LEGISLATOR'S GUIDE TO NORTH CAROLINA LEGISLATIVE AND CONGRESSIONAL REDISTRICTING

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PREFACE

Following each federal decennial census, the General Assembly of North Carolina engages in redistricting of congressional districts and legislative districts, as required by the U.S. and N.C. Constitutions. This Guide provides a brief introduction of legal principles related to redistricting law, as well as statistical information derived from the 2010 Census and information regarding the technology used in redistricting. This document is meant to be an overview of the process and the law surrounding that process and is not meant to be a comprehensive or exhaustive discussion of case law and interpretations thereof.

CONSTITUTIONAL PROVISIONS AUTHORIZING REDISTRICTING

United States Constitution

Article I, Section 2

Clause 3: Representatives . . . shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons . . . [and] three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the U.S., and within every subsequent Term of ten Years, in such Manner as they shall by Law direct.

Amendment XIV

SECTION 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed.

North Carolina Constitution

Article II: Legislative

Sec. 2. Number of Senators.

The Senate shall be composed of 50 Senators, biennially chosen by ballot.

Sec. 3. Senate districts; apportionment of Senators.

The Senators shall be elected from districts. The General Assembly, at the first regular session convening after the return of every decennial census of population taken by order of Congress, shall revise the senate districts and the apportionment of Senators among those districts, subject to the following requirements:

(1) Each Senator shall represent, as nearly as may be, an equal number of inhabitants, the number of inhabitants that each Senator represents being determined for this purpose by dividing the population of the district that he represents by the number of Senators apportioned to that district;
(2) Each senate district shall at all times consist of contiguous territory;
(3) No county shall be divided in the formation of a senate district;
(4) When established, the senate districts and the apportionment of Senators shall remain unaltered until the return of another decennial census of population taken by order of Congress.

Sec. 4. Number of Representatives.

The House of Representatives shall be composed of 120 Representatives, biennially chosen by ballot.

Sec. 5. Representative districts; apportionment of Representatives.

The Representatives shall be elected from districts. The General Assembly, at the first regular session convening after the return of every decennial census of population taken by order of Congress, shall revise the representative districts and the apportionment of Representatives among those districts, subject to the following requirements:

(1) Each Representative shall represent, as nearly as may be, an equal number of inhabitants, the number of inhabitants that each Representative represents

being determined for this purpose by dividing the population of the district that he represents by the number of Representatives apportioned to that district;

(2) Each representative district shall at all times consist of contiguous territory;

(3) No county shall be divided in the formation of a representative district;

(4) When established, the representative districts and the apportionment of Representatives shall remain unaltered until the return of another decennial census of population taken by order of Congress.

LEGAL REQUIREMENTS FOR REDISTRICTING

In North Carolina, a redistricting plan consists of legislation specifying the counties, census tracts, voting tabulation districts, or census blocks that comprise each district. A bill creating an official redistricting plan follows the same course through the General Assembly as any other legislation. House, Senate, and Congressional plans must be approved by the full General Assembly. However, a redistricting plan is not subject to gubernatorial veto if it is in a bill that contains no other matter. The maps and statistics generated during the redistricting process are not part of the legislation that enacts the plans, but can be used as tools to evaluate the plans.

I. POPULATION EQUALITY – ONE PERSON, ONE VOTE.

The U.S. Supreme Court has held that both congressional and legislative districts must have population equality among districts, often referred to as the principle of "one person, one vote." In the case of Wesberry v. Sanders, the U.S. Supreme Court held that the Article II requirements of the U.S. Constitution require equal population standards as near as practicable for congressional districts.

In Reynolds v Sims, the U.S. Supreme Court held that the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution requires population equality in legislative districts. Article II, Sections 3 and 5 of the N.C. Constitution also requires that both houses of the North Carolina legislature must be redistricted according to population.

CALCULATION OF IDEAL POPULATION

To comply with the "one person, one vote" standard, an ideal population is established for each district by dividing the population by the number of districts.

Based on 2010 Census data, North Carolina is the 10th largest state in the nation, with a total population of 9,535,483. North Carolina has 13 congressional seats, 50 State Senators, and 120 State House Representatives. The average number of persons each Senator, Representative, and Congressional member represents is as follows:

	2001	2011
State Senator	160,986	190,710
State Representative	67,078	79,462
Congressional member	619,178	733,499

DEVIATION FROM THE IDEAL POPULATION

Some deviation from precisely equal districts is permitted, and it is important to understand the distinction between the allowable deviations for legislative districts and for congressional districts.

Congressional Districts: There is no safe overall range of deviation for congressional districts. In Karcher v. Daggett, the U.S. Supreme Court struck down a New Jersey congressional redistricting plan with an overall range of less than one percent. The tight

standard for congressional districts stems from strict judicial construction of the U.S. Constitution's congressional reapportionment clause.

In 2001, the General Assembly took the approach of a congressional redistricting plan with no population deviation amongst the 13 districts.

Legislative Districts: A series of rulings by the U.S. Supreme Court has established that an overall range of population deviation from the ideal population of less than ten percent will not be a prima facie violation of the Equal Protection Clause. This has been called into question by the case of Larios v. Cox. That case overturned a Georgia legislative redistricting plan which had an overall range of population deviation of less than ten percent, but systematically over and under populated districts for partisan reasons. The U.S. Supreme Court summarily affirmed the lower court ruling overturning the plan, but did not issue an opinion.

The N.C. Constitution has been interpreted to require a stricter standard, however. In 2002, the N.C. Supreme Court, in Stephenson v. Bartlett, required that no State House or State Senate district may have a census population that is 5 percent greater or 5 percent smaller than the ideal population for a House or Senate district.

Stephenson also held that the Equal Protection Clause of the N.C. Constitution (Article I, Sec. 19) requires, absent a compelling governmental interest, that all legislative districts be single-member districts.

II. THE VOTING RIGHTS ACT OF 1965.

The Voting Rights Act of 1965 (VRA) was enacted to ensure minorities that their right to vote, as guaranteed by the Fifteenth Amendment, would not be abridged by State and local governments through the use of literacy tests, poll taxes, and other discriminatory electoral devices. Two primary sections of the VRA – Section 2 and Section 5 – are applicable to redistricting and are discussed below.

SECTION 2 OF THE VRA OF 1965 (42 U.S.C.§ 1973)

Section 2 of the VRA provides that "[n]o voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color[.]" While Section 2 does not establish a right to have members of a protected class elected in numbers equal to their proportion of the population, a violation does occur when, based on the totality of the circumstances, the election process is not equally open to participation by the members of a protected class, in that the members of the protected class have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. Section 2 of the VRA gives the U.S. Attorney General or private plaintiffs the right to sue if a state is diluting minority voting strength. Section 2 applies to all 50 states, as well as all counties and other political subdivisions within them.

In response to a 1980 U.S. Supreme Court decision requiring proof of intentional discrimination to establish a Section 2 violation, Congress amended the VRA in 1982 to clarify that if a redistricting plan, or other voting practice or qualification, has a discriminatory *effect* on minorities, regardless of intent, it violates Section 2.

ESTABLISHMENT OF A SECTION 2 VIOLATION

In the 1986 case of Thornburg v. Gingles, the U.S. Supreme Court established three threshold conditions that must be present to proceed on a Section 2 claim. The Gingles case arose from the N.C. General Assembly's 1982 House and Senate redistricting plans which created multi-member districts that included all or part of the counties of Northampton, Hertford, Gates, Bertie, Chowan, Washington, Martin, Halifax, Edgecombe, Mecklenburg, Cabarrus, Forsyth, Durham, Wake, Wilson, and Nash. The Gingles Court held that the following threshold conditions must be present:

1. The existence of a politically cohesive minority group
2. that is sufficiently large and geographically compact to constitute a majority in a single-member district
3. and whose preferred candidate is usually defeated by the white majority voting as a bloc.

In 2009, the U.S. Supreme Court clarified the first of these threshold conditions in another case originating in North Carolina, Bartlett v. Strickland. In a plurality opinion, Strickland held that the voting age minority population of the potential election district must be fifty percent or more of the voting age population to establish a Section 2 claim under the Gingles test. The U.S. Supreme Court also held that Section 2 of the VRA does not mandate crossover districts. An effective minority crossover district is one in which the minority population makes up less than a majority of the voting age population, but is at least potentially large enough to elect the candidate of its choice with help from voters who are members of the majority, and who cross over to support the minority's preferred candidate.

Once all three threshold conditions are met, Gingles requires that the "totality of the circumstances" be reviewed to determine if a Section 2 violation has occurred. Gingles incorporated the objective factors noted in the legislative history of Section 2 for consideration:

> "1. the extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process;
>
> 2. the extent to which voting in the elections of the state or political subdivision is racially polarized;
>
> 3. the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;
>
> 4. if there is a candidate slating process, whether the members of the minority group have been denied access to that process;
>
> 5. the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process;

> 6. whether political campaigns have been characterized by overt or subtle racial appeals;
>
> 7. the extent to which members of the minority group have been elected to public office in the jurisdiction.
>
> Additional factors that in some cases have had probative value as part of plaintiffs' evidence to establish a violation are:
>
> whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group.
>
> whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous."

Gingles, 478 U.S. 30, 36-37. The Court in Gingles determined that the threshold conditions were met and that, under the totality of the circumstances, the multi-member districts violated Section 2, requiring that majority-black single-member districts be created.

SECTION 5 OF THE VRA OF 1965 (42 U.S.C. 1973C)

Section 5 of the VRA singles out certain States, counties, and other political subdivisions and provides that every change affecting voting in those jurisdictions must receive federal "preclearance" before it can be put into effect. In 2006, Congress renewed the provisions of Section 5 of the VRA through 2032.

In North Carolina, the following 40 counties are subject to Section 5 of the VRA.

40 NORTH CAROLINA COUNTIES SUBJECT TO SECTION 5 OF THE VRA				
Anson	Craven	Guilford	Martin	Robeson
Beaufort	Cumberland	Halifax	Nash	Rockingham
Bertie	Edgecombe	Harnett	Northampton	Scotland
Bladen	Franklin	Hertford	Onslow	Union
Camden	Gaston	Hoke	Pasquotank	Vance
Caswell	Gates	Jackson	Perquimans	Washington
Chowan	Granville	Lee	Person	Wayne
Cleveland	Greene	Lenoir	Pitt	Wilson

A new law that affects elections in one of those counties, such as a redistricting bill, must be submitted for preclearance. Approval may be obtained in either of two ways: (i) administrative preclearance of the plans by the U.S. Department of Justice or (ii) a declaratory judgment by the federal 3-judge District Court in the District of Columbia.

Complying with Section 5 involves showing that:

1. There was no purpose or intent to discriminate.
2. The effect of the change is not to put minority voters in a worse position than prior law, that is, that the change does not result in "retrogression" for minority voters.

As part of the 2006 renewal of Section 5, Congress enacted changes to the language of Section 5 in response to decisions interpreting that section by the U.S. Supreme Court. Congress made clear that broad intent to discriminate was grounds for denial of preclearance under Section 5 in response to the U.S. Supreme Court decision in Reno v. Bossier Parish School Board II. Reno had held that discriminatory purpose only encompassed intent to cause retrogression and not to discriminate generally.

In response to the U.S. Supreme Court opinion in Georgia v. Ashcroft, Congress clarified that Section 5 was intended to preserve minority voters' ability to elect candidates of their choice, not merely to influence elections.

"RETROGRESSION" AND PROVING ITS ABSENCE

The U.S. Supreme Court made clear in 1976 that a change affecting voting could not be precleared under Section 5 if it led to "a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 130, 141. The U.S. Justice Department has stated that in redistricting, the plan against which the change is measured to determine retrogression (the "benchmark plan") is the "last legally enforceable redistricting plan in force" in the jurisdiction.

III. STEPHENSON V. BARTLETT AND LEGISLATIVE REDISTRICTING.

The 2002 Stephenson v. Bartlett decision by the N.C. Supreme Court established new requirements for legislative redistricting in North Carolina.

In Stephenson, the N.C. Supreme Court held that the Whole County Provision (Article II, Sections 2 and 4) should be harmonized not only with the VRA and the federal decisions of "one person, one vote," but also with other requirements of the N.C. Constitution. The Court also held that the Equal Protection Clause of the N.C. Constitution required, absent a compelling governmental interest otherwise, that all legislative districts be single-member districts. The Court in Stephenson did not specify what compelling governmental interest would justify drawing multi-member districts.

Stephenson then set forth a set of directions for drawing a House or Senate redistricting plan, which the Court reaffirmed in its second Stephenson opinion in 2003 as follows:

> "[1.] ... [T]o ensure full compliance with federal law, legislative districts required by the VRA shall be formed prior to creation of non-VRA districts.... In the formation of VRA districts within the revised redistricting plans on remand, we likewise direct the trial court to ensure that VRA districts are formed consistent with federal law and in a manner having no retrogressive effect upon minority voters. *To the maximum extent practicable, such VRA districts shall also comply with the legal requirements of the WCP, as herein established ....*
>
> [2.] In forming new legislative districts, any deviation from the ideal population for a legislative district shall be at or within plus or minus five percent for purposes of compliance with federal “one-person, one-vote” requirements.
>
> [3.] In counties having a 2000 census population sufficient to support the formation of one non-VRA legislative district ..., the WCP requires that the

> physical boundaries of any such non-VRA legislative district not cross or traverse the exterior geographic line of any such county.
>
> [4.] When two or more non-VRA legislative districts may be created within a single county, ... single-member non-VRA districts shall be formed within said county. *Such non-VRA districts shall be compact and shall not traverse the exterior geo-graphic boundary of any such county.*
>
> [5.] In counties having a non-VRA population pool which cannot support at least one legislative district ... or, alternatively, counties having a non-VRA population pool which, if divided into districts, would not comply with the ... "one-person, one-vote" standard, the requirements of the WCP are met by combining or grouping the *minimum number of whole, contiguous counties necessary to comply with the at or within plus or minus five percent "one-person, one-vote" standard. Within any such contiguous multi-county grouping, compact districts shall be formed, consistent with the at or within plus or minus five percent standard, whose boundary lines do not cross or traverse the "exterior" line of the multi-county grouping;* provided, however, that the resulting interior county lines created by any such groupings may be crossed or traversed in the creation of districts within said multi-county grouping but only to the extent necessary to comply with the at or within plus or minus five percent "one-person, one-vote" standard.
>
> [6.] The intent underlying the WCP must be en-forced to the maximum extent possible; thus, *only the smallest number of counties necessary to comply with the at or within plus or minus five percent "one-person, one-vote" standard shall be combined*[.]
>
> [7.] *... [C]ommunities of interest should be considered in the formation of compact and contiguous electoral districts.*
>
> [8.] ... [M]ulti-member districts shall not be used in the formation of legislative districts unless it is established that such districts are necessary to advance a compelling governmental interest.
>
> [9.] Finally, we direct that any new redistricting plans, including any proposed on remand in this case, *shall depart from strict compliance with the legal requirements set forth herein only to the extent necessary to comply with federal law.*"

Stephenson II, 357 N.C. 301, 305-07 (citing Stephenson I, 355 N.C. at 383-84 (emphasis in original)).

In Stephenson II, the NC Supreme Court affirmed the mixed findings of fact and conclusions of law by the trial court in the review of plans enacted by the General Assembly in 2002 following Stephenson I. The Court concluded "that the evidence support[ed] the trial court's findings of fact, which establish[ed] numerous instances where the 2002 revised redistricting plans [were] constitutionally deficient." Stephenson II, 357 N.C.301, 314. "These findings includ[ed] excessive division of counties; deficiencies in county groupings; and substantial failures in compactness, contiguity, and communities of interest." Stephenson II, 357 N.C. 301, 309.

In Pender v. Bartlett, the N.C. Supreme Court again affirmed its holding that non-VRA legislative districts must comply with the Whole County Provision. Pender considered an effective minority crossover district drawn as part to the 2003 House redistricting plan. The district violated the N.C. Constitution's Whole County Provision to comply with Section 2 of the

VRA. Pender held that the proper statistic for deciding whether a minority group could meet the first Gingles precondition was "voting age population as refined by citizenship." Pender, 361 N.C. 491, 501 (2007). The N.C. Supreme Court held that Section 2 did not require the drawing of effective minority crossover districts and required the challenged districts to be redrawn to comply with the Whole County Provision. Pender v. Bartlett was affirmed by the U.S. Supreme Court in Bartlett v. Strickland, discussed previously in Part II: THE VOTING RIGHTS ACT OF 1965.

The charts below of the currently available 2010 census data are useful in determining the application of the Stephenson II requirements based on population.

	House Plan				Senate Plan			
Members	5% Variance Under	Ideal Population	5% Variance Over	Members	5% Variance Under	Ideal Population	5% Variance Over	Members
1	75,489	**79,462**	83,435	1	181,174	**190,710**	200,245	1
2	150,978	**158,925**	166,871	2	362,348	**381,419**	400,490	2
3	226,468	**238,387**	250,306	3	543,523	**572,129**	600,735	3
4	301,957	**317,849**	333,742	4	724,697	**762,839**	800,981	4
5	377,446	**397,312**	417,177	5	905,871	**953,548**	1,001,226	5
6	452,935	**476,774**	500,613	6	1,087,045	**1,144,258**	1,201,471	6
7	528,425	**556,237**	584,048	7	1,268,219	**1,334,968**	1,401,716	7
8	603,914	**635,699**	667,484	8	1,449,393	**1,525,677**	1,601,961	8
9	679,403	**715,161**	750,919	9	1,630,568	**1,716,387**	1,802,206	9
10	754,892	**794,624**	834,355	10	1,811,742	**1,907,097**	2,002,451	10
11	830,382	**874,086**	917,790	11	1,992,916	**2,097,806**	2,202,697	11
12	905,871	**953,548**	1,001,226	12	2,174,090	**2,288,516**	2,402,942	12

IV. RESTRICTIONS ON REDISTRICTING: RACIAL AND POLITICAL GERRYMANDERING

RACIAL GERRYMANDERING (THE SHAW DOCTRINE).

In Shaw v. Reno, the U.S. Supreme Court recognized a new doctrine that "racial gerrymandering" to create majority-minority districts was actionable, stating, "A redistricting plan that is so bizarre on its face that it is unexplainable on grounds other than race demands the same strict scrutiny under the Equal Protection Clause given to other state laws that classify citizens by race." Shaw, 509 U.S. 630, 644. The U.S. Supreme Court also stated in the same case that it had not held that "race-conscious state decision making is impermissible in all circumstances, however." Shaw, 509 U.S. 630, 642. Shaw held that a plan drawn using race as the predominant consideration will be held to have violated the Equal Protection Clause, unless the state can show that the plan was narrowly tailored to accomplish a compelling state interest.

In Shaw v. Hunt, the U.S. Supreme Court concluded that the Equal Protection Clause is violated when race is the predominant consideration in drawing district lines and the legislature subordinates "traditional districting principles" to race in order to create minority districts without a compelling state interest.

In determining whether race was the predominant consideration, the U.S. Supreme Court, in Miller v. Johnson, stated:

> "The courts, in assessing the sufficiency of a challenge to a districting plan, must be sensitive to the complex interplay of forces that enter a legislature's redistricting calculus. Redistricting legislatures will, for example, almost always be aware of racial demographics; but it does not follow that race predominates in the redistricting process. The distinction between being aware of racial considerations and being motivated by them may be difficult to make. This evidentiary difficulty, together with the sensitive nature of redistricting and the presumption of good faith that must be accorded legislative enactments, requires courts to exercise extraordinary caution in adjudicating claims that a state has drawn district lines on the basis of race. The plaintiff's burden is to show, either through circumstantial evidence of a district's shape and demographics or more direct evidence going to legislative purpose, that race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district. To make this showing, a plaintiff must prove that the legislature subordinated traditional race-neutral districting principles, including but not limited to compactness, contiguity, respect for political subdivisions or communities defined by actual shared interests, to racial considerations. Where these or other race-neutral considerations are the basis for redistricting legislation, and are not subordinated to race, a state can defeat a claim that a district has been gerrymandered on racial lines."

Miller, 515 U.S. 900, 915-916 (internal citations omitted).

In Easley v. Cromartie, the U.S. Supreme Court considered the evidence needed to establish a racial gerrymander when race and political affiliation are highly correlated.

> "In a case such as this one where majority-minority districts (or the approximate equivalent) are at issue and where racial identification correlates highly with political affiliation, the party attacking the legislatively drawn boundaries must show at the least that the legislature could have achieved its legitimate political objectives in alternative ways that are comparably consistent with traditional districting principles. That party must also show that those districting alternatives would have brought about significantly greater racial balance."

Easley, 532 U.S. 234, 258.

POLITICS AND REDISTRICTING

Politics has traditionally played a role in redistricting. Politics includes protecting or enhancing the position of a political party, an interest group, an incumbent, or a potential candidate. All those things have been recognized as valid aims of redistricting. The U.S. Supreme Court has said that partisan gerrymanders are allowable unless they “consistently degrade a voter’s or a group of voters’ influence on the political process as a whole.” Davis v. Bandemer, 478 U.S. 109, 132 (1986). The N.C. Supreme Court noted the role of politics in Stephenson I, stating that the "General Assembly may consider partisan advantage and incumbency protection in the application of its discretionary redistricting decisions, but it must do so in conformity with the State Constitution." Stephenson I, 355 N.C. 354, 371. No party is constitutionally entitled

to representation proportional to the number of its supporters in the population. The protection of incumbents has been recognized as a valid aim of redistricting.

POLITICAL GERRYMANDERING

However, in 1986, the U.S. Supreme Court stated in Bandemer that courts will consider partisan gerrymandering challenges to redistricting plans. Partisan gerrymandering, unlike racial gerrymandering, is not subject to strict scrutiny. Instead, the Bandemer decision requires proof of both *intentional discrimination* and an *actual discriminatory effect*.

Despite holding that partisan gerrymandering claims are justiciable, the U.S. Supreme Court has yet to overturn a redistricting plan solely for discriminating against political parties. In the past decade, the U.S. Supreme Court has considered two additional political gerrymandering cases, but has yet to articulate a standard for adjudicating these claims. In the 2004 case of Vieth v. Jubelirer, the Court dismissed the political gerrymandering claim raised in that case and found no existing manageable standards for measuring whether a political gerrymander burdens the representational rights of a party's voters. In the 2006 case of League of United Latin American Citizens v. Perry, the Court again considered a political gerrymander claim, holding that a state legislature's mid-decade redrawing of a plan drawn by a federal court did not violate the Equal Protection Clause as a partisan gerrymander, even if the legislature's primary purpose was partisan advancement.

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Daly v. High, No. 5:97-CV-750-BO(3), 1998 U.S. Dist. LEXIS 8114, (E.D.N.C. Apr. 27, 1998).

Daughtry v. State Board, *unpublished* order (1992).

Davis v. Bandemer, 478 U.S. 109, 106 S.Ct. 2797 (1986).

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Reynolds v. Sims, 377 U.S. 533, 84 S.Ct. 1362 (1964).

Shaw v. Barr, 808 F.Supp. 461 (E.D.N.C. 1992).

Shaw v. Hunt, 154 F.3d 161 (4th Cir. 1998).

Shaw v. Reno, 509 U.S. 630, 113 S.Ct. 2816 (1993).

State of Utah v. Evans, 536 U.S. 452, 122 S.Ct. 2191 (2002).

Stephenson v. Bartlett, 355 N.C. 354, 562 S.E.2d 377 (2002).

Stephenson v Bartlett, 357 N.C. 301, 582 S.E.2d 247 (2003),

Thornburg v. Gingles, 478 U.S. 30, 106 S.Ct. 2752 (1986).

Vieth v. Jubelirer, 541 U.S. 267, 124 S.Ct. 1769 (2004).

Wesberry v. Sanders, 376 U.S. 1, 84 S.Ct. 526 (1964).

LEGISLATIVE CONFIDENTIALITY

Most legislators are aware of the legislative confidentiality statutes. These statutes protect legislators' drafting requests and information requests from being disclosed to any non-legislative employee without the consent of the requesting legislator. After a legislator makes a bill draft public by introducing it, the documents and information used to develop that draft remain confidential.

Requests relating to redistricting are treated differently. Under G.S. 120-133, all drafting and information requests to legislative employees about redistricting and all documents prepared by a legislative employee about redistricting are confidential only until the redistricting plan is enacted. Once the General Assembly enacts a House, Senate, or congressional redistricting plan, all written drafting and information requests in the possession of legislative employees regarding that plan become a public record. Additionally, all oral communications are no longer confidential after the plan is enacted. Present and former legislative employees may be required to provide information that the legislative employee may have acquired in committee, on the floor of either chamber, in any office of a legislator, or at any other location of the State legislative buildings and grounds. For other, non-redistricting matters, the equivalent information is generally protected from disclosure by G.S. 120-132.

The statutes on confidentiality concern communications between legislators and legislative employees and what constitutes a public record. Those statutes do not concern communications among legislators or between legislators and the public. For legislative plans personally created by legislators, the Attorney General's Office issued an opinion in 2002 contending that G.S. 120-130, G.S. 120-131, and G.S. 120-133 were ambiguous regarding whether redistricting plans prepared by legislators are public records. Similarly, a 2002 Attorney General's Opinion found that written and electronic communications between a legislator and members of the public about redistricting are generally public records, regardless of when those communications occur. The Attorney General's Opinion found the statutes ambiguous as to whether communications solely among legislators would be public records. Legislative immunity is a personal immunity which can be asserted by legislators so that they cannot be required to testify regarding communications with other legislators which are part of the "deliberative process." In federal court, legislative immunity extends to individual legislators and their staff for activities comprising the deliberative process.

REDISTRICTING TECHNOLOGY

The General Assembly and its administrative branch, the Legislative Services Office (LSO), maintain a functioning redistricting system throughout the decade. Though the technology in use has changed over the years, the redistricting system generally consists of four main components: 1) redistricting software, 2) geographic and numeric base data, 3) hardware for computing and printing, and 4) district plans. The system provides the legislators and legislatives employees of the General Assembly, as well as the public, with information about the 2010 Census, voter registration, and voting patterns by integrating four types of data:

1. Geographic data. These are based on the Census Bureau's TIGER (Topographically Integrated Geographic Encoding and Referencing system) files. TIGER divides all the land in the U.S. into several nesting hierarchies of geography. The primary hierarchy of interest for redistricting is: county, voting tabulation district, and census block. TIGER also describes a wide variety of other geographic features including cities, townships, roads, rail lines, rivers, and lakes.

2. Census population data. The first dataset released following each decennial census is the P.L. 94-171 data (or just "P.L. data"), named after the Act of Congress that mandated it. It contains population counts for every unit of census geography, down to the lowest level in the hierarchy. Counts are divided into two groups: total population and voting age population. Each of these groups is subsequently broken down by race and ethnicity. ("Ethnicity" in census terminology means whether or not a person self-identifies as Hispanic/Latino.)

3. Voter registration data. This data has its origin in the statewide voter registration system, or SEIMS, which is administered by the State Board of Elections. The voter registration data currently in the system is based on a snapshot of SEIMS which contains voters eligible to vote in the 2010 general election. The data include party affiliation, race, ethnicity, gender, and age information.

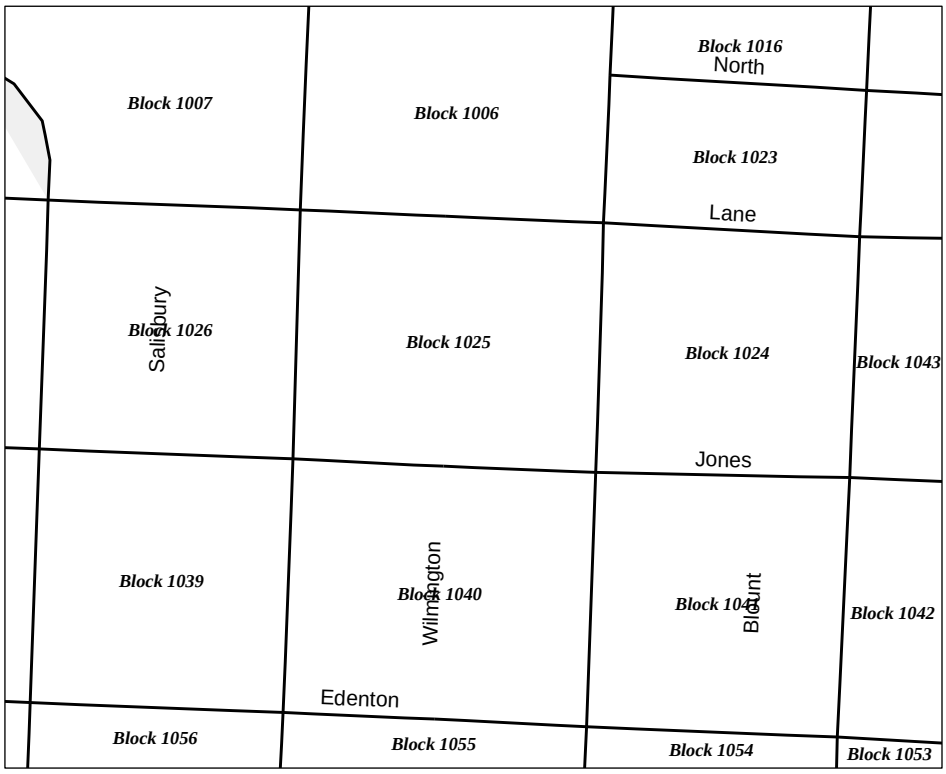
4. Election returns data. Contest results also come from the State Board of Elections.[1]

The redistricting system allows users to display any section of North Carolina on a computer screen. For example, a user can view all of Wake County on the screen or zoom in to view the census block in which the State Legislative Building sits (see following map). The system allows the user to view various levels of census geography (census tracts, block groups, and blocks) and political geography (counties, townships, cities, and voting tabulation districts). The ability to view and work with these different levels is particularly important in drawing

[1] Several qualifiers should be stated about the system's numeric data:

- Legislation enacted in 2001 required counties to report absentee votes by precinct by 2006. Before 2006, county boards of elections were not required to report all votes at the precinct level. Each county has a county-wide “absentee/provisional” category. Even after 2006, some votes are still reported county-wide under a ‘secrecy of the ballot’ exception. Since inclusion of these figures would tend to homogenize the precinct-level results, they were excluded from the database.
- Since the smallest common geographic denominator in the redistricting system is the census block, all numeric data must be resolved to that level. Elections and registration data are available only down to the voting tabulation district (VTD) level. In order to get them down to the block level, they must be disaggregated based on a value common to both the VTD and block levels. The best available item is voting age population (VAP) from the Census. A ratio is constructed based on block VAP/VTD VAP.
- In 2002, the boards of elections added several new categories to the voter registration forms. Race categories of Asian and multi-race were added. An ethnicity choice of Hispanic or non-Hispanic was also added. Note that since only new registrants are presented with these choices, percentages in these particular categories are presumably well below the actual values.

district lines within counties. The software also calculates selected summary information such as total population, minority population, and deviation from the ideal district size for each district. The system is able to calculate these statistics immediately as the boundaries of each district are created or altered.



CENSUS REDISTRICTING DATA PROGRAM

For the 1990 Census, the General Assembly mandated that any county over 50,000 in population must participate in the Census Redistricting Data Program and offered smaller counties the opportunity to do so. In the end, 48 counties participated, altering their precinct boundaries where necessary so that they followed 1990 Census block boundaries and reporting all those precinct lines to the General Assembly. In addition, the General Assembly added as best it could the precinct boundaries of 21 other counties to its redistricting database, in some cases splitting Census blocks and doing informal housing counts to provide population data. The Census-based redistricting software used by the General Assembly in 1991 provided precinct data for 69 counties. For the other 31 counties, the database showed townships. Townships are often, but not always, the basis for precincts.

For the 2000 Census, the General Assembly required that all 100 counties participate in the Census Redistricting Data Program. As a result, the 2000 TIGER files included precincts for all 100 counties. Using that information as a starting point, and with the assistance of legislated precinct change guidelines, the LSO subsequently tracked all precinct changes in the State based on 2000 census block groupings. The precincts depicted in the 2001 and 2003 redistricting databases were current statewide, with few exceptions.

To more easily compare voting behavior across multiple election cycles, it was in the General Assembly's interest to minimize changes in precinct geography. The county boards of elections therefore faced fairly restrictive precinct changes rules through most of the past

decade. This sometimes caused difficulties for local elections administrators. In 2008, the General Assembly created a new stable unit of elections geography called the Voting Tabulation District, or VTD. The VTDs are simply the voter precincts as they existed on January 1st, 2008. Starting in 2008, county boards of elections were required to report all votes cast by VTD within 60 days after an election. As long as they can demonstrate their ability to report results by VTD, they are now free to modify their precincts as needed, within guidelines set forth by the State Board of Elections. As of January 1st, 2008, the LSO was no longer charged with reviewing or tracking new precinct changes in the state.

VTD COVERAGE FOR 2011

When a person sits down at a computer terminal to draw a redistricting plan using the General Assembly's redistricting software, that person will have access to the boundaries, population breakdowns, voter registration breakdowns, and returns in certain key elections for VTDs in every county in the State. This is the result of a decade of work by the LSO, the State Board of Elections, and the 100 county boards of elections.

Though the accuracy of Census geography in general has greatly improved over the span of the last decade, it is important to note that, like the Census itself, the geography in the General Assembly's redistricting system is not perfect. The VTD boundaries are comprised of over 137,000 individual census boundary segments. Many of those segments represent invisible features such as township lines and current and superseded municipal boundaries. Definitive boundary location source materials are often scarce, and the Census Bureau compiles its geography from multiple, sometimes contradictory, sources.

The State participated in the Census Bureau's 2010 Voting District Project so the State's VTDs could be incorporated with the 2010 census geography. The ultimate goal was to have VTDs consisting entirely of combinations of 2010 census tabulation blocks. That way, population data for the VTDs can be based strictly on the 2010 Census. The Voting District Project required the LSO, the State Board of Elections, and the county boards of elections to carefully review, update, and correct all census depictions of VTD geography in the State. The LSO was charged with reviewing all county-based VTD submissions by the State Board of Elections to ensure that they matched the official VTD geography on record, as maintained since the Voting District Project of ten years prior. Where discrepancies were found, LSO staff worked directly with State Board of Elections staff to remedy those issues. Where agreement could not be reached, the LSO documented the issues in its official opinion letter to the director of the State Board of Elections. In many cases, discrepancies were due to minor boundary moves from invisible to physical features to facilitate accurate elections administration. In other cases, adjustments were made to avoid re-assigning voters. In this later case, the resulting VTDs better match past elections and registration data, as they reflect how voters have actually been assigned for some time.

2010 CENSUS AND REDISTRICTING

The 2010 federal decennial Census provides the population data to be used in the redistricting of legislative and congressional districts in North Carolina. Congress requires the U.S. Census Bureau to deliver the data to all states no later than April 1, 2011, to help each state meet its constitutional or statutory redistricting deadline. The Census Bureau has developed a 4-tiered schedule for delivery of the census data to the states. North Carolina falls in the second tier (second highest priority) primarily because of North Carolina's partial coverage under Section 5 of the Voting Rights Act (VRA).

ARRIVAL OF OFFICIAL CENSUS DATA

Census data for North Carolina down to the block level arrived on March 2, 2011. It was estimated that an additional period of several weeks might be needed to load and merge the population data with other relevant redistricting data in the computer system. The computer operations are discussed in more detail in the Redistricting Technology section.

According to the Census Bureau's unadjusted data, North Carolina's residential population has grown since 2000 by 18.5% to 9,535,483. Each of the 13 congressional districts now has an ideal population of 733,499 people. Each single member Senate district will now have an ideal population of 190,710, and each single member House district will have an ideal population of 79,462.

PERSONS COUNTED IN THE CENSUS

The Census counts everyone at his or her "usual place of residence" as of April 1, 2010 ("Census Day"). The following is a list, taken from the Census Bureau's 2010 data documentation, of certain types of special populations and where they are counted:

People Away From Their Usual Residence on Census Day - Counted at the residence where they live and sleep most of the time.

Visitors on Census Day

- ***Visitors on Census Day who will return to their usual residence*** - Counted at the residence where they live and sleep most of the time.
- ***Citizens of foreign countries who are visiting the U.S. on Census Day*** - Not counted in the census.

People Who Live In More than One Place

- ***People living away most of the time while working*** - Counted at the residence where they live and sleep most of the time. If there is no residence where they live and sleep most of the time, they are counted where they live and sleep more than anywhere else. If time is equally divided, or if usual residence cannot be determined, they are counted at the residence where they are staying on Census Day.
- ***People who live at two or more residences*** - Counted at the residence where they live and sleep most of the time. If there is no residence where they live and sleep most of the time, they are counted where they live and sleep more than anywhere else. If time is equally divided, or if usual residence cannot be determined, they are counted at the residence where they are staying on Census Day.

- ***Children in shared custody or other arrangements who live at more than one residence*** - Counted at the residence where they live and sleep most of the time. If time is equally divided, they are counted at the residence where they are staying on Census Day.

People without a Usual Residence

- ***People who cannot determine a usual residence*** - Counted where they are staying on Census Day.
- ***People at soup kitchens and regularly scheduled mobile food vans*** - Counted at the residence where they live and sleep most of the time. If they do not have a place they live and sleep most of the time, they are counted at the soup kitchen or mobile food van location where they are on Census Day.
- ***People at targeted non-sheltered outdoor locations*** - Counted at the outdoor location where people experiencing homelessness stay without paying.

Students

- ***Boarding school students living away from their parental home while attending boarding school below the college level, including Bureau of Indian Affairs boarding schools*** - Counted at their parental home rather than at the boarding school.
- ***College students living at their parental home while attending college*** - Counted at their parental home.
- ***College students living away from their parental home while attending college in the U.S.*** - Counted at the on-campus or off-campus residence where they live and sleep most of the time.
- ***College students living away from their parental home while attending college in the U.S. but staying at their parental home while on break or vacation*** - Counted at the on-campus or off-campus residence where they live and sleep most of the time.
- ***U.S. college students living outside the U.S. while attending college outside the U.S.*** - Not counted in the census.
- ***Foreign students living in the U.S. while attending college in the U.S.*** - Counted at the on-campus or off-campus residence where they live and sleep most of the time.

Movers on Census Day

- ***People who move into a residence on Census Day who have not been listed on a questionnaire for any residence*** - Counted at the residence they move into on Census Day.
- ***People who move out of a residence on Census Day and have not moved into a new residence on Census Day and who have not been listed on a questionnaire for any residence*** - Counted at the residence from which they moved.
- ***People who move out of a residence or move into a residence on Census Day who have already been listed on a questionnaire for any residence*** - If they have already been listed on one questionnaire, do not list them on any other questionnaire.

People Who Are Born or Die on Census Day

- ***Babies born on or before 11:59:59 p.m. on Census Day*** - Counted at the residence where they will live and sleep most of the time, even if they are still in the hospital on April 1, 2010 (Census Day).
- ***Babies born after 11:59:59 p.m. on Census Day*** - Not counted in the census.
- ***People who die before Census Day*** - Not counted in the census.
- ***People who die on Census Day*** - Counted in the census if they are alive at any time on April 1, 2010.

Nonrelatives of the Householder

- ***Roomers or boarders*** - Counted at the residence where they live and sleep most of the time.
- ***Housemates or roommates*** - Counted at the residence where they live and sleep most of the time.
- ***Unmarried partners*** - Counted at the residence where they live and sleep most of the time.
- ***Foster children or foster adults*** - Counted at the residence where they live and sleep most of the time.
- ***Live-in employees*** - Counted at the residence where they live and sleep most of the time.

U.S. Military Personnel

- ***U.S. military personnel living in military barracks in the U.S.*** - Counted at the military barracks.
- ***U.S. military personnel living in the U.S. but not in barracks*** - Counted at the residence where they live and sleep most of the time.
- ***U.S. military personnel on U.S. military vessels with a U.S. homeport*** - Counted at the onshore U.S. residence where they live and sleep most of the time. If they have no onshore U.S. residence, they are counted at their vessel's homeport.
- ***People in military disciplinary barracks and jails in the U.S.*** - Counted at the facility.
- ***People in military treatment facilities with assigned active duty patients in the U.S.*** - Counted at the facility if they are assigned there.
- ***U.S. military personnel living on or off a military installation outside the U.S., including dependents living with them*** - Counted as part of the U.S. overseas population. They should not be included on any U.S. census questionnaire.
- ***U.S. military personnel on U.S. military vessels with a homeport outside the U.S.*** - Counted as part of the U.S. overseas population. They should not be included on any U.S. census questionnaire.

Merchant Marine Personnel on U.S. Flag Maritime/Merchant Vessels

- ***Crews of U.S. flag maritime/merchant vessels docked in a U.S. port or sailing from one U.S. port to another U.S. port on Census Day*** - Counted at the onshore U.S. residence where they live and sleep most of the time. If they have no onshore U.S. residence, they are counted at their vessel. If the vessel is docked in a U.S. port, crewmembers with no onshore U.S. residence are counted at the port. If the vessel is sailing from one U.S. port to another U.S. port, crewmembers with no onshore U.S. residence are counted at the port of departure.
- ***Crews of U.S. flag maritime/merchant vessels engaged in U.S. inland waterway transportation on Census Day*** - Counted at the onshore residence where they live and sleep most of the time.
- ***Crews of U.S. flag maritime/merchant vessels docked in a foreign port, sailing from one foreign port to another foreign port, sailing from a U.S. port to a foreign port, or sailing from a foreign port to a U.S. port on Census Day*** - Not counted in the census.

Foreign Citizens in the U.S.

- ***Citizens of foreign countries living in the U.S.*** - Counted at the U.S. residence where they live and sleep most of the time.
- ***Citizens of foreign countries living in the U.S. who are members of the diplomatic community*** - Counted at the embassy, consulate, United Nations' facility, or other residences where diplomats live.

- ***Citizens of foreign countries visiting the U.S.*** - Not counted in the census.

U.S. Citizens and Their Dependents Living Outside the U.S.

- ***U.S. citizens living outside the U.S. who are employed as civilians by the U.S. government, including dependents living with them*** - Counted as part of the U.S. overseas population. They should not be included on any U.S. census questionnaire.
- ***U.S. citizens living outside the U.S. who are not employed by the U.S. government, including dependents living with them*** - Not counted in the census.
- ***U.S. military personnel living on or off a military installation outside the U.S., including dependents living with them*** - Counted as part of the U.S. overseas population. They should not be included on any U.S. census questionnaire.
- ***U.S. military personnel on U.S. military vessels with a homeport outside the U.S.*** - Counted as part of the U.S. overseas population. They should not be included on any U.S. census questionnaire.

People in Correctional Facilities for Adults

- ***People in correctional residential facilities on Census Day*** - Counted at the facility.
- ***People in federal detention centers on Census Day*** - Counted at the facility.
- ***People in federal and state prisons on Census Day*** - Counted at the facility.
- ***People in local jails and other municipal confinement facilities on Census Day*** - Counted at the facility.

People in Group Homes and Residential Treatment Centers for Adults

- ***People in group homes intended for adults (non-correctional)*** - Counted at the facility.
- ***People in residential treatment centers for adults (non-correctional)*** - Counted at the residence where they live and sleep most of the time. If they do not have a residence where they live and sleep most of the time, they are counted at the facility.

People in Health Care Facilities

- ***Patients in general or Veterans Affairs hospitals (except psychiatric units) on Census Day, including newborn babies still in the hospital on Census Day*** - Counted at the residence where they live and sleep most of the time. Newborn babies should be counted at the residence where they will live and sleep most of the time.
- ***People in hospitals on Census Day who have no usual home elsewhere*** – Counted at the facility.
- ***People staying in in-patient hospice facilities on Census Day*** - Counted at the residence where they live and sleep most of the time. If they do not have a residence where they live and sleep most of the time, they are counted at the facility.
- ***People in mental (psychiatric) hospitals and psychiatric units for long-term non-acute care in other hospitals on Census Day*** - Counted at the facility.
- ***People in nursing facilities/skilled nursing facilities on Census Day*** - Counted at the facility.

People in Juvenile Facilities

- ***People in correctional facilities intended for juveniles on Census Day*** - Counted at the facility.
- ***People in group homes for juveniles (non-correctional) on Census Day*** - Counted at the facility.
- ***People in residential treatment centers for juveniles (non-correctional) on Census Day*** - Counted at the facility.

People in Residential School-Related Facilities

- ***People in college/university student housing*** - Counted at the college/university student housing.
- ***Boarding school students living away from their parental home while attending boarding school below the college level, including Bureau of Indian Affairs boarding schools*** - Counted at their parental home rather than at the boarding school.
- ***People in residential schools for people with disabilities on Census Day*** - Counted at the school.

People in Shelters

- ***People in emergency and transitional shelters (with sleeping facilities) on Census Day for people experiencing homelessness*** - Counted at the shelter.
- ***People in living quarters for victims of natural disasters*** - Counted at the residence where they live and sleep most of the time. If they do not have a residence where they live and sleep most of the time, they are counted at the facility.
- ***People in domestic violence shelters on Census Day*** - Counted at the shelter.

People in Transitory Locations - Counted at the residence where they live and sleep most of the time. If there is no residence where they live and sleep most of the time, they are counted where they live and sleep more than anywhere else. If time is equally divided, or if usual residence cannot be determined, they are counted at the place where they are staying on Census Day.

People in Religious-Related Residential Facilities - Counted at the residence where they live and sleep most of the time. If they do not have a residence where they live and sleep most of the time, they are counted at the facility.

People in Workers' Residential Facilities - Counted at the residence where they live and sleep most of the time. If they do not have a residence where they live and sleep most of the time, they are counted at the facility.

RACE AND ETHNICITY IN THE 2010 CENSUS

In the 1990 Census and previous Censuses, individuals were asked to check one box to describe their "race." There were several boxes available, but the individual was asked to check only one. In response to objections, the Census Bureau decided that starting with the 2000 Census, people would be permitted to check more than one box, describing themselves as being of more than one race. The result is a grid with 63 possible combinations of race.

A little-understood concept in the 2000 Census data was the distinction between race and ethnicity. The distinction continues in the 2010 Census. Race involves the physical characteristics of a person and that person's forebears. Ethnicity involves their language heritage. The ethnicity question on the Census has two choices: Hispanic or non-Hispanic. Each person, then, would have both a racial and an ethnic tag: for example, white and Hispanic; black and Hispanic; Asian and non-Hispanic. In the 2010 Census, with its multi-racial categories, a person could, for example, be black/Asian and non-Hispanic.

Historical Perspectives

on Redistricting

in North Carolina

1776-2011

<table>
<tr><th></th><th>House</th><th>Senate</th><th>Congressional</th></tr>
<tr><td rowspan="3">1776</td><td colspan="2">North Carolina adopts its first Constitution, which creates the General Assembly, consisting of two houses:</td><td rowspan="3"></td></tr>
<tr><td>House of Commons: Each county elects 2 Representatives. Each of 7 named towns elects 1 Representative.</td><td>Senate: Each county elects 1 Senator.</td></tr>
<tr><td colspan="2">In 1776, there are 39 counties, but General Assembly has power to add new counties. By 1835, there are 65 counties. The size of House and Senate membership grows with each new county.</td></tr>
<tr><td>1789</td><td></td><td></td><td>North Carolina ratifies U.S. Constitution. Sends 5 members to U.S. House. Each of the five is elected from a congressional district. (Over the years, other states adopt the at-large method to elect U.S. House members, but N.C. never does. Only once, in 1882, does N.C. elect a House member statewide, and then only for a special reason for 1 term.)</td></tr>
<tr><td>1792</td><td></td><td></td><td>After first U.S. Census, first reapportionment of Congress occurs. N.C. receives 10 Congressional seats.</td></tr>
<tr><td>1802</td><td></td><td></td><td>N.C. receives 12 Congressional seats.</td></tr>
<tr><td>1813</td><td></td><td></td><td>N.C. receives 13 Congressional seats, and keeps that number until 1843.</td></tr>
<tr><td>1835</td><td colspan="2">State Constitutional Convention results in several major amendments:</td><td></td></tr>
</table>

	House	Senate	Congressional
	Number of Representatives fixed at 120. Representation still by county, not by district. Each county given between 1 and 4 representatives, depending on population. Representatives from the towns eliminated. General Assembly is required to reapportion Reps. among the counties based on Census data beginning in 1843.	Number of Senators fixed at 50. All are to be elected from districts based on the amount of tax revenue sent to the State, not on population. No division of counties permitted in drawing districts.	
1843	First reapportionment by population. With exceptions, it takes place every 10 years.		N.C. reduced to 9 Congressional seats.
1852			N.C. reduced to 8 Congressional seats.
1861-1865			No representation in U.S. Congress during Civil War.
1868	State Constitutional Convention results in new Constitution that lasts a century:		Post-war N.C. receives 7 Congressional seats.
	"House of Commons" becomes House of Representatives. Same county apportionment process used.	Senate districts based, not on tax revenue, but on population. Counties may not be split unless a county is entitled to more than one Senator.	
1872			N.C. receives 8 Congressional seats.
1882			N.C. receives 9 Congressional seats. Because a plan with 9 districts was not drawn before the 1882 elections, the 9th Congressman was elected statewide for one term until the 9-district plan could be drawn.
1901			N.C. receives 10 Congressional seats. Keeps same number for 30 years.
1931			N.C. receives 11 Congressional seats.

	House	Senate	Congressional
1941	Last redistricting of either house for 20 years, since redistricting neglected in 1951.		N.C. receives 12 Congress members. Keeps same number for 20 years.
1951	N.C. does not redistrict House, Senate, or congressional districts after 1950 Census.		
1961	General Assembly reapportions House members.	General Assembly tries unsuccessfully to redistrict Senate.	N.C. reduced to 11 Congress members.
1962	Baker v. Carr: U.S. Supreme Court issues decision in Tennessee case, enunciating doctrine of one person, one vote and applying it to state legislatures as well as to U.S. House of Representatives.		
1963		General Assembly redistricts Senate for first time since 1941. Also proposes constitutional amendment increasing Senators from 50 to 70.	
1964		Voters reject proposed 70-Senator amendment	
1965	President Lyndon Johnson signs Voting Rights Act. Section 5, requiring preclearance of all changes in law affecting voting, is applied to 40 N.C. counties. Drum v. Seawell: U.S. District Court invalidates N.C. House, Senate, and Congressional plans under Baker one person, one vote doctrine.		
1966	U.S. Supreme Court affirms Drum. General Assembly revises all three plans:		
	House overall population deviation reduced from 204% to 29.6%.	Senate overall deviation reduced from 240.5% to 27.3%.	Congressional overall deviation reduced from 51.5% to 17.28%.
	Court in Drum approves House and Senate plans but suggests that, when viewed together, they are still constitutionally suspect.		Court in Drum rejects redrawn congressional plan, but allows its use in 1966 elections only.

	House	Senate	Congressional
1967			General Assembly reduces deviation to 4.16%. Court approves. Congress mandates that all U.S. House members be elected from single-member districts.
1968	Constitutional amendments adopted. House and Senate members to be elected from districts, with each member representing, "as nearly as may be, an equal number of inhabitants." Dividing counties prohibited in both houses. Constitutional provisions are not submitted to U.S. Dept. of Justice for Voting Rights Act preclearance. 1st black legislator in 20th century elected: Henry Frye (D-Guilford) elected to House.		
1971	Last year in which North Carolina successfully implements redistricting plans for House, Senate, and Congress with no split counties.		
1981	House plan enacted. No counties divided and no minority single-member districts. Department of Justice objects to 1st plan. Gen. Assembly enacts 2nd plan. Still no counties split, no minority single-member districts.	Senate plan enacted. No counties divided and no minority single-member districts. Justice objects to 1st plan.	Congressional plan enacted. Tradition broken when 1 county (Moore) is divided. No minority districts. Justice objects to 1st plan.
	In response to Gingles lawsuit, State submits 1968 constitutional amendment against splitting counties to U.S. Dept. of Justice under Voting Rights Act. Justice denies preclearance, rendering the constitutional provision unenforceable.		

	House	Senate	Congressional
1982	Justice objects to 2nd plan. General Assembly enacts 3rd plan, splitting 24 counties and creating 4 black single-member districts. Justice objects to 3rd plan. General Assembly enacts 4th plan, creating a black 2-member district encompassing Ft. Bragg. Justice preclears 4th plan.	General Assembly enacts 2nd plan, splitting 8 counties and creating 2 black single-member districts. Justice objects to 2nd plan. General Assembly enacts 3rd plan, splitting 7 counties, increasing black % in 2 northeastern districts. Justice preclears 3rd plan.	General Assembly enacts 2nd plan. Adds Durham County to 2nd district, making it 40.1% black. Divides 4 counties. Justice Department preclears.
	President Reagan signs amendments to Voting Rights Act, extending life of Section 5 to 2007 and clarifying that proof of discriminatory intent is not required to establish a valid Section 2 claim.		
1983	Cavanagh v. Brock: U.S. District Court rules that North Carolina constitutional provisions against dividing counties have no force in any counties since they were not precleared.		Karcher v. Daggett: U.S. Supreme Court, showing how seriously it takes absolute population equality of congressional districts, rejects a New Jersey plan with overall range of less than 1% because another plan had lower percent and State showed no "legitimate State objective" for exceeding zero deviation.
1984	Gingles v. Edmisten: U.S. District Court rejects both North Carolina legislative plans, saying that more majority-black single-member districts should be drawn in both urban and rural areas.		

	House	Senate	Congressional
	General Assembly enacts 5th plan, creating 10 black single-member districts, in addition to the 2-member district in Cumberland County. After forcing creation of a single-member black district in Nash-Edgecombe-Wilson counties, Justice and Gingles court approve plan.	General Assembly enacts 4th plan, creating 3 black single-member districts. Justice and Gingles court approve plan.	
	Pugh v. Hunt: U.S. District Court dismisses suit challenging North Carolina's multi-member districts. Court says they are not per se unconstitutional.		
1986	U.S. Supreme Court affirms *Gingles*, except to reverse creation of single-member black House district in Durham County. Court states 3-prong test for proving Section 2 Voting Rights Act challenge to multi-member district: 1. Minority group must be sufficiently large and geographically compact to constitute a majority in a single-member district. 2. Minority group must be politically cohesive. 3. Minority's preferred candidates must usually be defeated by white-majority bloc voting.		
1991	General Assembly enacts plan with 10 black single-member districts, 1 black 2-member district, and 1 Lumbee Indian single-member district.	General Assembly enacts plan with 4 black single-member districts and one district with a black + Lumbee majority.	N.C. receives 12 Congressional seats. General Assembly enacts plan with 1 black single-member district in northeast, including part of Durham.
	Justice objects to all three plans in a single letter, saying that they all fail to provide opportunity for representation to minorities in southern and southeastern North Carolina.		

	House	Senate	Congressional
1992	General Assembly enacts 2nd plan, creating 16 black single-member districts, in addition to the 2-member black district and the Lumbee district. Justice preclears.	General Assembly enacts 2nd plan, creating 6 black districts, in addition to the black + Lumbee district. Justice preclears.	General Assembly enacts 2nd plan, creating 2 majority-black districts. Justice preclears. 2 black candidates elected from 1st and 12th districts – first in 20th century. Franklin v. Massachusetts: U.S. Supreme Court upholds decision of Census Bureau to count overseas federal employees and allocate them to states for reapportionment.
	U.S. District Courts dismiss 3 lawsuits challenging N.C. plans: Daughtry v. State Board, Pope v. Blue, and Shaw v. Barr. Pope and Shaw allege the plans disregard communities of interest. Courts say that is not a constitutional objection.		
1993			Shaw v. Reno: U.S. Supreme Court, in landmark decision, reverses lower court's dismissal, says plaintiffs have Equal Protection claim where a district plan is "so irrational on its face that it can be understood only as an effort to segregate voters into separate districts on the basis of race, and that the separation lacks sufficient justification." Remands case to District court for trial on N.C.'s 1st and 12th congressional districts.
1994			3-judge panel in U.S. District Court dismisses Shaw on remand. Says plan is a racial gerrymander, but that it is narrowly tailored to serve a compelling State interest, i.e., compliance with the Voting Rights Act.

	House	Senate	Congressional
1995			Miller v. Johnson: In invalidating Georgia congressional plan, U.S. Supreme Court refines the Shaw doctrine. Says districts need not look "bizarre" to be unconstitutional racial gerrymanders. Key is that race was predominant factor.
1996			Shaw v. Hunt: U.S. Supreme Court reverses lower court, rules that N.C.'s 12th congressional district is an unconstitutional racial gerrymander not narrowly tailored to serve a compelling State interest. U.S. District Court allows 1996 elections under invalidated plan, but gives General Assembly spring deadline to redraw. Bush v. Vera: U.S. Supreme Court invalidates Texas congressional plan. Justice O'Connor, in concurrence, says race may be used, but should not be subordinated to "traditional districting criteria."
	Daly v. High, using a Shaw theory to challenge House, Senate and congressional plans, is filed. Procedural missteps prevent suit from getting full hearing.		

	House	Senate	Congressional
1997			General Assembly draws plan to correct 1992 plan invalidated in Shaw. Tightens up shapes of 1st and 12th districts, leaving 1st with slight black majority and 12th with slightly less than black majority. Houses controlled by different parties ratify plan. Justice preclears. Attorney for Shaw plaintiffs accepts dismissal, but files Cromartie v. Hunt, a new lawsuit challenging 1st and 12th districts in 1997 plan.
1998			3-judge panel in U.S. District Court holds 12th district in 1997 plan unconstitutional on summary judgment. U.S. Supreme Court denies stay. State appeals, but General Assembly draws 2nd remedial plan for use in 1998 elections, reducing black % in 12th to 35%. Both black incumbents re-elected under 1998 plan.
1999			U.S. Supreme Court reverses summary judgment invalidation of 12th District. Remands Cromartie for trial. Dept. of Commerce v. U.S. House: U.S. Supreme Court rules that only the head count may be used to apportion Congress members among states. Does not rule on whether an adjusted count may be used to redistrict within states.

	House	Senate	Congressional
2000			3-judge panel holds trial in Cromartie, rules 12th invalid, 1st valid. State appeals and obtains stay. Elections held under 1997 plan. All incumbents re-elected. Census apportions to N.C. 13 Congress members.
2001			Utah files State of Utah v. Evans, challenging Census's apportionment of a Congress member to N.C. rather than Utah. Utah alleges policy of counting overseas federal employees but not overseas Mormon missionaries constitutes a burden on free exercise of religion. In April, a 3-judge federal court in Utah dismisses Utah's lawsuit, but Utah appeals to U.S. Supreme Court. Utah files a second lawsuit, challenging the Census Bureau's method of imputing the characteristics of counted population to neighboring uncounted population. U.S. Supreme Court rules, in 5-4, decision, that 12th District of 1997 has not been proved to be an unconstitutional racial gerrymander. Justice Breyer, writing for majority in Cromartie, says that where race correlates highly with political affiliation, plaintiff in a Shaw claim has heavy burden in showing that race rather than politics was the predominate factor.

	House	Senate	Congressional
	U.S. Secretary of Commerce Donald Evans decides in March that Census Bureau will release down-to-the-block 2000 Census data according to head count only. No adjusted data will be released for redistricting purposes. North Carolina data released March 21. DistrictBuilder, the General Assembly's redistricting computer system, released for use April 23. General Assembly enacts House and Senate plans in November, Congressional plan in December. Lawsuits filed challenging all three.		
2002	2001 House and Senate plans precleared. State Supreme Court decides Stephenson v. Bartlett. Court says counties must be kept whole in House and Senate plans to extent possible without conflicting with Voting Rights Act and Equal Protection Clauses of U.S. and State Constitutions. Court says Equal Protection Clause of State Constitution requires single-members districts, absent compelling governmental interest otherwise. Superior Court Judge Knox Jenkins finds General Assembly's plans, drawn in May 2002 to comply with Stephenson, unconstitutional. Jenkins draws his own Interim Plans for use in the 2002 elections only. State appeals Jenkins' decision, and Supreme Court says it will hear appeal after 2002 elections. 2002 elections held, resulting in partisan split in General Assembly.		2001 Congressional plan precleared.

	House	Senate	Congressional
2003	At Supreme Court's request, Jenkins issues detailed findings of fact and conclusions of law on which he based rejection of General Assembly's 2002 plans. Jenkins declares that pieces of a district touching at one point does not satisfy State Constitution's requirement of contiguity. Supreme Court, in Stephenson II, affirms Jenkins's rejection of 2002 General Assembly plans. Court's opinion says Jenkins found "numerous instances" of constitutional violation, and quotes extensively from Jenkins' findings and conclusions. In response to motion by Stephenson plaintiffs, Judge Jenkins declines to set a deadline for General Assembly to draw districts, but asserts continuing jurisdiction in the case until districts that pass constitutional muster are drawn. General Assembly enacts House and Senate plans in November of 2003.		Lawsuit against congressional plan dismissed.
2004	2003 House and Senate plans precleared. *Pender v. Bartlett* is filed, challenging the division of Pender County in House District 18 and House District 16.		
2006	Three-judge panel in Pender enters final summary judgment finding that creation of House District 18 as crossover district was required by the Voting Rights Act, permitting the county to be divided for redistricting. Individual plaintiffs in Pender appeal judgment to North Carolina Supreme Court.		

	House	Senate	Congressional
2007	North Carolina Supreme Court overturns three-judge panel in Pender, finding that the minority group in House District 18 was less than fifty percent (50%) and not large enough to constitute a majority in the district for a Section 2 claim. Supreme Court orders that House District 18 be redrawn, but stays the order until after the 2008 elections. Defendants appeal decision to the United States Supreme Court. Dean v. Leake filed in federal court challenging the 2003 House and Senate legislative districts.		
2008	Plaintiff's motion for preliminary injunction in Dean v. Leake is denied by the three-judge panel of the Eastern District of North Carolina.		
2009	United States Supreme Court affirms the North Carolina Supreme Court order to redistrict House District 18 in Bartlett v. Strickland. In a plurality opinion, the Court holds that Section 2 does not mandate crossover districts, and that the voting age minority population of the potential election district must be fifty percent or more of the voting age population to establish a Section 2 claim. General Assembly amends the 2003 Redistricting Plan and redraws House District 16 and House District 18 in compliance with the Pender v. Bartlett and Bartlett v. Strickland decisions. Amended 2003 House plan precleared.		
2011	NC data released by Census Bureau on March 2, 2011.		

USEFUL WEBSITES

North Carolina General Assembly's Redistricting Pages (go to Redistricting on main page)

http://www.ncleg.net/

National Conference of State Legislatures (go to "Legislature and Elections," then "Redistricting"):

http://www.ncsl.org

U.S. Census Bureau and its Redistricting page:

http://www.census.gov/

http://www.census.gov/rdo/

State Data Center:

http://www.census.state.nc.us/

U.S. Department of Justice, Civil Rights Division, Voting Section (information about VRA):

http://www.usdoj.gov/crt/voting/index.htm

State Board of Elections website (voter registration and election data):

http://www.app.sboe.state.nc.us/

Center for Geographic Information and Analysis (CGIA):

http://www.cgia.state.nc.us/