
Reapportionment and Redistricting: Redrawing the Political Landscape

by Paul T. O'Connor

The 1991 General Assembly will face many tough issues: education reform, tax increases, economic issues, prison construction and correction alternatives, environmental dilemmas, and the like. But no issue is likely to be more politically divisive and difficult to resolve than the redistricting of N.C. House and Senate seats and the state's 11 congressional districts—which may well expand to 12, thanks to the 1990 census. In the following pages, Insight examines the history of redistricting in the past 20 years in North Carolina and outlines the key political and legal issues facing the 1991 legislature. Insight also looks at landmark court decisions affecting redistricting, at how other states handle redistricting, and at what electronic tools will be available to help lawmakers draw new districts in 1991.



Daniel T. Blue entered the 1981 General Assembly in much the way a highly touted rookie joins a major league baseball club out of spring training. The young, articulate lawyer, then 31, was the first black House member since the turn of the century to represent Wake County, and local Democrats knew they had a rising political star in their midst.

On Oct. 29, 1981, Blue brought forth a redistricting plan for the state House that, at first blush, had almost everyone believing the man was a miracle worker. The assembly had already spent most of the year unsuccessfully trying to redraw House, Senate, and congressional districts when

Blue proposed a plan that probably would have satisfied the federal courts and the U.S. Justice Department on the issues of population deviation and minority voting strength dilution. The plan did minimal damage to incumbents' districts and county lines. According to the computer printout, all the numbers were right, all the criteria were met. Rep. George Brannan (D-Johnston) was so tickled with Blue's plan that he first offered to buy him a steak dinner and then upped the offer to two.

But Dan and Earle Blue never got to eat those steaks because shortly after the House Committee on House Redistricting approved the plan on Oct.

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29, 1981, someone took the precaution of counting the number of seats, and therein lay the problem. Blue had only 119 seats for a 120-member House of Representatives.¹

Had Blue and other members of the House been able to foresee, that day, how long it would take to reapportion the state's legislative and congressional districts to comply with population shifts reflected in the 1980 census, they might have reacted differently. Rather than rescinding committee approval of the Blue plan, the committee might have proposed a constitutional amendment reducing the size of the House to 119 seats. That might have saved the House from a protracted redistricting battle that would take years to fight and would require a total of four extra legislative sessions and numerous court reviews which wouldn't be completed until July 1986. And even then, it was not until 1988 that the state had its first House of Representatives elected entirely from districts considered legal by the federal courts and the U.S. Department of Justice.

And now it is all about to happen again. Preliminary data from the 1990 U.S. Census have begun arriving in Raleigh and legislators are preparing to begin what Common Cause refers to as "decennial madness." Throughout North Carolina and the nation, those who follow reapportionment law view the process with trepidation, predicting that redistricting this time could create more litigation, cost more money, and take more time than ever before in the history of the country. As Rep. Howard Chapin (D-Beaufort) put it at a March 16, 1990, briefing for legislators, "These people don't know what they're in for."

To understand how protracted the redistricting wars of the 1990s may be in North Carolina, a look at the history of the process is in order.

A Short History of a Long Redistricting



The U.S. Constitution mandates *reapportionment*, the process of using census data to divide the 435 members of the

U.S. House of Representatives among the 50 states.² Reapportionment hasn't changed things in North Carolina in 30 years, but change is on the horizon this year. In 1961, North Carolina lost a congressional seat and the delegation was reduced in size from 12 to 11. But the census reapportionment applies only to U.S. House seats. Of the 435 House seats, each state gets one seat, and the remaining 385 are apportioned on the basis of that state's

population. Two U.S. Senators from each state are elected on an at-large basis, so the census does not affect the U.S. Senate races.

The census affects state legislative races in a different fashion, mandating the redrawing of legislative district lines based on population shifts. The redrawing of congressional and legislative districts is called *redistricting*. Until the 1960s, legislative redistricting was a matter of state concern alone, but that changed after two U.S. Supreme Court decisions—*Baker v. Carr* and *Reynolds v. Sims*. In *Baker*, the high court ruled that legislative districts with unequal populations can be challenged in federal court. In *Reynolds*, the court ruled that state legislative districts must be apportioned according to population, but that there could be more leeway on what constituted equal population.³

For nearly 300 years, the state House had been apportioned on a plan that guaranteed at least one representative to each county. With the Reconstruction Constitution of 1868, that meant that 100 counties each had one representative and that the other 20 seats were divided among the most populous counties on the basis of population.⁴ The 50 state Senate districts theoretically were designed to contain equal populations, but they did not because of a constitutional requirement that no county lines be broken in the drawing of Senate districts. The

When Gov. Elbridge Gerry of Massachusetts oversaw legislative redistricting in 1812, opponents said one district was so contrived it took the shape of a salamander—but others called it a gerrymander and the name stuck.



net effect of these two plans for the House and Senate was to create a system that provided rural areas with the overwhelming balance of power in the North Carolina General Assembly. It was a system that, in effect, had legislators representing land rather than people.

Those practices were to change in 1966. A series of lawsuits challenging the districting plans for many state legislatures (see sidebar, page 43, for more) and congressional delegations began to work their way to the U.S. Supreme Court by the early 1960s. Beginning with the high court's ruling in a 1962 Tennessee case⁵ that legislative apportionment was a proper subject for review by the federal courts, a series of court cases forced the redrawing of the American political map. The decisions were based on the Equal Protection Clause of the 14th Amendment to the U.S. Constitution, with the emerging principle that became known as one-person, one-vote.

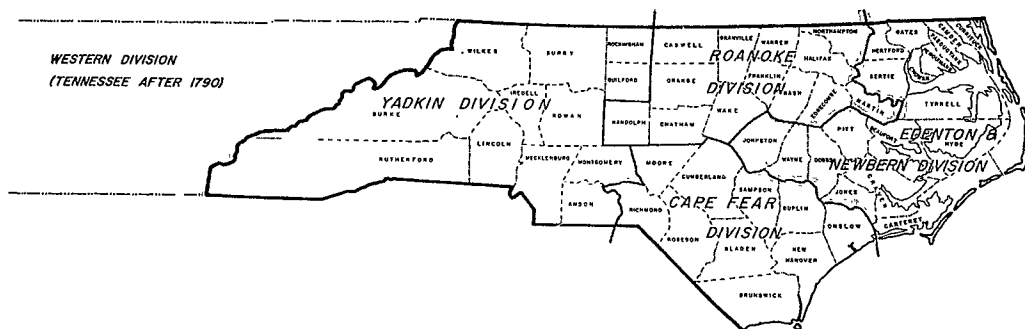
This new series of redistricting cases came home to North Carolina on Nov. 30, 1965, when a three-judge U.S. District Court panel declared invalid the state's Senate, House, and congressional district plans and the state constitution's provision guaranteeing to each county a representative in the House.⁶ The General Assembly was given until Jan. 31, 1966, to redistrict the state in a constitutional fashion.

At the time, the North Carolina House was so controlled by rural forces that a majority vote—61 members—could be assembled from members who represented only 27.09 percent of the state's population. The most populous district was 18.15 times larger than the smallest. These two statistics, previously not considered upon those rare occasions when the House redistricted itself—the House had skipped redistricting after the 1950 census, going from 1941 to 1961 without a change in district lines—were to become guiding principles in the

1989-90 House Speaker Joe Mavretic, left, chats with House Minority Leader Johnathan Rhyne. Mavretic and Rhyne prefer a special session on redistricting in 1991, following the regular session, but a new speaker will be elected when the legislature convenes Jan. 30, 1991.



Karen Tam



N.C. Congressional Districts 1789-1790

This map shows North Carolina's four congressional districts under the original U.S. Constitution.

future. The first is known as “minimum controlling percentage” and the second as “population deviation.”

In 1966, the state Senate had a *minimum controlling percentage* (defined as the smallest percentage of the population needed to control a majority of legislative votes) of 47.06, which was close enough to acceptable (the ideal would be 51 percent) that the U.S. District Court did not take exception to it in its 1965 ruling. But the *population deviation*—the ratio of the population of the most populous district to that of the least—was 2.26 to 1. The District Court indicated that it would accept no more than a 1.3 to 1 deviation ratio. A deviation ratio of 1 to 1 would be best, of course, because districts would then be equal in population, but such an idea is all but impossible to achieve.

Given the enormity of the political task facing the assembly when it convened at the call of Gov. Dan Moore at noon on Monday, Jan. 10, 1966, it appears almost miraculous today that districts were redrawn and approved, and that the General Assembly adjourned on Friday, Jan. 14, at 12:49 p.m.—just in time for lunch. The assembly had been in session for only four days and 49 minutes.

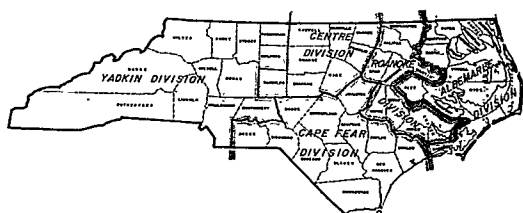
On February 18, the District Court accepted the House and Senate redistricting plans but rejected the congressional plan, though it did allow the 1966 congressional primaries and elections to proceed under the 1966 plan with the stipulation

that an acceptable plan be adopted by the 1967 General Assembly.

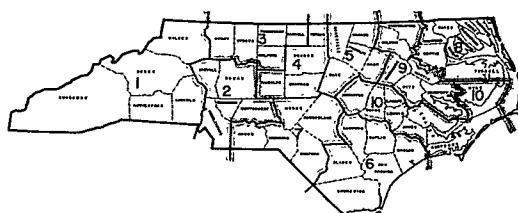
The state House plan adopted in 1966 had a minimum controlling percentage of 47.54 percent and a population deviation ratio of 1.33 to 1. The state Senate plan had a minimum controlling percentage of 48.8 percent and a population deviation ratio of 1.32 to 1. The District Court, citing the *Reynolds v. Sims* decision of the U.S. Supreme Court,⁷ said congressional plans would be held to a much tighter standard of one-person, one vote. Thus the congressional plan was closer to ideal than either the House or Senate plans. In 1967, when the legislature changed the congressional plan, it reached a population deviation ratio of 1.04 to 1, according to figures in the 1960 census.

But figures in the 1960 census did not reflect the real state of the population in 1967, or in 1971. The state had seen shifts in population among the counties and a growth of more than a half-million citizens. Therefore, when the 1971 General Assembly convened to draw districts for the state House and Senate and for the U.S. House, the deviations once again were far beyond the point where they would pass constitutional muster. The very definition of *muster* also had changed. The U.S. Supreme Court had signaled, in *Kirkpatrick v. Preisler*⁸ in 1969, that it would hold states to much more rigorous standards as they sought to meet the ideal district size.

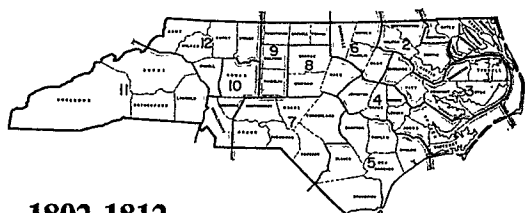
Congressional Districts in North Carolina 1790 - 1872



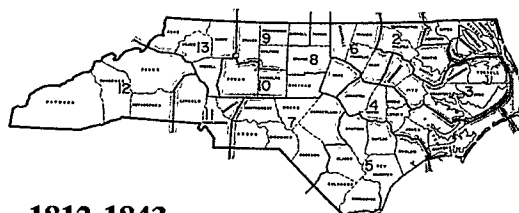
1790-1792



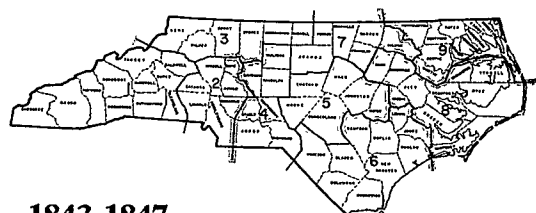
1792-1802



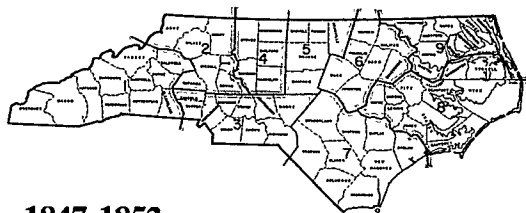
1802-1812



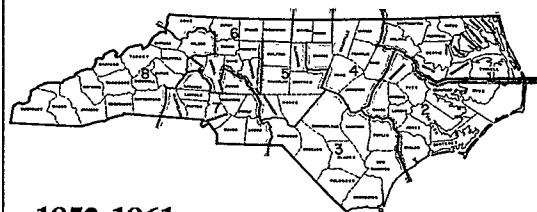
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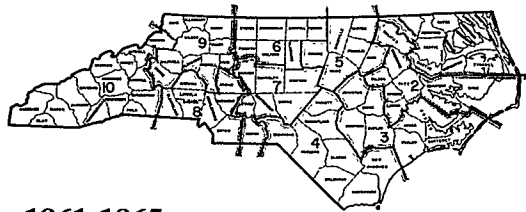
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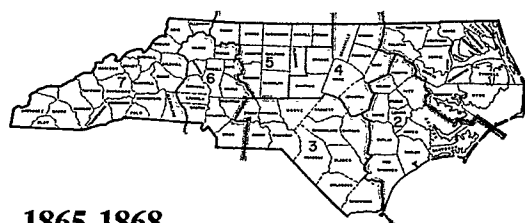
1847-1852



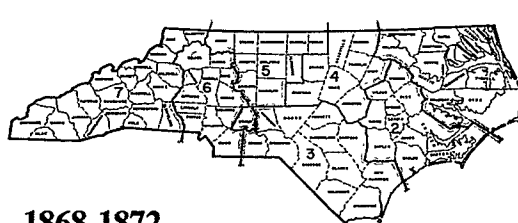
1852-1861



1861-1865



1865-1868



1868-1872

North Carolina Government 1585-1979

But fears that the 1971 session would drag on endlessly, with considerable political bloodletting, were groundless. Again, as in 1966, the assembly redrew legislative and congressional districts in a relatively short period with minimal acrimony. The 1971 state Senate plan brought the minimal controlling percentage over the halfway mark—to 50.46 percent—and the population deviation ratio down to 1.14 to 1. The state House plan created a 48.82 minimum controlling percentage and a population deviation ratio of 1.21 to 1. The congressional plan achieved a population deviation ratio of only 1.035 to 1 while not splitting counties, pitting incumbents against each other, or stripping any congressman of his base of support.⁹

When the General Assembly adjourned in 1971, it could look back at five years in which it had drastically redrawn its district lines to come into compliance with the Supreme Court's one-person, one-vote, mandate. A majority of votes in the Senate now required the votes of senators representing a majority of the population. The House still did not meet that standard, but its 48.8 percent

minimum control point was a major improvement over the 27.09 percent of only five years earlier. The state's congressmen all represented populations of between 454,275 (8th district) and 471,777 (10th).

Unfortunately, the resolve for change did not carry over for a full decade. The 1981 General Assembly would not carry forward significantly the effort to equalize districts, and it refused to address the new constitutional problem that had been injected into redistricting battles: minority representation.

Problems with the 1980s Redistricting Efforts



By 1981, black political forces were fed up with a system that restricted them to only three House seats and one Senate seat, although blacks were somewhat split on whether they preferred single-member districts to multi-member districts. Blacks faced a system that

*Rep. H. M. "Mickey" Michaux of Durham envisions
a new congressional district running from the Virginia border down
to New Bern on the coast—similar to one that existed from 1883 to 1891.*



Karen Tan

kept them out of power by diluting their voting strength within large, multi-member districts. If a concentrated core of black voters were surrounded in a large multi-member district by a much larger white population, then whites could cast enough votes to elect whites for all of the seats in the district. Republicans thought that the district worked in much the same way against them. Republican pockets were diluted in large multi-member districts which would elect slates of Democrats. Therefore, an unusual alliance was formed between blacks, who vote heavily Democratic, and Republicans. Both wanted a system of single-member districts in which both black House and Senate candidates would enjoy majority black populations.

Such a plan would split large, urban counties like Mecklenburg, Forsyth, Guilford, Cumberland, and Wake into single-member districts, some of which would hold a black majority. "For blacks, creating black majority districts is a simple way of ensuring the election of black representatives. For Republicans, packing blacks into a few districts means that the surrounding districts become whiter, less Democratic, and fertile soil for GOP candidates," Washington reporter Matthew Cooper wrote in *The Washington Monthly*.¹⁰

It's little wonder, then, that the white Democrats who controlled the assembly fought vigorously to oppose the creation of a single-member district plan. Some legislators, of course, believed they were hamstrung by the traditional practice of keeping county lines intact when drawing new districts, and creating single-member districts would require the fracturing of county lines in some cases. That practice would end in 1983 when a U.S. District Court in Raleigh struck down an N.C. constitutional ban on crossing county lines.¹¹

Former N.C. State Board of Elections Chairman Robert Hunter of Greensboro, a Republican, would later write of the redistricting battles of the early 1980s, "Despite continued appeals, the General Assembly would not draw single-member minority districts unless forced to do so by the Attorney General or the federal courts; and when this requirement was made, they would 'swallow the smallest pill.'"¹² Representative Blue says much the same. "The 1981 to 1984 process was an ongoing refusal to face facts that the courts and the U.S. Justice Department were going to demand single-member districts that enhanced the possibilities for election of minorities in heavily minority districts. The General Assembly tried to do as little as possible." (North Carolina is among the few

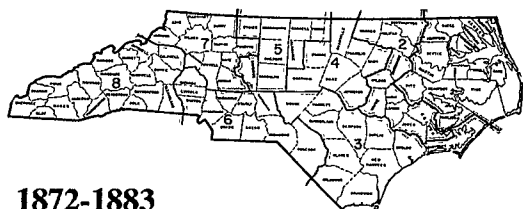
states nationally that permit multi-member districts. See Table 1, page 38, for more.)

Hunter was the original Republican intervenor's attorney in the case that eventually forced the assembly to draw single-member districts in counties not covered by the Voting Rights Act.¹³ In January 1984, *Gingles* (then *Gingles v. Edmisten*) was decided in favor of blacks and, indirectly, Republicans (the NAACP, ACLU, and Republican National Committee eventually wound up on the same side, while the Democratic attorney general of North Carolina and the Reagan Administration were on the other). The decision by the U.S. District Court in Raleigh forced the assembly to return to the capital and draw seven single-member House districts and two single-member Senate districts for blacks. These came in addition to four single-member House and two single-member Senate districts which the assembly had already drawn in 1982 in response to objections by the U.S. attorney general—after the *Gingles* case had been filed. By the time the courts were finished with *Gingles*, a majority black House district and a 48 percent black House district would be added in the Nash, Edgecombe, and Wilson counties area. The U.S. Supreme Court would permit the re-joining of the three single-member House districts in Durham County, however, on the basis that Durham had shown itself capable of electing blacks in a multi-member district.

The *Gingles* suit was based on the U.S. Voting Rights Act of 1965, and specifically on 1982 amendments to the act.¹⁴ The act, Hunter explains, is designed "to ensure racial and language minority groups, primarily in the South, the right to register to vote in federal and state elections." Administrative rules which were written in support of the act, and later affirmed by the U.S. Supreme Court, allowed the U.S. Justice Department in effect to order broad changes in election practices, including changes in political district boundaries. (The Justice Department, of course, could not directly order such changes, but its signals were unmistakable when Justice Department officials clearly spelled out what would be acceptable under the Voting Rights Act.) Before 1982, someone alleging discrimination in an election law had to prove that the law contained an *intent* to discriminate.¹⁵ The 1982 amendments require only that a plaintiff meet a less rigid test of showing that a voting practice or law has the *result* of discriminating against that minority.

In the *Gingles* decision, the high court rendered an expansive interpretation of the amended

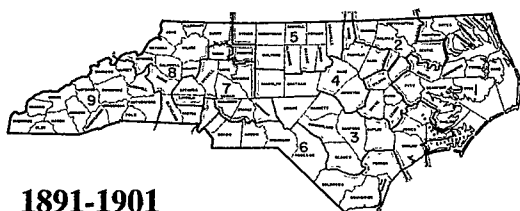
Congressional Districts in North Carolina **1872 – 1971**



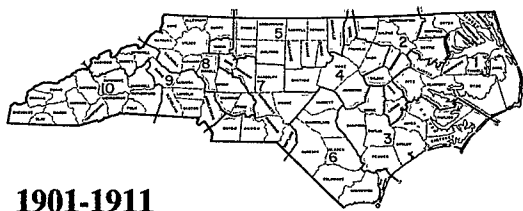
1872-1883



1883-1891



1891-1901



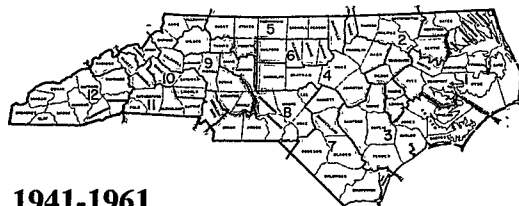
1901-1911



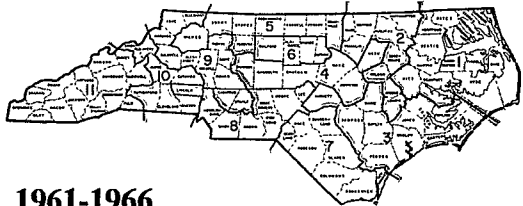
1911-1931



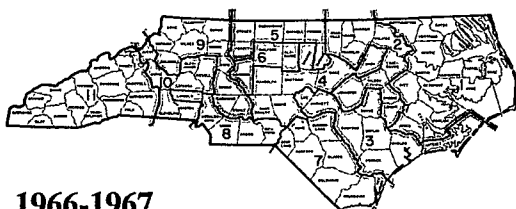
1931-1941



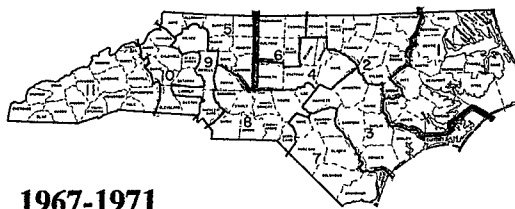
1941-1961



1961-1966



1966-1967



1967-1971

from *North Carolina Government 1585-1979*

act. Blue says that under the rule of *Gingles*, "If you have a population and you can reasonably draw a district that is majority minority, the law is that you have to draw it, unless you demonstrate that consistently since the last census, they have elected minority officials." Adds Charlotte attorney Leslie Winner, who represented plaintiffs in the 1980s redistricting battles, "The linchpin is to demonstrate that white voters fail to vote for black candidates in such numbers as usually to defeat the candidate of choice of the black community."

Some legislative observers believe the General Assembly in 1981 was already moving toward enacting single-member districts by the time the federal courts became involved, and that the final resolution of the *Gingles* case resulted only in a few more single-member seats. But the fact remains that *Gingles* was filed shortly after the 1981 legislature adjourned, that the U.S. Justice Department rejected the 1981 legislature's plans a short time later, and that not until 1982 did the N.C. General Assembly begin enacting single-member districts.

The 1982 election had a dramatic result. Eleven black House members were elected, including some from single-member districts and some from multi-member districts. The previous high number in the House had been four.

The 1991 Redistricting



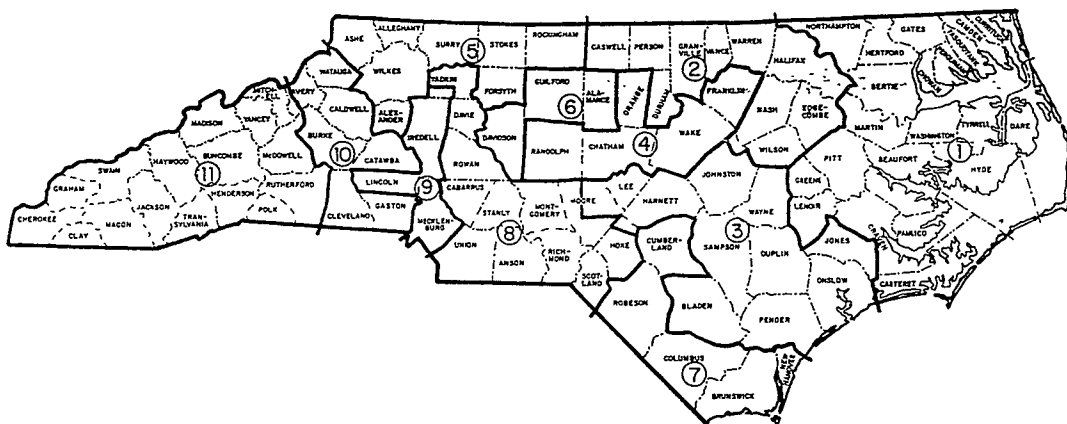
Despite the racial issues involved in the redistricting struggles of the 1980s, the 1991 General Assembly may not face a serious racial battle. "I think that battle is over," says Rep. H.M. "Mickey" Michaux (D-Durham), a veteran black legislator and former U.S. Attorney. "As long as they don't try to undo what has already been done." Population shifts will require some adjustments to legislative boundaries, says Gerry Cohen, chief of the assembly's bill drafting section and a key staff member for redistricting for more than a decade. Predominantly black districts may have lost or gained popu-

Table 1. States That Allow Multi-Member Legislative Districts

State	Senate	House	Summary
Alaska	6 of 14	13 of 27	States with multi-member districts in either House or Senate or both: 17
Arizona		30 of 30	
Arkansas		10 of 84	
Georgia		15 of 156	States with multi-member districts for House only: 9
Idaho	6 of 33	33 of 33	
Indiana		16 of 77	States with multi-member districts for Senate only: 1
Maryland		45 of 59	
Nevada	7 of 14		States with multi-member districts for both House and Senate: 7
New Hampshire		103 of 175	
New Jersey		40 of 40	Southern States with multi-member districts: (Georgia, North Carolina,* Maryland) 3
North Carolina	13 of 35	30 of 72	
North Dakota	2 of 53	53 of 53	States without multi-member legislative districts: 33
South Dakota		35 of 35	
Vermont	10 of 13	43 of 77	
Washington		47 of 51	(Chart denotes how many of chamber's total districts are multi-member districts. Alaska, for instance, has 14 House districts, and 6 of them are multi-member districts)
West Virginia	17 of 17	26 of 40	
Wyoming	5 of 18	15 of 23	

* Note: North Carolina is only southern state allowing multi-member districts in both the House and the Senate.

Source: *Redistricting Provisions: 50 State Profiles*, National Conference of State Legislatures



Congressional Districts 1981 – 1991

Speaker Joe Mavretic (D-Edgecombe) and House Minority Leader Johnathan Rhyne (R-Lincoln), thinking about a special redistricting session later in 1991, perhaps not until late August or September. "The only thing worse than having to go through this process once," Rhyne says, "is having to go through it twice."

In an Oct. 4, 1990, letter to House members, Mavretic vowed that the House would avoid repeating "the expensive legacy of unnecessary partisanship and insensitivity to minority rights in 1981" and told House members that redistricting committees should work through the summer of 1991 to come up with proposals to be presented to the House "immediately after Labor Day." Mavretic also warned colleagues to avoid partisan bickering over plans. "The people who advocate partisanship over common sense will ensure that the federal courts will intervene. It is embarrassing to keep making the same mistake over and over. This will not advance either party."

State Democratic Chairman Lawrence Davis doesn't want a special session, though. Davis says Mavretic's proposal is "a terrible idea" and thought it was "very bad to have [a] special session."

A 12th Congressional Seat?



Based on population gains that have boosted the state to 10th in the nation with about 6.5 million citizens, North Carolina tentatively is slated to gain a 12th congressional seat beginning with the 1992 elections, and

the General Assembly must decide what goal it wants to accomplish with that seat. This will bring back to North Carolina the 12th seat it had from 1941-1961, but still puts the state one short of its largest House delegation ever—13 (see table, page 42, for more on the size of the state's congressional delegation over the last two centuries). There's plenty of speculation that, under the *Gingles* rule, the assembly will have to carve out a district with a large black population. "My best guess now is that a black district, or a district where a black can be elected, is a probability," said Minority Leader Rhyne. Representatives Blue and Michaux are both proceeding along the same presumption.

If the legislature does choose to use the 12th seat for that purpose, or if it simply chooses to adjust an existing district's boundaries to create such a district, it will have two basic choices. "We could probably create a 70 to 80 percent black district," Michaux says. Such a district would probably take heavily black areas of the 1st, 2nd and 3rd Congressional Districts to form a salamander-shaped district that runs along the Virginia border, down through Nash, Edgecombe, and Wilson counties and perhaps out to the Intracoastal Waterway and around Craven County near the city of New Bern. The district would have to embrace contiguous territory, but that could be accomplished by linking extremely narrow portions of rural eastern North Carolina. Shaping such a district would very nearly replicate the old 2nd District that existed from 1883-1891—the so-called "Black Second" because Henry Cheatham, born into a slave household in Vance County, defeated

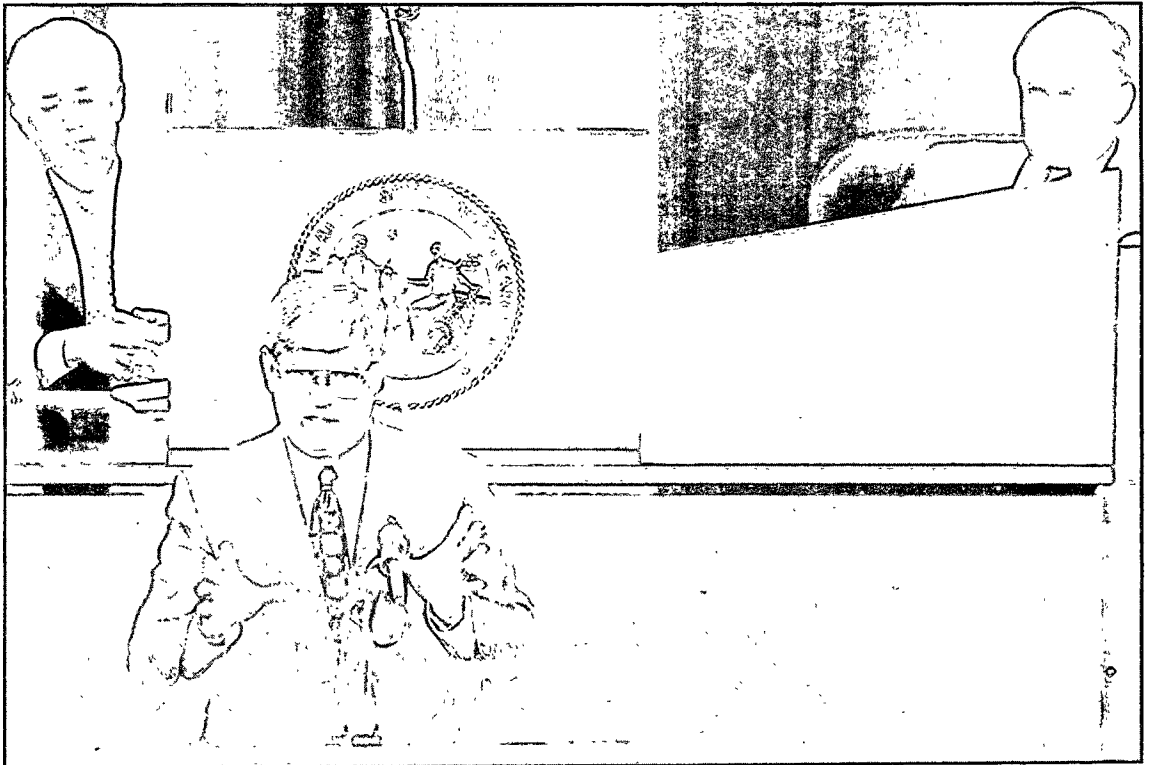
then-U.S. Rep. Furnifold Simmons, who later would become U.S. Senator, in the 1888 elections. Cheatham was a black Republican. What is now the 1st District in northeastern North Carolina might have to use barrier island census tracts to link it with other portions of eastern North Carolina and thereby remain contiguous territory.

But a 70 percent or greater black population district isn't needed. The courts recognize 65 percent as the benchmark for recognizing a district as *majority minority*. And such a plan might be accused of violating the Voting Rights Act because it packs minority votes into one district. "Minorities won't be looking for a totally minority district," says Michaux. "They can't put us off in a corner and say now you have your district, don't bother us for anything else. I feel that a district of 40 to 45 percent [of minority voters] could do very well and give us the opportunity to be effective in more than one district." Michaux thus raises a second geographic option. A predominantly black district could begin with Durham County and proceed north and east, taking in the counties with substantial black populations—Granville and Vance with 43 percent non-white populations each and Warren

with nearly a 64 percent non-white population—that border Virginia. Such a district would be unlikely to reach the 65 percent minority concentration, but Michaux argues that such a district, especially if it included white Chapel Hill voters in nearby Orange County, who have shown a willingness to support black candidates, would be in the best interests of black North Carolinians.

State Republican Party Chairman Jack Hawke says the GOP is likely to support creation of a black district which would concentrate many of the traditionally Democratic voters in one district. "If you try to draw a strong black district, you dilute the black vote in the 11 other districts," Hawke said, "so if you look at the raw politics of it, it would be favorable to the Republican Party." Republicans believe that with the eastern black voters concentrated in one district, other eastern districts would have to be moved westward, into the more heavily Republican Piedmont, to fill out the total population of 546,077 which a district needs to be— $\frac{1}{12}$ of the state's estimated 6,552,927 population. Closely contested districts such as the 4th, 5th, and 8th, which had voted Democratic in recent years, might lose enough Democratic voters due to the ripple

These three leaders—Lt. Gov. Jim Gardner, left, Gov. Jim Martin, center, and 1989-90 Speaker Joe Mavretic, right, will seek to influence redistricting in 1991.



Karen Tenn

Table 2. Number of U.S. House of Representatives Seats Allotted to North Carolina Since Adoption of the U.S. Constitution in 1789

Year	Number of Seats
1789-90	5*
1790-92	5
1792-02	10
1802-12	11
1812-43	13 (most ever)
1843-52	9
1852-61	8
1861-65	0 (10 seats in Confederate Congress)
1865-72	7
1872-83	8
1883-01	9
1901-31	10
1931-41	11
1941-61	12
1961-91	11
1991-	12 (?)

* In the original U.S. Constitution, effective on the first Wednesday in March 1789, North Carolina was allotted five representatives pending the first enumeration. But the original map of districts for North Carolina shows only four districts, including a combination "Edenton and Newbern Division." Until 1792, districts were named for regions or geographic features of the state. Since 1792, districts have been numbered—sometimes from west to east, but, since 1852, North Carolina's districts have been numbered from east to west.

Source: U.S. Constitution and *North Carolina Government 1585-1979*.

effect of such a black district that Republicans would begin winning those seats, Hawke said. "If they draw a black district, it will become increasingly difficult for the Democrats to hold their big delegation." In the 101st Congress, Democrats held eight of the state's 11 House seats, Republicans only three, but in the 102nd Congress, it will be seven Democrats and four Republicans.

Adds Hunter, "I think it very important to remember how the Voting Rights Act . . . will work on the 40 covered counties in North Carolina when it comes to drafting the 12th Congressional District. It appears to me that . . . it is required that at least a 65 percent district be drawn to reach pre-clearance. What happens to (Democratic U.S. Rep.) David Price if Orange County goes with Durham?"

But Democrats, who are likely to control the 1991 General Assembly, can do some packing of their own. There is some sentiment in Democratic circles to take the new 12th District and wind it through the most heavily Republican counties of the Piedmont. Such a district would almost certainly go to a new Republican congressman, but it might drain enough Republican votes that incumbent Democrats in the 4th, 5th, and 8th Districts might be far safer in the 1992 elections. It also might affect the 9th District and turn it into a Democratic seat. After all, the Democratic nominee twice carried Mecklenburg County on the Democratic ticket in the 1980s.

Political Gerrymandering and the Bandemer Decision



Such political manipulation of districts is not uncommon. It's called gerrymandering, a description coined in 1812 by the old *Boston Centinel* to describe Gov. Elbridge Gerry's salamander-looking proposal for a Massachusetts district. Political manipulation of districts pre-dates racial manipulation, but until recently there was little or nothing a minority party could do to protect itself from a majority party that wanted to draw district lines to its own advantage. The 1991 redistricting may indicate just how much recourse a minority party is to have.

The Voting Rights Act does not protect political minorities. Those wishing to pursue legal action on the grounds of political gerrymandering must use the Equal Protection Clause of the 14th Amendment to the U.S. Constitution.¹⁶ In 1986, the U.S. Supreme Court may have opened what will be the proverbial can of salamanders in *Davis v. Bandemer*. That was an Indiana case brought by Democrats who felt that the Indiana legislature had unconstitutionally diluted their voting strength. The Supreme Court held that partisan gerrymandering was an issue for consideration by the federal courts. Justice Byron White, in the majority opinion, said, "Unconstitutional discrimination occurs only when

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the electoral system is arranged in a manner that will consistently degrade a voter's or a group of voters' influence on the political process as a whole."¹⁷ But, in what could be the cruelest blow to those who will be involved in redistricting this year, the high court did not say which arrangements "consistently degrade" voting influence.

The partisan political nature of the 1991 redistricting in North Carolina could be especially

fractious in light of the emerging strength of the Republican Party in the state. Never before in this century has the GOP entered a redistricting session with the strength it will have in 1991. In November, voters elected 39 GOP representatives and 14 *GOP senators to the 1991 legislature. In 1971, the breakdown was 31 Republicans and 139 Democrats. In the 1981 redistricting, the breakdown was 34 Republicans and 136 Democrats. Following the

What Do Other States Do When It's Time to Redistrict?

Reapportionment in neighboring states is much like North Carolina's, but there are important differences. The legislatures of Virginia, South Carolina, Georgia, and Tennessee, like North Carolina's, all draw new district lines for the state House, state Senate, and U.S. Congress districts following the release of the decennial census.

But these four states must involve the governor in redistricting, because the chief executive has the veto in those states and may reject plans. North Carolina, the only state in the nation without a veto, does not directly involve the governor in its redistricting process.

All legislative districts in the four neighboring states—with the lone exception of Georgia's state House districts—are drawn for single members. All five states suffered with various redistricting problems and rejections in the 1980s. The South Carolina legislature failed to enact a congressional plan and it was left to the courts to do so. An S.C. Senate plan was enacted but overturned by the courts. The Tennessee legislature saw both its House and Senate plans overturned by the courts in the 1980s. The Georgia congressional plan and the Virginia House plan also were overturned.

A survey of other states finds other approaches to the drawing of district lines. In Alaska, the governor appoints a redistricting board and then can accept or reject the proposal of the board. In Arkansas, a board draws lines for legislative districts, but the legislature draws

the congressional districts. This Arkansas board comprises the governor, the secretary of state, and the attorney general, and the governor has the power to veto the legislature's congressional plan.

Colorado, Ohio, New Jersey, and Missouri also split the job between reapportionment commissions for legislative districts and the legislature for the congressional plan. Washington, Hawaii, Maine, and Montana have commissions which draw both legislative and congressional plans.

The states that have redistricting commissions have made it easier for their legislatures, but they have a mixed record in withstanding legal challenges. Alaska, for instance, has a redistricting board, but spent much of the 1980s in federal court answering one challenge or another, so having a redistricting board does not guarantee any more success than not having one.

And some states have it relatively easy. Alaska, Delaware, North Dakota, South Dakota, Vermont, and Wyoming each have only one congressional seat, so they have no need for congressional redistricting. Nebraska has only three congressional seats and a unicameral legislature with 49 seats, so that state has to worry about redrawing a maximum of 52 new districts. North Carolina, with a 50-member Senate and a 120-member House and an 11-member congressional delegation that may expand to 12, has a total of 182 potential maps to draw in 1991.

—Paul T. O'Connor



Rep. Dan Blue (D-Wake) nearly pulled off a miracle in the 1981 redistricting until a staff member counted the number of districts. Blue will be a key player in the 1991 redistricting and may well be the next speaker.

1990 elections, the breakdown will be 53 Republicans and 117 Democrats. Thus, Democrats will be fighting to fashion a map which will protect their century-long domination of the assembly and congressional delegation.

Adding to the Democratic woes may be the shifting population of the state. Preliminary census figures released in September 1990 indicate that North Carolina metropolitan areas continue to grow far faster than does the rest of the state. The Research Triangle counties of Wake and Durham have grown the fastest, followed by the Charlotte area. Also growing fast are the southern coastal counties—Carteret, Craven, New Hanover, and Brunswick—which continue to attract large numbers of retirees. Areas which have either lost population, or failed to grow as fast as the state

average, are the far west, such as Madison County; the southeastern inland counties of Bladen, Robeson, and Columbus; the northeast counties bordering Virginia, such as Gates, Hertford, Pasquotank and Camden; and a broad stretch of territory running north from Gastonia, west of I-85 and east of Asheville, all the way to the Virginia line. Growth has been steady in much of this latter area, but it has been relatively small compared to the high growth rate in other parts of the state. For the most part, this translates into a population shift away from traditional areas of Democratic strength and into areas where Republicans are either a majority, or at least competitive with Democratic candidates.

Hawke, the GOP chairman, says he will encourage North Carolina Republican legislators to fight plans that would pack Republican incumbents into safe GOP districts. "I would like to see packing ended and the Republican vote spread out," he says. Republicans ought to be aggressive, he adds, and try to become competitive in as many legislative and congressional districts as possible. That is the only way that the GOP will ever gain control of the General Assembly and the states' congressional delegation, Hawke says.

Democrats will have many more tools this year than 10 years ago. The major difference is that, in fashioning a plan aimed at protecting their turf, they need to protect far fewer districts. Rather than 96 House and 40 Senate seats, which the party held when the 1981 redistricting began a decade ago, they must protect only 81 House and 36 Senate seats in 1991. They can also go after some Republican seats by carving up multi-member districts that were once solidly Democratic but are now solidly Republican. For example, the four-member 34th House District—embracing Cabarrus, Stanly, and Union counties—and the four-member 44th House District—comprising Gaston and Lincoln counties—are now solidly Republican. But by breaking each of those two districts into four single-member districts, Democrats probably could draw new districts that would improve their party's chances of winning a seat or two in each, while guaranteeing two or three seats to the Republicans.

This is a decision which could not have been made 10 years ago when Democrats worked to avoid drawing single-member districts.

Representative Rhyne, the minority leader who could be affected by a division of the 44th, says he expects the partisan fighting to become so ugly that it may be in the best interests of the state to delay the redistricting until late summer or fall, regardless of the availability of the final census figures. "Mixing something that is purely political with all the other policy decisions seems to me like a formula for making bad law."

One Person, One Vote



Whatever North Carolina does about a predominantly black congressional district and partisan gerrymandering, it will have to abide by ever-stricter standards regarding the equal division of population into districts. The federal courts will demand that legislative districts have a population deviation ratio of no more than 1.1 to one. That is, the largest district can be no more than 10 percent more populous than the

The Tools of Redistricting—From Crayons to Computers

When Gerry Cohen talks about drawing redistricting maps during the early 1980s, he evokes images of Prince Henry the Navigator. "The last time, it took us a full day to do a map," says Cohen, the legislature's bill-drafting expert and redistricting specialist. "Late at night, we'd be spread out on the floor to color in the districts." No more. In 1991, Cohen predicts, the legislative computer system will be able to spit out a new map every half hour. That ability to constantly refigure district numbers and boundaries will be the major difference between the redistricting process of the 1980s and this time around.

Redistricting in the 1990s will be driven by computers for the first time in North Carolina. The N.C. General Assembly, which in 1971 raised the prospect of purchasing a computer to help with redistricting only to dismiss the idea almost immediately, will amass computer files with more than 4.5 billion bits of information, says Glenn Newkirk, the legislature's computer guru and director of the Automated Systems Division. The assembly already operates a DEC VAX mainframe computer to which it will add what Newkirk describes as a large mini-computer just to run the redistricting program that it has purchased—at a tab of \$200,000—from Public Systems Associates of Denver, Col.

Newkirk first is loading TIGER, a 650-million character data base formally named Topologically Integrated Geographic Encoding and Referencing System, into the computers. TIGER essentially is an atlas of every census tract in the United States, with the names of almost every street, road, railroad, hilltop, and creek stored on compact discs and referenced by geographic coordinates. The programs will even include precinct boundaries for 48 of the state's largest counties. Legislators seeking to draw a map through the city of Lumberton, for example, would be able to pull up a multi-colored map on the computer screen which would show all the city's streets, the Lumber River, the railroad tracks, and I-95.

When the U.S. Census Bureau releases North Carolina's tract-by-tract 1990 census information in late February, Newkirk will then be responsible for integrating it with the TIGER files. Where TIGER recognized a city block in downtown Lumberton, for example, the census data will also recognize that block and provide census numbers for it. Thus, if legislators were hoping to draw a district boundary through the center of Lumberton along Water Street, they'd be able to keep track of the racial and partisan political compositions of the districts formed both to the south and north of the street. Then,

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The Tools, *continued*

by moving a city block one at a time, in one direction or the other, they could adjust these make-ups to serve their purposes.

Just loading the census data into the legislature's computers will take more than six weeks to complete, Newkirk predicts, because North Carolina is such a difficult state to map. With the state's three coastlines, and with its many mountain peaks and streams, the number of geographic coordinates needed is immense. In the end, the TIGER and census data bases will comprise more than 1.2 billion bits of information. Because of the huge loading process, Newkirk worries that if redistricting plans are enacted before July 1991, and if the court or the U.S. Commerce Department orders a population adjustment, it would take several months to reload the computers with adjusted data and require more legislative work to draw new districts.

The speed with which the computers can draw new maps is a blessing on one hand and a

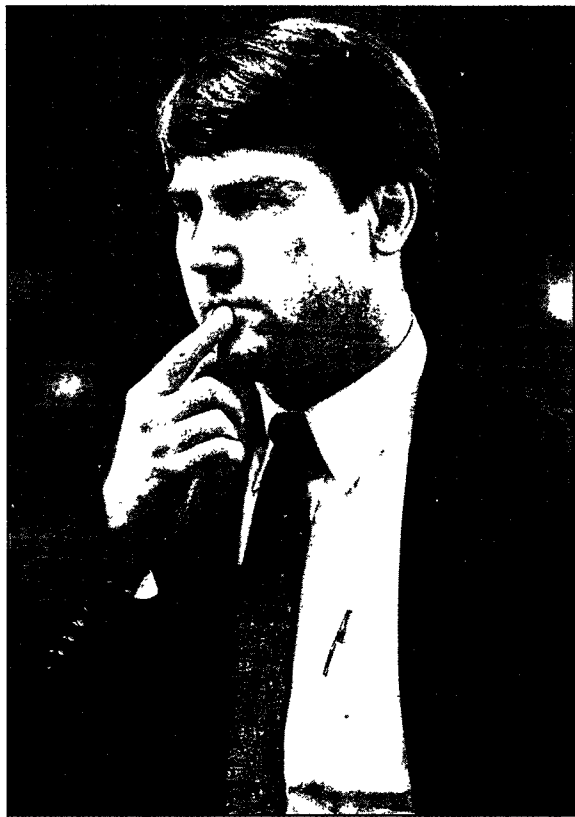
curse on the other. With nearly every legislator capable of drawing a map to suit individual interests, the legislature could be inundated by maps, buried in a blizzard of standard deviations, or swamped in a tidal wave of minority districts. And almost certain to add to the confusion will be the relative ease with which other entities, like the Democratic and Republican parties, key special interests, and minority advocacy groups will be able to draw their own maps using the same information the legislature has and some of the same kind of technologies.

In the 15th century, it took Prince Henry a long time to draw maps that contained many inaccuracies. But his sailors eventually mapped the east coast of Africa and circumnavigated the Cape of Good Hope in 1488. With high speed computers and precise census tract data, it remains to be seen if North Carolina legislators can draw three maps that create House, Senate and congressional districts.

—Paul T. O'Connor



Gerry Cohen, a legislative staff expert on redistricting, contemplates the 1991 task.



House Majority Leader Dennis Wicker (D-Lee), will be a key player in the 1991 redistricting.

smallest district. Put another way, this calls for a population deviation within a 5 percent plus-or-minus range. That's a target the General Assembly eventually achieved in redistricting in the 1980s.

The courts will not be as lenient, however, when it comes to congressional redistricting. "Any deviation—it could be as little as 25 votes—might be challenged," one legislative lawyer speculates. That's because of a New Jersey case decided in 1983 by the U.S. Supreme Court.¹⁸ In *Karcher v. Daggett*, the court struck down a congressional redistricting plan with an overall range of less than 1 percent when plaintiffs showed that they could produce a plan that had less deviation. Minnesota Senate Counsel Peter S. Wattson, writing in *State Legislatures* magazine, says that the lesson to be learned by legislators is that, "If you can't draw congressional districts that are mathematically equal in population, don't assume that others can't. Assume that you risk having your plan challenged in court and replaced by another with a lower overall range."¹⁹

Such potentially exacting standards, along with the uncertainties created by the lack of standards on what constitutes illegal political gerrymandering and the possible undercount of minorities nationwide, account for the trepidation among legislators who face redistricting. Jeffrey Wice, New York state assembly counsel, says redistricting in the 1990s is the equivalent of a "lawyers' full employment act." The Mexican-American Legal Defense Fund's Ruben Castillo warns, "The litigation [arising out of redistricting] will take a long time. . . . It may not be resolved until 1994 or 1995 with a Supreme Court decision. It is going to be a fiasco." ☐

FOOTNOTES

¹ For more on this and other redistricting difficulties, see Paul T. O'Connor, "Redistricting Plan Near Perfect, But Sacrifice Too Great," *The Raleigh Times*, Oct. 30, 1981, p. 1.

² Article 1, Section 2, Clause 3, United States Constitution.

³ *Baker v. Carr*, 369 U.S. 186 (1962), and *Reynolds v. Sims*, 377 U.S. 533 (1964). For a further discussion of the pre-1966 districting scheme, and of the 1966 session, see John L. Sanders, "Legislative Representation in North Carolina: A Chapter Ends," *Popular Government* magazine, Institute of Government, UNC-Chapel Hill, Vol. 32, No. 5 (February 1966), pp. 1-10. Two other important redistricting cases are *Gray v. Sanders*, 372 U.S. 368 (1963) and *Wesberry v. Sanders*, 376 U.S. 1 (1964).

⁴ Article II, Sections 3-6, Constitution of North Carolina (1868).

⁵ *Baker v. Carr*, op. cit.

⁶ *Druan v. Seawell*, 249 F. Supp. 877 (M.D.N.C., 1965).

⁷ *Reynolds v. Sims*, op. cit., at 577.

⁸ *Kirkpatrick v. Preisler*, 394 U.S. 526 (1969).

⁹ For a fuller discussion of the 1971 redistricting, see John L. Sanders, "Redistricting," *Popular Government* magazine, Institute of Government, UNC-Chapel Hill, Vol. 38, No. 1 (September 1971), pp. 3-13.

¹⁰ Matthew Cooper, "Beware of Republicans Bearing Voting Rights Suits," *The Washington Monthly*, February 1987, p. 11. See also Jack Betts, "When Black and Republican Interests Coincide, Does the Democratic Party Lose?," *North Carolina Insight*, Vol. 12, No. 1 (December 1989), p. 45.

¹¹ *Cavanagh v. Brock*, 577 F. Supp. 176 (E.D.N.C., 1983).

¹² Robert N. Hunter, "Racial Gerrymandering and the Voting Rights Act in North Carolina," *Campbell Law Review*, Vol. 9, No. 2 (Spring 1987), p. 272.

¹³ *Gingles v. Edmisten*, 590 F. Supp. 345 (E.D.N.C., 1984). See also *Thornburg v. Gingles*, 478 U.S. 30, 106 S. Ct. 2752 (1986).

¹⁴ U.S. Voting Rights Act of 1965, as amended on June 29, 1982, is found in 42 U.S.C. 1973.

¹⁵ *City of Mobile v. Bolden*, 446 U.S. 55, 66 (1980).

¹⁶ "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws."—Article 14, Section 1, United States Constitution.

¹⁷ *Davis v. Bandemer*, 478 U.S. 109 at 110, 106 S. Ct. 2797 (1986).

¹⁸ *Karcher v. Daggett*, 462 U.S. 725, 103 S. Ct. 2653 (1983).

¹⁹ Peter S. Wattson, "Maps That Will Stand Up in Court," *State Legislatures* magazine, September 1990, p. 15.