, such as African-Americans and Hispanics, ever be combined for purposes of Section 2?

The Supreme Court hasn’t resolved this issue,⁴⁷ but most courts have held that different minority groups can be combined provided they satisfy the *Gingles* factors.⁴⁸

Q: Since we have a secret ballot, how is it possible to show racial bloc voting?

In *Gingles* the Court approved two widely used methods of proving racial bloc voting, extreme case (or homogeneous precinct) analysis, and ecological regression analysis.⁴⁹ Homogeneous precinct analysis looks at precincts predominantly (usually 90% or more) of one race. If, for example, a black candidate gets most of the votes in the predominantly black precincts but few votes in the predominantly white precincts, the voting in those precincts is necessarily along racial lines. Ecological regression analysis,

which is generally performed by experts in the field, looks at all the precincts to determine if there is a correlation between the racial makeup of the precincts and how votes are cast. It generates estimates of the percentages of members of each race who voted for minority candidates.

Q: Is it necessary to prove that voters are voting *because of race*?

No. The Supreme Court has held that “the reasons black and white voters vote differently have no relevance to the central inquiry of § 2. . . . [O]nly the correlation between race of voter and selection of certain candidates, not the causes of the correlation, matters.”⁵⁰

Q: Which elections are the most important in proving racial bloc voting and in determining whether it is legally significant?

Every election in which a voter votes, *e.g.*, a presidential preference primary, a statewide contest, a local school board election, tells us something about voter behavior and is therefore theoretically relevant in a vote dilution challenge. However, elections for the particular office at issue and those which give the voters a racial choice are generally considered the most important in determining a Section 2 violation.⁵¹ In *Gingles*, for example, the only elections analyzed by the Court were black-white legislative contests.⁵²

Defendants in some voting cases have

argued that minority voters were often able to elect candidates of their choice in white-white contests and that therefore there was no dilution of minority voting strength. The courts have generally rejected these arguments on the grounds that Section 2’s guarantee of equal opportunity is not met when “candidates favored by blacks can win, but only if the candidates are white.”⁵³

Q: What is “proportionality” and does it play a role in the *Gingles* analysis?

The term “proportionality,” as used by the Supreme Court, “links the number of majority-minority voting districts to minority members’ share of the relevant population.”⁵⁴ Whether a challenged plan provides proportionality is a factor to be considered by a court in its totality of circumstances analysis under Section 2, but proportionality does not insulate a plan, or provide it a safe harbor, from a vote dilution challenge. According to the Court, “[n]o single statistic provides courts with a short-cut to determine whether a [redistricting plan] unlawfully dilutes minority voting strength.”⁵⁵

Q: If a plan drawn to remedy a Section 2 violation were to exceed proportionality, would it for that reason be unacceptable?

No, particularly where the remedial plan has less disparity and more closely approximates proportionality than the existing plan. As one court put it,

“[t]here is no reason why the . . . minority in this case should continue to bear the burden of under-representation under the current scheme while the white majority enjoys over-representation.”⁵⁶

Q: Does the *Gingles* analysis also apply to single-member district plans?

Yes. The Court has held that the analysis in *Gingles* applies to single-member redistricting plans as well as multi-member plans and at-large elections.⁵⁷

SECTION 5 OF THE VOTING RIGHTS ACT

Q: How does Section 5 work?

Section 5 requires certain “covered” states, *i.e.*, those which used discriminatory tests for voting and had low levels of voter participation, to get federal approval, or preclearance, of their new voting laws or practices before they can be implemented.⁵⁸ Section 5 was designed to prohibit states from replacing their discriminatory tests for voting with other, equally discriminatory voting practices.

Q: What states are covered by Section 5?

Section 5 covers nine states in their entirety (Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas, and Virginia) and parts

of seven others (California, Florida, Michigan, New Hampshire, New York, North Carolina, and South Dakota).

Q: What voting changes are covered by Section 5?

The courts have interpreted Section 5 broadly to cover practices that alter the election laws of a covered jurisdiction in even a minor way.⁵⁹ Covered changes have run the gamut from redistricting plans,⁶⁰ to annexations,⁶¹ to setting the date for a special election,⁶² to moving a polling place.⁶³

Q: Is Section 5 permanent?

No. Unlike Section 2, Section 5 was originally enacted as a temporary, five-year measure.⁶⁴ Section 5 was extended and expanded by amendments in 1970, 1975, and 1982,⁶⁵ and is currently scheduled to expire in 2007.⁶⁶

Q: How is preclearance obtained?

Preclearance can only be granted by the United States District Court for the District of Columbia in a lawsuit, or by the U.S. Attorney General in an administrative submission. Local federal courts have the power, and duty, to enjoin the use of unprecleared voting practices, but they have no jurisdiction to determine whether a change should be approved.⁶⁷ That decision is reserved exclusively for the District of Columbia court or the Attorney General. Section 5 also places the burden of proof on the jurisdiction to show that a proposed voting change does

not have a discriminatory purpose or effect.⁶⁸ The statute was thus designed to shift the advantages of inertia and the delay associated with litigation from the victims of discrimination to the jurisdictions which practiced it.

Q: What if a jurisdiction refuses to submit a voting change for preclearance?

Congress placed the initial burden of “voluntary” compliance with the statute on the covered jurisdictions,⁶⁹ but it also authorized the Attorney General and private citizens to bring suit in local federal court to block the use of unprecleared voting practices.⁷⁰ It also made it a crime to fail to comply with the statute.⁷¹

Q: What standard do the District of Columbia Court and the Attorney General use in determining whether a proposed change has a discriminatory effect?

The Supreme Court has construed the discriminatory effect standard of Section 5 narrowly to mean retrogression.⁷² That is, only those voting changes that make minorities worse off than they were under the preexisting practice or system (known as the “benchmark” for determining retrogression)⁷³ are objectionable under the effect standard. The Court has even held that if a voting change clearly violates the results standard of Section 2, it would not be objectionable under Section 5 unless it caused a retrogression in minority voting strength.⁷⁴

Q: Can an intervening court decision alter the benchmark for determining retrogression under Section 5?

Yes. In the event that the existing practice or plan were held to be unconstitutional, the benchmark for determining retrogression of any proposed legislative plan would normally be the last legally enforceable practice or plan used by the jurisdiction.⁷⁵ However, a court decision implementing a remedial redistricting plan would itself become the benchmark for determining retrogression in a subsequent Section 5 submission rather than the last legally enforceable legislative plan.⁷⁶

Q: What is the standard for determining whether a proposed change has a discriminatory purpose under Section 5?

As with the effect standard, the Supreme Court has construed the purpose standard of Section 5 narrowly to mean a purpose to regress. Thus, a voting change enacted with the express purpose of abridging minority voting strength would be objectionable only if the jurisdiction intended to make minorities worse off than they were before.⁷⁷ Such a restrictive interpretation of the statute is wholly at odds with the stated purpose of Congress in enacting the Voting Rights Act, which was to “banish the blight of racial discrimination in voting.”⁷⁸

Q: Can minorities participate in the Section 5 preclearance process?

Yes. The Attorney General's regulations allow, and encourage, minorities to participate in the preclearance process and submit information concerning the possible discriminatory purpose or effect of voting changes. In practice, the Attorney General is heavily dependent on information received from citizens in the communities affected by proposed voting changes in administering the statute.

Q: What is the procedure for making a Section 5 comment?

Section 5 comment letters can be mailed to Chief, Voting Section, Civil Rights Division, P.O. Box 66128, Department of Justice, Washington, D.C. 20035-6128. Comments can also be made by phone by calling 1-800-253-3931 or (202) 307-2767. To learn more about the Section 5 process, you can log on the voting section's website at www.usdoj.gov/crt/voting.

Q: If a voting change has been precleared under Section 5 can it still be challenged under Section 2?

Yes. Even if a redistricting plan has been precleared under Section 5, it can still be challenged under Section 2 by a lawsuit in the local federal district court.⁷⁹

THE SHAW/MILLER CASES

Q: What did the Supreme Court hold in *Shaw v. Reno*?

In *Shaw v. Reno*,⁸⁰ decided in 1993, the Court held that white voters who alleged that North Carolina's two majority black congressional districts were so bizarre in shape that they could only be understood as an attempt to assign or segregate voters on the basis of race, stated a claim under the equal protection clause of the Fourteenth Amendment.

Q: Has the Court limited *Shaw* type claims to districts that were bizarrely shaped?

No. In *Miller v. Johnson*,⁸¹ the Court held that Georgia's majority black Eleventh Congressional District was unconstitutional, not because of its shape, but because race was the "predominant" factor in drawing district lines and the state "subordinated" its traditional redistricting principles to race without having a compelling reason for doing so, such as remedying or avoiding a violation of federal law. According to the Court, a bizarre shape was not required for an equal protection challenge but was simply one way of proving a predominant racial motive and subordination of traditional redistricting principles.

Q: Did the Court in the *Shaw* and *Miller* cases establish special rules for white voters allowing them to challenge majority-minority districts?

Yes. First, the *Shaw/Miller* cases allow white voters to challenge majority-minority districts based solely on their shape. Prior to *Shaw* the Court had held that a regular district shape was not a federal constitutional requirement.⁸² Second, in voting cases brought by blacks the Court has required the plaintiffs to prove that a challenged practice was adopted or was being maintained with a discriminatory purpose to establish a constitutional violation.⁸³ In the *Shaw/Miller* cases, the plaintiffs did not attempt to prove, or even claim, that the state's redistricting plans were enacted for the purpose of discriminating against them or other white voters.⁸⁴ Third, in civil rights cases brought by blacks the Court had held that the plaintiffs were required to show a personal, concrete injury.⁸⁵ In the *Shaw/Miller* cases, however, the Court dispensed with any requirement that the plaintiffs allege or prove that the challenged plans had diluted their voting strength or personally injured them in any way.⁸⁶

Q: Are the *Shaw/Miller* cases consistent with the spirit of the Fourteenth Amendment?

No. They have transformed the Fourteenth Amendment from a law designed to prohibit discrimination

against racial minorities,⁸⁷ to one that can now be used to challenge majority-minority districts and allow whites to seek to maximize their control of the redistricting process. That this was done in the name of "equal protection" is one of the great ironies of the Court's modern redistricting cases.

Q: Is it still permissible to draw majority-minority districts?

Yes. The Court has invalidated majority black and Hispanic districts in some states,⁸⁸ but it has rejected challenges to such districts in others.⁸⁹ States are not only permitted to draw majority-minority districts, but may be required to do so to comply with the Voting Rights Act.

According to the Court, a legislature "will . . . almost always be aware of racial demographics," but it may not allow race to predominate in the redistricting process.⁹⁰ A state "is free to recognize communities that have a particular racial makeup, provided its action is directed toward some common thread of relevant interest."⁹¹ Redistricting may be performed "with consciousness of race."⁹² Indeed, it would be "irresponsible" for a state to disregard the racial fairness provisions of the Voting Rights Act.⁹³ A state may therefore "create a majority-minority district without awaiting judicial findings" if it has a strong basis in evidence for avoiding a Voting Rights Act violation.⁹⁴ Admittedly, it may be difficult to steer a median course between these competing principles articulated by the Court, but it is clear that

the Court has not banned the use of majority-minority districts.

Q: Are majority-minority districts a suspect form of gerrymandering?

No. Majority black or Hispanic districts are no more “gerrymandered” than majority white districts. One leading expert has said that “[a]ll districting is ‘gerrymandering.’”⁹⁵ Indeed, districts are always designed to give, or try to give, an advantage to somebody, some group, or some interest, and to that extent can be called “gerrymandered.” Incumbents try to “gerrymander” districts in which they can get elected, Democrats try to “gerrymander” districts that protect their party, suburbanites try to “gerrymander” districts to include the suburbs, and so on. As the Court noted in *Davis v. Bandemer*,⁹⁶ “[a]n intent to discriminate in this sense may be present whenever redistricting occurs.”

Q: Are majority-minority districts a form of affirmative action?

No. There is a fundamental distinction between the race conscious allocation of limited employment or contractual opportunities and the far different task of achieving fair representation for political, ethnic, racial, and other minority groups in the redistricting process.⁹⁷ Providing minorities with an effective political voice involves equal, not preferential, treatment.

Q: Do majority-minority districts segregate voters?

No. The majority-minority districts in the South created after the 1990 census, far from being segregated, were the most racially *integrated* districts in the country. They contained an average of 45% of non-black voters. No one familiar with Jim Crow could ever confuse the highly integrated redistricting plans of the 1990s with racial segregation under which blacks were not allowed to vote or run for office. Moreover, the notion that majority black districts are “segregated,” and that the only integrated districts are those in which whites are the majority, is itself a racist concept. A constitutional doctrine that can tolerate only what is majority white in redistricting is surely a perversion of the equal protection standard of the Fourteenth Amendment.

Q: Is race simply a stereotype that should be avoided in redistricting?

Race is not a scientific or genetic fact, but race remains an important social and political fact. Most scientists and social scientists today recognize that race is a social construct – that is, a way of looking at people based on tradition, custom, prevailing attitudes, and the law. Various groups of individuals in this country have been singled out at one time or another for discriminatory treatment because of their skin color or their ancestry, for example the Irish and the Chinese. But discrimination against blacks, including slavery, Jim Crow, and political disfranchisement, has been particularly harsh

and persistent. In the states where majority-minority districts were challenged, race was not just an “assumption” or “stereotype,” as the Supreme Court maintained. Race, or more precisely racial discrimination, was real.

In the congressional case from Georgia, for example, *Miller v. Johnson*, racial discrimination in every aspect of life in the state was so apparent that the trial court took judicial notice of it and dispensed with any requirement that it be proved. The lower court also acknowledged that, on the basis of existing state-wide racial bloc voting patterns, the Voting Rights Act required the creation of a majority black congressional district in the Atlanta metropolitan area.

Q: Do majority-minority districts stigmatize or harm voters?

No. There is no empirical evidence that majority-minority districts have in fact stigmatized voters or caused them harm. The witnesses in the Georgia case testified at trial without contradiction that the challenged plan had not increased racial tension, caused segregation, imposed a racial stigma, deprived anyone of representation, caused harm, or guaranteed blacks congressional seats. The district court concluded that “the 1992 congressional redistricting plans had no adverse consequences for . . . white voters.”⁹⁸ None of the plaintiffs in the *Shaw* type cases argued that they were directly harmed by the challenged plans. Their claimed injury was entirely theoretical and abstract.

Q: Do majority-minority districts increase racial tension?

There is no evidence that they do. The evidence tends to show, if anything, that the creation of highly integrated majority-minority districts has helped reduce white fears of minority office holding, and as a result may have had a dampening effect on racial bloc voting.

Q: Have majority-minority districts increased political opportunities for minorities?

Yes. In 1964 there were only about 300 black elected officials nationwide. By 1998 the number had grown to more than 8,858.⁹⁹ This increase is the direct result of the increase in majority-minority districts since passage of the Voting Rights Act in 1965.¹⁰⁰

Q: Are majority-minority districts still needed?

Yes. Although some black incumbents drawn into new majority white districts as a result of the *Shaw* cases were reelected, *e.g.*, Cynthia McKinney and Sanford Bishop in Georgia, voting in their elections was still racially polarized.¹⁰¹ McKinney herself has credited her victory to incumbency and the opportunity of running initially in a majority black district.¹⁰² Nationwide, more than 90% of incumbent house members who sought reelection in 1996 won. Non-incumbent blacks, by contrast, who ran in majority white con-

gressional districts in 1996 in Arkansas, Mississippi, and Texas all lost.¹⁰³

Before the 1996 elections, the only black candidate in this century to win a seat in Congress from a majority white district in the deep South states of Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas was Andrew Young. He was elected in 1972 from the Fifth District in metropolitan Atlanta, in which blacks were 44% of the population. A pattern of minority office holding similar to that in Congress exists for southern state legislatures. Throughout the 1970s and 1980s, only about 1% of majority white districts elected a black. As late as 1988 no blacks were elected from majority white districts in Alabama, Arkansas, Louisiana, Mississippi, or South Carolina.¹⁰⁴ The number of blacks elected to state legislatures increased after the 1990 redistricting, but the increase was the result of the increase in the number of majority black districts.¹⁰⁵ Given the persistent patterns of racial bloc voting over time in the South, the destruction of majority-minority districts, whether at the congressional or state and local levels, would inevitably lead to a decline in the number of minority office holders. It is premature to claim that the electorate is suddenly color-blind or that majority-minority districts are no longer necessary to counter the effects of racial bloc voting.

Q: Is there any way to avoid a *Shaw/Miller* challenge?

Probably not. There will always be voters

who are disgruntled over being put in a majority-minority district and who will be willing to go to court to challenge the plan. But there are things a legislative body can do to defeat a *Shaw/Miller* challenge if one is brought. They include: drawing districts that are reasonably compact; observing traditional redistricting principles; and establishing a record showing that the minority community has common interests, needs, and concerns.

A jurisdiction can also draw majority-minority districts if it has a reasonable basis in evidence for avoiding a Section 2 violation. That evidence would consist of the factors identified in *Gingles* and the legislative history of Section 2: geographic compactness; political cohesion; legally significant white bloc voting; a history of discrimination; the use of devices that enhance the opportunity for discrimination, such as majority vote requirements or anti-single shot provisions; whether the minority bears the effects of discrimination in such areas as education, employment and health, which hinders its ability to participate effectively in the political process; whether political campaigns have been characterized by overt or subtle racial appeals; and the extent to which minorities have been elected to public office in the jurisdiction.

A jurisdiction should make it clear, moreover, that it considered these factors *at the time* it adopted its redistricting plan. After-the-fact attempts to establish a basis in evidence for complying with Section 2 might be dismissed as being unrelated to the decisionmaking process.

Q: Are minorities better off influencing the election of white candidates, rather than minority candidates whom they might prefer?

When it amended Section 2 of the Voting Rights Act in 1982, Congress provided that the right protected by the statute was the equal right of minorities “to elect” candidates of their choice.¹⁰⁶ As Congress recognized, a system in which the majority can freely elect candidates of its choice but in which blacks and other minorities can only influence the outcome of elections is not a true democracy.

Touting minority influence as a substitute for equal voting power is also paternalistic, for it assumes that minorities are better off being represented by officials (mainly white) chosen from white majority districts. If influence were such a great idea, whites would certainly promote the creation of as many districts as possible in which they were the minority so that they could maximize their influence over elections. But the whites who have challenged majority-minority districts would scoff at such a suggestion.

Q: Did the creation of majority-minority districts have unintended political consequences by causing the Democratic party to lose control of Congress in 1994?

No. Most social science studies place the actual cost to Democrats of creating

majority-minority districts at about a dozen seats in the house.¹⁰⁷ Given the fact that Democrats lost a total of 54 house seats in 1994 and that 24 were in states where there are no majority-minority districts, the party’s loss of control of the house cannot be laid at the doorstep of majority-minority congressional districts. Democrats lost control of the U.S. Senate after the 1994 election, but since senators are elected statewide, congressional redistricting could not have been the cause of the loss.

The decline in fortunes of Democrats can be traced to the growing defection of conservative whites that began during the early days of the civil rights movement in the 1950s. Republicans, capitalizing on white southern opposition to desegregation, made significant inroads on Democratic control of southern house seats following the presidential elections involving popular conservative Republican candidates in 1952 (Eisenhower), 1964 (Goldwater), and 1972 (Nixon). At the time of the election of Ronald Reagan to a second term in 1984, the Republicans gained control of 37% of southern house seats. The Solid Democratic South ceased to exist long before the 1990s round of congressional line drawing.

Q: Shouldn’t redistricting be color blind?

In an ideal world where people didn’t vote on the basis of race, perhaps. In the real world, states may and should consider race in redistricting for a variety of rea-

sons – to overcome the effects of prior and continuing discrimination, to comply with the Fourteenth Amendment and the Voting Rights Act, or simply to recognize communities that have a particular racial or ethnic makeup to account for their common, shared interests. The Supreme Court has acknowledged that legislators are always aware of racial information and the relationship between race and voting behavior.¹⁰⁸

It is far more honest to discuss and consider race openly than to pretend it is not a factor in reapportionment decisionmaking.

PARTISAN GERRYMANDERING

Q: Can the party in control enact a plan to limit the political opportunities of another party?

In theory, no. The Supreme Court held for the first time in 1986 that a plan which discriminated against a political party could be challenged under the Fourteenth Amendment.¹⁰⁹ Although the Court rejected the plaintiffs' claim, it indicated that a violation could be established by proof of intentional discrimination, an actual discriminatory effect, and that the system would "consistently degrade" the group's influence on the political process as a whole.¹¹⁰

Q: Have the courts invalidated many redistricting plans on the basis that they were partisan gerrymanders?

No. As a practical matter, the standard of proof announced by the Court has proved to be almost impossible to meet. Only one reported case has invalidated an election plan on the basis that it was a partisan gerrymander, a plan involving judicial elections in North Carolina.¹¹¹

THE 2000 CENSUS

Q: What is Public Law 94-171 data?

In 1975 Congress enacted Public Law 94-171 which allowed states to provide the census with physical descriptions of geographic areas, such as voting precincts, that they intended to use in drawing district lines.¹¹² The PL 94-171 data make it easier for states to comply with one person, one vote and minimizes the need to split precincts when drawing district lines. The Census Bureau is required to provide states this information, which includes data on voting age population and race at the bloc level, by April 1 of the year following the census.

Q: What is the difference between the census enumeration and the corrected count?

The enumeration is the initial head count the census takes using mailed questionnaires and followup by enumerators on the ground. Not surprisingly, the head

count always misses a lot of people. The census bureau has documented back to 1940 that the census not only undercounted the actual population by millions of people, but disproportionately missed racial minorities. The bureau estimates that in 1990 it counted 99.3% of whites but missed 4.4% of African-Americans, 5% of Hispanics, and 12.2% of Native Americans living on reservations.¹¹³ In an effort to increase the accuracy and completeness of the census the bureau has developed a technique for adjusting the enumeration statistically through “sampling.” The “corrected count” refers to the enumeration adjusted by sampling.

Q: Is statistical sampling something new for the census bureau?

No. The census has used sampling techniques since 1940. For instance, it sends the “long form” to only a small percentage of the population to generate estimates of socio-economic conditions, which are relied upon to distribute federal dollars to state and local government. Congress authorized sampling as early as 1957,¹¹⁴ and in 1964 removed the requirement that enumerators obtain “every item of information” by personal visit to each household.¹¹⁵ In 1998, Congress authorized the Secretary of Commerce, who oversees the census, to use sampling to correct the enumeration “if he considers it feasible.”¹¹⁶ Congress further provided that if the secretary decides to correct the census through

sampling, the corrected data must be accompanied by a companion set of unadjusted data.

Q: What is the basis of the dispute concerning use of corrected data?

One of the concerns is over which data are more accurate, the enumeration or the adjusted count. There are other disputes involving interpretation of what the Constitution and the Census Act require. But the overriding dispute has always been one of partisan advantage. In 1997 the chairman of the Republican National Committee wrote to all state chairmen warning that the Democratic administration’s plan to correct the census data “will add nearly four and one-half million Democrats to the nation’s population.”¹¹⁷ Republicans have sponsored legislation barring use of the corrected count on the assumption that those who will be missed in the enumeration, but who will be captured by the corrected count, would likely vote Democratic and that excluding such individuals from the redistricting database would confer an advantage on the Republican party. Partisan interests, however, have never been held to trump the one person, one vote requirement. In addition, any effort by one party to “consistently degrade” another party’s influence on the political process would be subject to challenge as an unconstitutional political gerrymander.¹¹⁸

Q: Which data--the enumeration or the corrected data--did the census bureau decide to release as PL 94-171 data for redistricting?

On March 1, 2001 the census bureau announced that it would release the enumeration data, and not the corrected count. This decision was the result of a study performed by senior census bureau officials to determine which set of data was more accurate.¹¹⁹ The committee announced that it was “unable to conclude, based on the information available at this time, that the adjusted Census 2000 data are more accurate for redistricting.”¹²⁰

Q: Was the enumerated undercount reduced in the 2000 census?

According to the census bureau, improvements were made both in reducing the overall undercount and in the differential among races. The overall undercount was reduced from 1.61% to 1.18%. The undercount of whites remained almost identical at 0.7%. The African-American undercount was reduced to 2.17% and Hispanic to 2.85%. But the census bureau also estimates that the undercount of Native Americans on reservations, which was 12.22% in 1990, remained the highest of any group at 4.75% in 2000.¹²¹

Q: Will the corrected data for the 2000 census be released in the future?

The corrected data for the 1990 census was eventually released because of requests made under the Freedom of Information Act, and that may happen again. It is also possible that the census bureau may decide to release the corrected data, particularly if further study leads it to conclude with confidence that the corrected data is indeed more accurate than the enumeration data. The Secretary of Commerce did not rule out releasing corrected data for other purposes, which includes distributing billions of dollars in federal funds.

Q: What impact does the decision to release the enumerated data as the PL 94-171 have on the redistricting process and on racial minorities in particular?

The estimated three million persons missed by the census will affect many redistricting decisions and may result in undetected one person, one vote violations. Using data that significantly and disproportionately undercounted minorities could violate the result standard of Section 2 and the retrogression standard of Section 5 of the Voting Rights Act. For example, using figures that disproportionately undercounted minorities would lower the benchmark for determining whether a state's redistricting plan which reduced the number of majority-minority districts was retrogressive and/or resulted

in the dilution of minority voting strength. However, we will not even know of such effects unless the corrected data is released.

Q: What impact would future release of corrected data have on the redistricting process?

That is difficult to say, since many state and local governments may have completed their redistricting process before the corrected data is released. But if it is promptly released individual states may choose to use it.

Additionally, the Department of Justice previously stated that it will use any data released by the census is evaluating submissions under Section 5, and that its review “will not be restricted by [a state’s] redistricting process.”¹²² Thus, if both adjusted and unadjusted data are released, the department will presumably look at both in determining the presence of any racial purpose or effect.

Q: Did the 2000 census use multi-racial or multi-ethnic categories?

Yes. For the first time the 2000 census used multi-racial or multi-ethnic categories. Respondents to the census questionnaire were able to choose among six single-race categories, plus 57 varieties of multi-racial groups.

Q: What impact will the new categories likely have on redistricting?

It will probably vary from area to area. In areas where few people checked a multi-racial category, the impact of the new categories will be minimal. Where a significant number of people checked one or more of the new racial categories, it could have an impact on the determination whether a given minority is sufficiently large and geographically compact to constitute a majority in one or more single member districts.

The new multi-racial categories could also have an impact on determining whether a minority group is politically cohesive, which must be shown to establish a violation of Section 2, and on determining the benchmark for retrogression under Section 5.

In any case, the impact of the new racial categories will have to be evaluated and dealt with on a jurisdiction-by-jurisdiction basis. And the impact will largely depend on what courts decide is the appropriate method of allocating the multiple categories into groups in determining the size of a minority.

CONCLUSION

Redistricting is everyone’s business. Given the availability of new mapping technology, the accessibility of census data, and the existence of numerous groups and organizations with expertise in the voting

area who can lend a hand, no community need sit on the sidelines and watch the redistricting process from afar. Everyone can, and should, be a player.

ENDNOTES

- ¹ Johnson v. Miller, 929 F.Supp. 1529, 1534 n.12 (S.D.Ga. 1996).
- ² See U.S. Constitution, Article I, Section 2 (“Representatives . . . shall be apportioned among the several states . . . according to their respective numbers”).
- ³ Kilgarlin v. Martin, 252 F.Supp. 252 F.Supp. 404, 410 n.1 (S.D.Tex. 1966); Johnson v. Miller, 929 F.Supp. at 1534 n.12.
- ⁴ South v. Peters, 339 U.S. 276, 278 (1950) (Douglas, J., dissenting).
- ⁵ Toombs v. Fortson, 205 F.Supp. 248, 251 (N.D.Ga. 1962).
- ⁶ Gray v. Sanders, 372 U.S. 368, 380-81 (1963); Reynolds v. Sims, 377 U.S. 533 (1964).
- ⁷ Reynolds v. Sims, 377 U.S. at 577; Brown v. Thomson, 462 U.S. 835, 842 (1983).
- ⁸ White v. Regester, 412 U.S. 755, 764 (1973); Brown v. Thomson, 462 U.S. at 842-43.
- ⁹ Mahan v. Howell, 410 U.S. 315, 325 (1973).
- ¹⁰ Connor v. Finch, 413 U.S. 407, 420 (1977). *But see* Brown v. Thomson, and Gorin v. Karpan, 775 F.Supp. 1430 (D.Wyo. 1991).
- ¹¹ Mahan v. Howell, 410 U.S. at 325; DeWitt v. Wilson, 856 F.Supp. 1409, 1415 (1994).
- ¹² Article I, Sec. 2 provides that “Representatives . . . shall be apportioned among the several states . . . according to their respective numbers.”
- ¹³ White v. Weiser, 412 U.S. 783, 790 (1973); Karcher v. Daggett, 462 U.S. 725, 730 (1983).
- ¹⁴ Karcher v. Daggett, 462 U.S. at 729, 741.
- ¹⁵ Reynolds v. Sims, 377 U.S. at 583-84.
- ¹⁶ See, e.g., South Dakota Constitution, Article III, Section 5 (prohibiting redistricting by the legislature except “by December first of the year in which apportionment is required”).
- ¹⁷ Thornburg v. Gingles, 478 U.S. 30, 47 (1986).
- ¹⁸ For a discussion of these techniques, see Frank R. Parker, “Racial Gerrymandering and Legislative Reapportionment,” in *Minority Vote Dilution* (C. Davidson ed. 1984).
- ¹⁹ See Major v. Treen, 574 F.Supp. 325 (E.D.La. 1983); Voinovich v. Quilter, 507 U.S. 146, 153-54 (1993); Jeffers v. Clinton, 730 F.Supp. 196 (E.D.Ark. 1990).
- ²⁰ Rogers v. Lodge, 458 U.S. 613 (1982).
- ²¹ Hunter v. Underwood, 471 U.S. 222 (1985).
- ²² 42 U.S.C. § 1973.
- ²³ 42 U.S.C. § 1973c.
- ²⁴ 42 U.S.C. § 1973.
- ²⁵ 42 U.S.C. § 1973aa-1a(e).
- ²⁶ 42 U.S.C. § 1973(b).
- ²⁷ S.Rep. No. 417, 97th Cong., 2d Sess. 36 (1982). See Thornburg v. Gingles, 478 U.S. at 43-4 & n.8.
- ²⁸ Nevett v. Sides, 571 F.2d 209, 238

- (5th Cir. 1978).
- ²⁹ 478 U.S. 30 (1986).
- ³⁰ *Id.* at 50-1.
- ³¹ S.Rep. No. 417 at 28-9.
- ³² *Thornburg v. Gingles*, 478 U.S. at 36-7.
- ³³ *Johnson v. De Grandy*, 512 U.S. 997 (1994).
- ³⁴ *Bush v. Vera*, 517 U.S. 952, 977 (1996); *See also* *Clark v. Calhoun County, Miss.*, 21 F.3d 92, 95 (5th Cir. 1994) (*Gingles* “does not require some aesthetic ideal of compactness”).
- ³⁵ *Bush v. Vera*, 517 U.S. at 977.
- ³⁶ *See, e.g.*, Richard H. Pildes & Richard G. Niemi, “Expressive Harms, ‘Bizarre Districts,’ and Voting Rights: Evaluating Election-District Appearances After *Shaw v. Reno*,” 92 Mich.L.Rev. 483, 554 & n.200, 555 & n.203 (1993).
- ³⁷ *See, e.g.*, *Houston v. Lafayette County*, 56 F.3d 606, 611 (5th Cir. 1995); *Cuthair v. Montezuma-Cortez, Colorado School Dist.*, 7 F.Supp. 1152, 1167 (D.Col. 1998).
- ³⁸ *See, e.g.*, *Clark v. Calhoun County*, 21 F.3d at 95; *Sanchez v. State of Colorado*, 97 F.3d 1303, 1312 (10th Cir. 1996).
- ³⁹ *See, e.g.*, *McNeil v. Springfield Park District*, 851 F.2d 937 (7th Cir. 1988); *Magnolia Bar Ass’n, Inc. v. Lee*, 994 F.2d 1143, 1150 (5th Cir. 1993).
- ⁴⁰ *See Johnson v. De Grandy*, 512 U.S. at 1008-09. As noted earlier, the related concept of one person, one vote relies upon total population rather than VAP in determining equality of

- voting power.
- ⁴¹ 478 U.S. at 46 n.12.
- ⁴² *Voinovich v. Quilter*, 507 U.S. 146, 158 (1993).
- ⁴³ *Thornburg v. Gingles*, 478 U.S. at 56.
- ⁴⁴ *Id.* at 53 n.21.
- ⁴⁵ *Id.* at 51, 56.
- ⁴⁶ *Id.* at 76.
- ⁴⁷ *Grove v. Emison*, 507 U.S. 25, 41 (1993).
- ⁴⁸ *See Nixon v. Kent County*, 76 F.3d 1381, 1393 (6th Cir. 1996); *Campos v. City of Baytown*, 840 F.2d 1240, 1244 (5th Cir. 1988).
- ⁴⁹ 478 U.S. at 52-3.
- ⁵⁰ *Id.* at 63.
- ⁵¹ *Clark v. Calhoun County*, 21 F.3d at 97 (“elections involving the particular office at issue will be more relevant than elections involving other offices”); *RWTAAAC v. Sundquist*, 29 F.Supp.2d 448, 457 (W.D.Tenn. 1998) (“[b]ecause of the prevalence of endogenous [legislative] data, the court does not find the exogenous [county] elections to be particularly useful or necessary”).
- ⁵² 478 U.S. at 80-2.
- ⁵³ *Smith v. Clinton*, 687 F.Supp. 1310, 1318 (E.D.Ark. 1988); *Clarke v. City of Cincinnati*, 40 F.3d 807, 812 (6th Cir. 1994); *RWTAAAC v. Sundquist*, 29 F.Supp.2d at 456. *Contra*, *Lewis v. Alamance County*, 99 F.3d 600 (4th Cir. 1996); *Solomon v. Liberty County*, 221 F.2d 1218 (11th Cir. 2000) (*en banc*).
- ⁵⁴ *Johnson v. De Grandy*, 512 U.S. at 1014 n.11.
- ⁵⁵ *Id.* at 1020-21.

- ⁵⁶ *Stabler v. County of Thurston*, 129 F.3d 1015, 1022 (8th Cir. 1997). *See also* *Harvell v. Blythville School Dist. # 5*, 71 F.3d 1382, 1389 (8th Cir. 1995) (“the white majority has no right under Section 2 to ensure that a minority group has absolutely no opportunity to achieve greater than proportional representation in any given race”).
- ⁵⁷ *Voinovich v. Quilter*, 507 U.S. at 158.
- ⁵⁸ 42 U.S.C. § 1973c. The determination of Section 5 coverage is made by the Attorney General and the Director of the Census. 42 U.S.C. § 1973b(b).
- ⁵⁹ *Allen v. State Board of Elections*, 393 U.S. 544, 566-67 (1969).
- ⁶⁰ *Beer v. United States*, 425 U.S. 130 (1976).
- ⁶¹ *City of Richmond v. United States*, 422 U.S. 358 (1975).
- ⁶² *Henderson v. Harris*, 804 F.Supp. 288 (M.D.Ala. 1992).
- ⁶³ *Perkins v. Matthews*, 400 U.S. 379, 387-90 (1971).
- ⁶⁴ S.Rep. No. 295, 94th Cong., 2d Sess. 12 (1975).
- ⁶⁵ 28 C.F.R. § 51 Appendix.
- ⁶⁶ 42 U.S.C. § 1973b(a). Jurisdictions can escape or “bail out” from Section 5 coverage prior to its expiration, but the standards for doing so require complete compliance with the Act for 10 years, and as a result few jurisdictions have bothered to try.
- ⁶⁷ *Allen v. State Board of Elections*, 393 U.S. at 555-56 n.19.
- ⁶⁸ *McCain v. Lybrand*, 465 U.S. 236 (1984).
- ⁶⁹ *Perkins v. Matthews*, 400 U.S. at 396.
- ⁷⁰ 42 U.S.C. §§ 1973j(d) and (f).
- ⁷¹ 42 U.S.C. § 1973j(a). Despite numerous court decisions finding that Section 5 had been violated, no one has ever been charged with the crime of failing to comply with the act.
- ⁷² *Beer v. United States*, 425 U.S. at 141.
- ⁷³ *Holder v. Hall*, 512 U.S. 874, 883-84 (1994) (the baseline for comparison in determining retrogression “is the existing status”).
- ⁷⁴ *Reno v. Bossier Parish School Bd.*, 520 U.S. 471, 485 (1997).
- ⁷⁵ *Abrams v. Johnson*, 521 U.S. 74, 97 (1997).
- ⁷⁶ *Texas v. United States*, 785 F.Supp. 201, 205 (D.D.C. 1992).
- ⁷⁷ *Reno v. Bossier Parish School Bd.*, 120 S.Ct. 866, 871 (2000).
- ⁷⁸ *South Carolina v. Katzenbach*, 383 U.S. 301, 308 (1966).
- ⁷⁹ *Thornburg v. Gingles*; *Major v. Treen*.
- ⁸⁰ 509 U.S. 630 (1993).
- ⁸¹ 515 U.S. 900, 919-20 (1995).
- ⁸² *Gaffney v. Cummings*, 412 U.S. 735, 752 n.18 (1973) (“compactness or attractiveness has never been held to constitute an independent federal constitutional requirement for State legislative districts”).
- ⁸³ *City of Mobile v. Bolden*, 446 U.S. 55 (1980).
- ⁸⁴ *Shaw v. Reno*, 509 U.S. at 641-42.
- ⁸⁵ *Allen v. Wright*, 468 U.S. 737, 754, 756 (1984).
- ⁸⁶ *Shaw v. Reno*, 509 U.S. at 641.
- ⁸⁷ *The Slaughter-House Cases*, 83 U.S. (16 Wall) 36, 81 (1872) (the Fourteenth Amendment was

adopted to remedy “discrimination against the negroes as a class, or on account of their race”).

- ⁸⁸ *I.e.*, Districts 2 and 11 in Georgia (Miller v. Johnson, Abrams v. Johnson), District 12 in North Carolina (Shaw v. Hunt, 517 U.S. 899 (1996)), and Districts 18, 29, and 30 in Texas (Bush v. Vera, 517 U.S. 952 (1996)).
- ⁸⁹ *I.e.*, in California (DeWitt v. Wilson, 515 U.S. 1170 (1995), *affirming*, 856 F.Supp. 1409 (E.D.Cal. 1994)), and in Illinois (King v. Illinois Board of Election, 118 S.Ct. 877 (1998), *affirming*, 979 F.Supp. 582, 619 (N.D.Ill. 1996)). In *Lawyer v. Department of Justice*, 521 U.S. 567 (1997), the Court rejected a *Shaw* challenge to a majority black and Hispanic state legislative district in Florida.
- ⁹⁰ Miller v. Johnson, 515 U.S. at 916.
- ⁹¹ *Id.* at 920.
- ⁹² Bush v. Vera, 517 U.S. at 958.
- ⁹³ *Id.* at 991 (O’Connor, J., concurring).
- ⁹⁴ *Id.* at 994.
- ⁹⁵ Robert G. Dixon, Jr., *Democratic Representation: Reapportionment in Law and Politics* 462 (1968).
- ⁹⁶ 478 U.S. 109, 164 (1986).
- ⁹⁷ Davis v. Bandemer, 478 U.S. at 147 (O’Connor, J., concurring).
- ⁹⁸ Johnson v. Miller, 864 F.Supp. 1354, 1370 (S.D.Ga. 1994).
- ⁹⁹ Joint Center for Political and Economic Studies, *Number of Black Elected Officials in the United States, by State and Office*, January 1998.
- ¹⁰⁰ See Lisa Handley & Bernard

Grofman, “The Impact of the Voting Rights Act on Minority Representation: Black Officeholding in Southern State Legislatures and Congressional Delegations,” in *Quiet Revolution in the South* 335 (Chandler Davidson & Bernard Grofman, eds. 1994) (“the increase in the number of blacks elected to office in the South is a product of the increase in the number of majority-black districts”).

- ¹⁰¹ David Bositis, “The Persistence of Racially Polarized Voting in the 1996 Elections,” *Voting Rights Review* 5 (Southern Regional Council, Atlanta, GA, Summer 1997).
- ¹⁰² Cynthia McKinney, “A Product of the Voting Rights Act,” *The Washington Post*, Nov. 26, 1996, p. A15.
- ¹⁰³ Bositis 6 (1997).
- ¹⁰⁴ Lisa Handley & Bernard Grofman, “The Impact of the Voting Rights Act on Minority Representation: Black Officeholding in Southern State Legislatures and Congressional Delegations,” in *Quiet Revolution* at 336-37.
- ¹⁰⁵ David Bositis, *Redistricting and Representation: The Creation of Majority-Minority Districts and the Evolving Party System in the South* 46 (Joint Center for Political and Economic Studies, 1995).
- ¹⁰⁶ 42 U.S.C. § 1973.
- ¹⁰⁷ Bernard Grofman & Lisa Handley, “1990s Issues in Voting Rights,” 65 *Miss. L. J.* 205, 264 (1995).
- ¹⁰⁸ *United Jewish Organizations of Williamsburg, Inc. v. Carey*, 430

- U.S. 144, 176 n.4 (1977) (“[i]t would be naive to suppose that racial considerations do not enter into apportionment decisions”).
- ¹⁰⁹ *Davis v. Bandemer*, 478 U.S. 109 (1986).
- ¹¹⁰ *Id.*, 478 U.S. at 132.
- ¹¹¹ *Republican Party of North Carolina v. Hunt*, 841 F.Supp. 722 (E.D.N.C. 1994).
- ¹¹² 13 U.S.C. § 141(c).
- ¹¹³ Kenneth Prewitt, Director, U.S. Bureau of the Census, “Accuracy and Coverage Evaluation,” June 2000, pp. 4, 6.
- ¹¹⁴ *Department of Commerce v. United States House of Representatives*, 525 U.S. 316, 337 (1999).
- ¹¹⁵ 78 Stat. 737.
- ¹¹⁶ 13 U.S.C. § 195.
- ¹¹⁷ Memorandum from Jim Nicholson, Chairman, Republican National Committee, May 20, 1997 “Re: the Clinton Census.”
- ¹¹⁸ *See Davis v. Bandemer*, 478 U.S. at 132.
- ¹¹⁹ The committee’s makeup and its duties were established by federal regulation. 15 C.F.R. 101.1, 101.2 (effective Nov. 6, 2000), published in 65 Fed. Reg. 59,713 (2000).
- ¹²⁰ Bureau of the Census, U.S. Dept. of Commerce, “Report of the Executive Steering Committee for Accuracy and Coverage Evaluation Policy, Recommendation Concerning the Methodology to be Used in Producing the Tabulations of Population Reported to States and Localities Pursuant to 13 U.S.C. § 191(c)” (March 1, 2001),

- Recommendation, p. 1. The committee stated that “the analysis indicated an overall improvement in accuracy from adjustment,” but because its analysis revealed concerns that were “potentially indicative of undetected problems..., [it was] unable to conclude at this time that the adjusted data are superior because further research on these concerns could reverse the finding of the adjusted data’s superior accuracy.” *Id.* at iii.
- ¹²¹ “Report of the Executive Steering Committee for Accuracy and Coverage Evaluation Policy,” *Id.* at 4-5.
- ¹²² Letter from Joseph D. Rich, Acting Chief, Voting Section, Civil Rights Division, U.S. Dept. of Justice, to Jane Dee Hull, Governor of Arizona, March 24, 2000, p. 2; FR Doc. 01-1488, filed 1-17-01.

APPENDIX A

There are more than a dozen national or regional organizations that may be able to help you with redistricting and other voting rights issues. Many of them have state and local offices as well.

Advancement Project
 1100 17th Street NW, Suite 604
 Washington, DC 20036
 (202)728-9557

American Civil Liberties Union

125 Broad Street
New York, NY 10004-2400
<<http://www.aclu.org>>
(202)549-2500

American Civil Liberties Union

Southern Regional Office
2727 Harris Tower
233 Peachtree Street, NE
Atlanta, GA 30303
(404)523-2721

**Brennan Center for Justice
at NYU School of Law**

161 Avenue of the Americas
12th Floor
New York, NY 10013
<<http://www.brennancenter.org>>
(212)998-6730
(212)995-4550 (fax)

Center for Constitutional Rights

666 Broadway, 7th Floor
New York, NY 10012
(212)614-6464
(212)614-6499 (fax)

**Lawyers Committee for Civil Rights
Under Law**

1401 New York Avenue NW
Suite 400
Washington, DC 20005
<<http://www.lawyerscommittee.org>>
(202)662-8600

League of Women Voters

1730 M Street NW, Suite 1000
Washington, DC 20036-4508
<<http://www.lwv.org>>
(202)429-1965
(202)429-0854 (fax)

**Mexican American Legal Defense
and Educational Fund**

634 South Spring Street
11th Floor
Los Angeles, CA 90014
<<http://www.maldef.org>>
(213)629-2512
(213)629-0266 (fax)

**NAACP Legal Defense and
Educational Fund, Inc.**

99 Hudson Street, Suite 1600
New York, NY 10013
(212)965-2200
(800)221-7822

**NAACP Legal Defense and
Educational Fund, Inc.**

1444 Eye Street N.W.
10th floor
Washington, DC 20005
(202) 682-1300

**NAACP Legal Defense and
Educational Fund, Inc.**

1055 Wilshire Boulevard
Suite 1480
Los Angeles, CA 90017
(213) 975-0211

**National Asian Pacific American
Legal Consortium**

1140 Connecticut Avenue NW
Suite 1200
Washington, DC 20036
<<http://www.napalc.org>>
(202) 296-2300
(202) 296-2318 (fax)

**National Association for the
Advancement of Colored People**
4805 Mt. Hope Drive
Baltimore, MD 21215
<<http://www.naacp.org>>
(410)486-9180

Native American Rights Fund
1506 Broadway
Boulder, CO 80302
<<http://www.narf.org>>
(303)447-8760
(303)443-7776 (fax)

**Puerto Rican Legal Defense and
Education Fund**
99 Hudson Street, 14th Floor
New York, NY 10013
(212)219-3360

Southern Poverty Law Center
400 Washington Avenue
Montgomery, AL 36014
<<http://www.splcenter.org>>
(334)264-0286

Southern Regional Council
133 Carnegie Way NW, Suite 900
Atlanta, GA 30303-1024
<<http://www.southerncouncil.org>>
email: info@southerncouncil.org
(404)522-8764
(404)522-8791 (fax)

**Southwest Voter Registration
Education Project**
403 E. Commerce, Suite 220
San Antonio, TX 78205
<<http://www.svrep.org>>
(210)222-0224
(210)222-8474 (fax)
(800)404-VOTE

APPENDIX B

The following maps come from the *Bush v. Vera* decision. The maps on this page are from the majority opinion of the Court:



TEXAS CONGRESSIONAL DISTRICT 18
Majority Black and Unconstitutional



TEXAS CONGRESSIONAL DISTRICT 29
Majority Hispanic and Unconstitutional

The maps on this page come from the dissenting opinion of Justice Stevens:



TEXAS CONGRESSIONAL DISTRICT 6
Majority White and Constitutional



TEXAS CONGRESSIONAL DISTRICT 25
Majority White and Constitutional