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INTRODUCTION

Plaintiffs ask this Court to dismantle the only congressional district in Virginia where black voters have the ability to elect the candidate of their choice. But Plaintiffs cannot satisfy their “demanding” burden, *Easley v. Cromartie*, 532 U.S. 234, 241 (2001), to prove that District 3 is unconstitutional under *Shaw v. Reno*, 509 U.S. 630 (1993) (*Shaw I*), for one simple reason: they have *conceded* that the General Assembly acted constitutionally when it enacted the current congressional districting map (“the Enacted Plan”) and preserved District 3 as a majority-black district, as Section 5 of the Voting Rights Act required. Since Plaintiffs do not dispute that District 3’s racial composition was driven by the legitimate purpose of Section 5 compliance, they inherently and obviously cannot show that an illegitimate use of “race was the predominant factor motivating the legislature’s decision to place a significant number of voters within or without” District 3. *Miller v. Johnson*, 515 U.S. 900, 916 (1995). Absent such a showing, Plaintiffs’ *Shaw* claim fails, and Defendants are entitled to summary judgment. *See, e.g., Easley*, 532 U.S. at 241.

Plaintiffs’ invocation of the Supreme Court’s post-enactment decision in *Shelby County v. Holder*, 133 S. Ct. 2612 (June 25, 2013), fails to address, much less overcome, these obvious and fatal implications of their concession. Plaintiffs’ theorize that, by relieving Virginia of its Section 5 obligations with respect to *future* changes to its election laws, *Shelby County* somehow *retroactively* rendered the constitutional Enacted Plan unconstitutional and transformed the General Assembly’s constitutional, non-discriminatory purpose into an unconstitutional, discriminatory purpose.

This argument is as meritless as it is novel. To belabor the seemingly obvious, whether a legislature had an impermissible racial purpose in enacting a law is judged by whether the

legislature had an impermissible racial purpose in enacting the law; *i.e.*, its purpose when the law was enacted. If the legislature's purpose at enactment was constitutional, the law complies with the Constitution. If *subsequent* events *change* the constraints that confronted the legislature at the time of enactment, this obviously says nothing about the purpose underlying the law as enacted. Under Plaintiffs' contrary theory, if Justice Kennedy had voted with the four dissenting justices in *Shelby County* to uphold Section 5 in 2013, this would somehow mean that the General Assembly had a constitutional purpose in 2012. But since five Justices invalidated Section 5 in 2013, this somehow means that the General Assembly had an illegitimate racial purpose in 2012. Again, however, the General Assembly's purpose must be assessed by what it did, not by what the Supreme Court subsequently did.

In short, nothing in *Shelby County* obligates the General Assembly to do *anything*, much less to interject mid-decade voter confusion and instability into Virginia's election system by undoing the Enacted Plan that was adopted less than two years ago and constitutionally used for the 2012 election. And, to the extent Plaintiffs ask the Court to examine the legally irrelevant question of the purpose underlying the 2013 General Assembly's *inaction* regarding District 3 after *Shelby County*, there is an obvious non-racial purpose for eschewing "corrective" action—the serious costs, disruption and voter confusion entailed in altering districts in the middle of a decade.

Even if Plaintiffs could overcome their lack of a cognizable legal theory, they have not adduced evidence sufficient to entitle them to a trial. Most fundamentally, even now, Plaintiffs have refused to disclose their proposed alternative to District 3 and, thus, cannot prove liability or entitlement to any specific remedy. Plaintiffs' adamant refusal to even generally describe what a constitutionally compliant District 3 should look like, in the face of the Court's Order

directing them to disclose the “remedial measures sought . . . if they were to prevail in this action,” Order at 2 (DE 27), is particularly inexcusable gamesmanship, because Plaintiffs have now revealed that their purported concern about District 3 is simply a pretext to accomplish a *state-wide redistricting*. Remarkably, after having assured the Court that they are seeking a modest remedy to District 3 that can be adjudicated in *one day*, Plaintiffs’ reply brief on remedies reveals that they actually *oppose* a remedy that simply “correct[s] the identified departure from the Constitution” in that District, but instead will seek a “*wide reaching*” remedy where the Court will “mak[e] *substantial changes* to the existing plan” that go far beyond District 3. Pls. Reply In Support Of Brief On Available Remedies at 12 (quoting *Abrams v. Johnson*, 521 U.S. 74, 85–86 (1997)) (emphases added) (DE 34) (“Pls.’ Reply”). In short, under Plaintiffs’ theory, a state legislature that enacted a concededly constitutional law will have its sovereign redistricting prerogative usurped by the federal judiciary not only with respect to the challenged district, but for virtually all districts in the state. Simply stating this outlandish proposition should suffice to refute it.

Finally, even if Plaintiffs could overcome their lack of a legally cognizable theory, the record already demonstrates that Plaintiffs cannot adduce evidence to satisfy their heavy burden to prove that the General Assembly “subordinated traditional race-neutral districting principles . . . to racial considerations.” *Easley*, 532 U.S. at 241. Another three-judge court in the Fourth Circuit recently granted summary judgment to the defendants in a *Shaw* case involving a much more bizarrely shaped district than District 3 because the plaintiffs could not show “that the State moved African-American voters from one district to another because they were African-American and not simply because they were Democrats.” *Fletcher v. Lamone*, 831 F. Supp. 2d 887, 901 (D. Md. 2011) (three-judge court), *summ. aff’d* 133 S. Ct. 29 (2012). Plaintiffs have

completely ignored partisan politics and other “non-racial reasons,” such as “incumbent protection” and preserving the cores of existing districts, that explain the shape and composition of District 3. *Id.* at 903. Thus, in all events, the Court should grant Defendants summary judgment and dismiss this case.

STATEMENT OF UNDISPUTED MATERIAL FACTS

1. Virginia was a covered jurisdiction under Section 5 of the Voting Rights Act from 1965 until the Supreme Court’s decision in *Shelby County*. *See Shelby County*, 133 S. Ct. at 2620–31.

2. Section 5 required Virginia to submit any changes to its election or voting laws to federal preclearance. *See* 42 U.S.C. § 1973c.

3. Congress amended Section 5 in 2006. *See Shelby County*, 133 S. Ct. at 2621.

4. As amended in 2006, Section 5 prohibited Virginia from enacting any change to its election or voting laws with “any discriminatory purpose.” 42 U.S.C. § 1973c(c).

5. As amended in 2006, Section 5 also prohibited Virginia from enacting any change to its election or voting laws that “diminish[ed] the ability” of minorities “to elect their preferred candidates of choice.” *Id.* §§ 1973c(b), (d).

6. District 3 is the only congressional district in Virginia where black voters have the ability to elect their candidate of choice. *See* Statement Of Anticipated Minority Impact, Virginia Preclearance Submission, *available at* http://redistricting.dls.virginia.gov/2010/Data/Ref/DOJSubmission2012/Attachment_5_cong.pdf (last visited Dec. 18, 2013) (Ex. A); Virginia Members, *available at* <https://www.govtrack.us/congress/members/VA> (last visited Dec. 18, 2013) (“Virginia Members”).

7. District 3 is represented by Congressman Bobby Scott, a Democrat. *See* Virginia Members.

8. District 3 is surrounded by Districts 1, 2, 4, and 7 in the current congressional districting map (“the Enacted Plan”). *See* Enacted Plan Map (Ex. B).

9. District 1 is represented by Congressman Robert Wittman, a Republican. *See* Virginia Members.

10. District 2 is represented by Congressman Scott Rigell, a Republican. *See id.*

11. District 4 is represented by Congressman Randy Forbes, a Republican. *See id.*

12. District 7 is represented by Congressman Eric Cantor, a Republican. *See id.*

13. District 3 was created as a majority-black district in 1991. *See Moon v. Meadows*, 952 F. Supp. 1141, 1144 (E.D. Va. 1997) (three-judge court), *summ. aff’d*, 521 U.S. 1113 (1997).

14. The 1991 version of District 3 encompassed New Kent, King William, King and Queen, and Essex counties. *See* 1991 District 3 Map (Ex. C).

15. The black voting-age population (“BVAP”) in the 1991 version of District 3 was 61.17%. *See Moon*, 952 F. Supp. at 1144.

16. In 1997, a three-judge court invalidated the 1991 version of District 3 as an unconstitutional racial gerrymander, and allowed the General Assembly the opportunity to enact a remedial District 3. *See id.* at 1151.

17. The General Assembly enacted a new districting plan and new District 3 in 1998. *See* Va. Stat. § 24-302 (1998 Version) (Ex. G).

18. Neither Plaintiffs nor any other party challenged the 1998 version of District 3 under Section 2 of the Voting Rights Act or as a racial gerrymander.

19. The General Assembly enacted a new congressional districting plan in 2001 to reflect population shifts shown in the 2000 Census. *See* Va. Stat. § 24-302.1 (2001 Version) (Ex. H).

20. The 2001 plan preserved District 3 in “similar” form to the 1998 version of District 3. Compl. ¶ 29; *compare* 1998 District 3 Map (Ex. D), *with* 2001 District 3 Map (Ex. E).

21. The 2001 plan received preclearance under Section 5. *See* Va. Stat. § 24-302.1 note (2001 Version).

22. Neither Plaintiffs nor any other party challenged the 2001 version of District 3 under Section 2 of the Voting Right Act or as a racial gerrymander.

23. The 2010 Census revealed population shifts in Virginia that required a new districting plan. *See* 2001 Congressional Districts, *available at* <http://redistricting.dls.virginia.gov/2010/Data/2010%20PL94-171/current%20congress.pdf> (last visited Dec. 18, 2013) (Ex. I).

24. In particular, Districts 2, 3, 5, 6, 8, and 9 were underpopulated, and Districts 1, 4, 7, 10, and 11 were overpopulated. *See id.*; Statement Of Change, Virginia Preclearance Submission, *available at* http://redistricting.dls.virginia.gov/2010/Data/Ref/DOJSubmission2012/Attachment_3_Cong.pdf (last visited Dec. 18, 2013) (Ex. J).

25. The Virginia Senate approved a number of criteria for drawing the new congressional districting plan, including achieving “population equality”; complying with the Voting Rights Act; drawing “contiguous” and “compact” districts; uniting “communities of interest”; and accommodating “incumbency considerations.” Sen. Comm. On Privileges And Elections Resolution No. 2—Congressional District Criteria I–VI (Mar. 25, 2011), *available at* http://redistricting.dls.virginia.gov/2010/Data/Ref/Criteria/Approved_congress_criteria_SEN_3-25-11.pdf (last visited Dec. 18, 2013) (Ex. K) (“Sen. Criteria”).

26. The General Assembly enacted the Enacted Plan in 2012. *See* Va. Stat. 24.02-302.2 (2012 Version) (Ex. L).

27. The Enacted Plan's District 3 "contains only slight variations from Congressional District 3" drawn in 1998 and 2001. Compl. ¶ 30 (DE 1); *compare* 1998 District 3 Map and 2001 District 3 Map, *with* 2012 District 3 Map (Ex. F).

28. The current version of District 3 does not include any part of New Kent, King William, King and Queen, or Essex counties. *See* 2012 District 3 Map.

29. The General Assembly was required to add population to Districts 2, 3, 5, 6, 8, and 9 in order to comply with the one-person, one-vote requirement. *See* Statement Of Change.

30. To achieve compliance with the one-person, one-vote requirement, the General Assembly exchanged areas across several districts. *See* Statement Of Anticipated Minority Impact at 2–4.

31. These exchanges included moving the City of Petersburg from District 4 to District 3 and New Kent County from District 3 to District 7. *See id.*

32. The net effect of these and other shifts was to increase the BVAP of District 3 from 53.1% to 56.3%. *Compare* 2001 Congressional Districts at 3, *with* Enacted Plan Congressional Districts at 3, *available at* http://redistricting.dls.virginia.gov/2010/data/congressional%20plans/2012%20HB251_Bell/HB251_Bell.pdf (last visited Dec. 18, 2013) (Ex. M).

33. The Justice Department granted preclearance of the Enacted Plan, meaning that Virginia carried its burden to prove that the Plan was enacted without "any discriminatory purpose." 42 U.S.C. § 1973c(c); *see also* Mar. 14, 2012 Preclearance Letter, *available at*

http://redistricting.dls.virginia.gov/2010/Data/Ref/precleanance_letters.pdf (last visited Dec. 18, 2013) (Ex. N).

34. The 2012 election was conducted under the Enacted Plan.

35. Virginia's 2014 congressional primary is set by statute for June 10. *See* Va. Stat. § 24.2-515.

36. The statutory candidate filing period begins on March 10, less than three months from now, and ends on March 27, 75 days before the primary. *See id.* § 24.2-522.

37. The Supreme Court issued its decision in *Shelby County* on June 25, 2013. *See* 133 S. Ct. at 2620–31.

38. That decision relieved Virginia of its Section 5 obligations with respect to future changes to its voting and election laws. *See id.* at 2627–31.

39. Plaintiffs did not bring any legal challenge to or *Shaw* claim against the Enacted Plan prior to the Supreme Court's decision in *Shelby County*.

40. Plaintiffs acknowledge that “[a]s of the date of the enactment of the [Enacted Plan], Virginia was considered a covered jurisdiction under Section 5 of the Voting Rights Act.” Compl. ¶ 35.

41. Plaintiffs concede that the General Assembly acted constitutionally when it adopted the Enacted Plan and preserved District 3 as a majority-black district as Section 5 required. *See id.*; *see also* Pls.’ Br. On Available Remedies at 2 (DE 30) (“Pls.’ Br.”).

42. Plaintiffs also mount no challenge to the 2012 congressional elections, which were conducted under the Enacted Plan. *See* Compl. ¶¶ 1–6.

43. Plaintiffs claim, however, that the General Assembly's constitutional purpose has been tainted—and the previously constitutional Enacted Plan and District 3 have been rendered

unconstitutional—by the Supreme Court’s intervening decision in *Shelby County*. See Compl. ¶¶ 4, 39; Pls.’ Br. at 2.

44. In particular, Plaintiffs claim that “[r]ace was the predominant consideration in the creation of Congressional District 3,” Compl. ¶ 41, that this alleged “racial[] gerrymander” and “packing” of black voters “diminish[es] their influence in surrounding districts,” *id.* ¶ 3, and that “Virginia can no longer seek refuge in Section 5” for its pre-*Shelby County* decision to preserve District 3 as Section 5 then required, *id.* ¶ 5; see also Pls.’ Br. at 2 (citing *Shaw I*).

45. Plaintiffs purport to plead a *Shaw* claim under the Equal Protection Clause, but do not advance any claims under Section 2 of the Voting Rights Act. See Compl. ¶¶ 46–51.

46. Plaintiffs waited more than three months after the decision in *Shelby County* to file this suit. See *id.* (filed Oct. 2, 2013).

47. Plaintiffs ask “that the Court hold an expedited trial on the merits and, assuming a finding in Plaintiffs’ favor on liability, that the Court approve a remedial map” prior to the opening of Virginia’s candidate filing period on March 10, less than three months from now. Pls.’ Br. at 1.

48. Plaintiffs seek “substantial,” statewide changes to “multiple districts in the Commonwealth” based on an alleged *Shaw* violation localized to District 3. Pls.’ Reply at 12.

49. Plaintiffs have refused to identify the mid-decade “remedial map” that they ask Defendants to defend against and the Court to adopt on their accelerated time table. Pls.’ Br. at 1; Pls.’ Reply at 2–4.

50. Plaintiffs designated only one expert, Dr. Michael McDonald, before the deadline for expert disclosures in this case. See McDonald Rep. (Ex. O).

51. Dr. McDonald offers the opinion that “race” was the General Assembly’s “predominant purpose” in shifting areas between District 3 and surrounding districts, but did not consider the Senate Criteria or analyze whether race-neutral criteria explain those shifts. *See id.* at 12–26.

52. Last year, another three-judge court in the Fourth Circuit considering a *Shaw* claim rejected an indistinguishable opinion from Dr. McDonald as “incomplete and unconvincing.” *Backus v. State*, 857 F. Supp. 2d 553, 562 (D.S.C. 2012) (three-judge court), *summ. aff’d*, 133 S. Ct. 156 (2012).

STANDARD OF REVIEW

“The plain language of [Fed. R. Civ. P. 56(a)] mandates the entry of summary judgment . . . against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party bear[s] the burden of proof.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). “In such a situation, there can be no genuine issue as to any material fact since a complete failure of proof concerning an essential element of the nonmoving party’s case necessarily renders all other facts immaterial.” *Id.* at 322–23.

In a case alleging a racial gerrymander, a court’s summary judgment analysis must be conducted “in the context of the courts’ traditional reluctance to interfere with the delicate and politically charged area of legislative redistricting.” *Chen v. City of Houston*, 206 F.3d 502, 505 (5th Cir. 2000). Indeed, because “[r]eapportionment is primarily a matter for legislative consideration and determination,” *White v. Weiser*, 412 U.S. 783, 794 (1973); *Upham v. Seamon*, 456 U.S. 37, 41 (1982), and “[f]ederal-court review of districting legislation represents a serious intrusion on the most vital of local functions,” federal courts must presume that state

legislatures act in “good faith” and that their redistricting statutes are constitutional, *Miller*, 515 U.S. at 916.

Thus, as the Court has specifically warned with respect to *Shaw* claims, federal courts must “exercise extraordinary caution in adjudicating claims that a State has drawn district lines on the basis of race.” *Id.* Specifically, courts must “recognize these principles, and the intrusive potential of judicial intervention into the legislative realm, when assessing under the Federal Rules of Civil Procedure the adequacy of a plaintiff’s showing at the various stages of litigation and determining whether to permit discovery or trial to proceed.” *Id.* at 916–17.

ARGUMENT

I. PLAINTIFFS’ CONCESSION THAT THE ENACTED PLAN WAS CONSTITUTIONAL AT ITS ADOPTION DEFEATS THEIR CLAIM

Plaintiffs’ concession that the General Assembly acted with a constitutional, non-discriminatory purpose when it preserved District 3 as a majority-black district in the Enacted Plan defeats their *Shaw* claim. Indeed, that concession forecloses Plaintiffs from proving that the General Assembly adopted the Enacted Plan “because of” its alleged discriminatory effects. *Personnel Adm’r v. Feeney*, 442 U.S. 265, 279 (1979). Moreover, *Shelby County*’s post-enactment removal of Virginia’s Section 5 obligations for *future* changes to its election laws did not obligate Virginia to do *anything*, much less replace the Enacted Plan mid-decade after it had been constitutionally used in the 2012 election. The Court should grant Defendants summary judgment.

A. Plaintiffs Cannot Satisfy Their Burden To Prove That The General Assembly Adopted The Enacted Plan With A Discriminatory Purpose

It is well-established that “[p]roof of racially discriminatory intent or purpose is required to show a violation of the Equal Protection Clause.” *Arlington Heights v. Metro. Housing Dev. Corp.*, 429 U.S. 252, 265 (1977); *see also Feeney*, 442 U.S. at 279; *Washington v. Davis*, 426

U.S. 229, 240 (1976). This requirement is particularly exacting for *Shaw* racial gerrymander claims. In such cases, the plaintiff must prove that “race was the *predominant* factor motivating the legislature’s decision to place a significant number of voters within or without a particular district.” *Miller*, 515 U.S. at 916 (emphasis added). For a plaintiff to succeed, “[r]ace must not simply be *a* motivation for the drawing of a majority-minority district.” *Easley*, 532 U.S. at 241; *cf. Arlington Heights*, 492 U.S. at 266 (“[D]iscriminatory purpose must have been ‘a motivating factor in the decision.’”). Thus, the plaintiff must show that “the legislature subordinated traditional race-neutral districting principles . . . to racial considerations.” *Easley*, 532 U.S. at 241. Plaintiffs bear the burden to make this showing, and it is “a demanding one.” *Id.*

Plaintiffs, however, do not even *allege* that the General Assembly “acted with” an impermissible discriminatory purpose, *Reno v. Bossier Parish Sch. Bd.*, 520 U.S. 471, 480 (1997) (*Bossier I*), or that improper racial considerations were the “predominant factor motivating the legislature’s decision” to adopt the Enacted Plan, *Miller*, 515 U.S. at 916. Rather, they forthrightly concede that District 3 was maintained as a majority black district “because of,” *Feeney*, 442 U.S. at 279, the need to comply with the “non-retrogression” command of Section 5 of the Voting Rights Act. *See* Compl. ¶¶ 1–6. It is well-recognized and undisputed that compliance with Section 5 is not an impermissible purpose under *Shaw*. Indeed, compliance with Section 5 is not just a *legitimate* purpose, it is a “compelling state interest” which justifies race-conscious districts that might otherwise violate the *Shaw* standard. *Colleton County Council v. McConnell*, 201 F. Supp. 2d 618, 639 (D.S.C. 2002) (three-judge court) (“[C]ompliance with the Voting Rights Act is a compelling state interest.”); *Backus*, 857 F. Supp. 2d at 559 (“[C]ompliance with the Voting Rights Act is a compelling state interest.”); *LULAC v. Perry*, 548 U.S. 399, 475 n.12 (2006) (Stevens, J., joined by Breyer, J., concurring in part and

dissenting in part) (“agree[ing] . . . that compliance with § 5 of the Voting Rights Act is also a compelling state interest”); *id.* at 485 n.2 (Souter, J., joined by Ginsburg, J., concurring in part and dissenting in part) (“agree[ing] . . . that compliance with § 5 is a compelling state interest”); *id.* at 518 (Scalia, J., joined by Roberts, C.J., Thomas, J., and Alito, J., concurring in part and dissenting in part) (“compliance with § 5 of the Voting Rights Act can be” a compelling state interest).

Nor can there be any question that District 3 had to be maintained as a majority-black district under Section 5, particularly since a new, more stringent “no diminution in minorities’ ability to elect” standard was added to Section 5 in 2006, precisely in order to require the preservation of such districts, by overturning the Supreme Court’s decision in *Georgia v. Ashcroft*, 539 U.S. 461 (2003), that had permitted diminishing such districts in certain circumstances.¹

Accordingly, all agree that the General Assembly’s redistricting law was not tainted with an unconstitutional racial purpose. Since considerations of race in redistricting do not violate the Fourteenth Amendment if they further the compelling need to comply with Section 5, Plaintiffs’ concession concerning Section 5 compliance requires summary judgment in favor of Defendants.

¹ Congress amended Section 5 in 2006 to prohibit any change in voting or election laws that “diminish[ed] the ability” of minorities “to elect their preferred candidates of choice.” 42 U.S.C. §§ 1973c(b), (d). Congress’ avowed purpose was to overturn *Ashcroft*, which had construed Section 5 to permit conversion of majority-minority districts into minority-minority districts in certain circumstances. *Ashcroft*, 539 U.S. at 479–80. Congress vehemently criticized *Ashcroft* for “misconstru[ing] and narrow[ing] the protections afforded by Section 5.” 42 U.S.C. § 1973c note, Findings (b)(6); *see also* H.R. Rep. No. 109-478, at 65-72, 93–94 (2006) (*e.g.*, Ashcroft made Section 5 “a wasteful formality,” that perversely “would encourage states to turn black and other minority voters into second class voters”). Thus, Congress prohibited any diminution in minority voters’ ability to elect their preferred candidate, thereby precluding reducing a majority-black district to a minority-black district or otherwise making a safe black district any less safe. 42 U.S.C. §§ 1973c(b), (d).

1. Plaintiffs seek to evade this inexorable logic by noting that Section 5 was subsequently invalidated in *Shelby County* and, consequently, “Virginia can no longer seek refuge in Section 5 as an excuse to racially gerrymander congressional District 3.” Compl. ¶ 5. But, of course, events that occur *after* a legislature has acted cannot have influenced the legislature’s purpose *when* it acted. And since the only basis upon which a state law can be invalidated under *Shaw* is an improper legislative purpose, subsequent events which cannot possibly shed light on that purpose are, by definition, irrelevant and offer no grounds for invalidation.

The only action that the General Assembly has taken with respect to congressional redistricting was passing the Enacted Plan in 2012. Since this action complied with the Constitution because it was motivated by the non-racial—indeed, compelling—purpose of Section 5 compliance, the redistricting law does not constitute a constitutional violation and therefore cannot be altered or overturned by a federal court. *Milliken v. Bradley*, 418 U.S. 717, 738 (1974) (“Federal remedial power may be exercised only on the basis of a constitutional violation.”). Thus, Plaintiffs’ entire theory is irreconcilable with the self-evident truism that a constitutional law cannot be struck down as unconstitutional.

For this reason, Plaintiffs’ assertion that “Virginia can no longer seek refuge in Section 5,” Compl. ¶ 5, is simply baffling, and reflects their fundamental confusion concerning the only allegedly unconstitutional state action they may challenge and the only action they are challenging. The General Assembly does not need to “take refuge under Section 5” now or in 2014, because it is not doing anything concerning redistricting now or in 2014. The only redistricting action the General Assembly has taken occurred in 2012, when all agree it *could* “seek refuge in Section 5.” Since Section 5 existed at that relevant time of passage, and since the

only legally relevant question is the interest underlying the law that was enacted, the conceded fact that the Enacted Plan was constitutionally justified means that the Enacted Plan is constitutional, regardless of whether it would have been unconstitutional if passed in 2014.

The validity of the legislative purpose underlying challenged laws is obviously assessed by examining the purpose underlying the law in the real world; *i.e.*, the interest or purpose of the legislature that actually enacted the law at the time they actually enacted it in light of the actual realities extant at that time. It is not assessed, as Plaintiffs apparently believe, on what the Legislature's purpose would have been in an alternative, hypothetical world that did not exist—*i.e.*, a world without Section 5. Every case assessing discriminatory purpose confirms this truism.

As noted, the question under *Shaw* is whether an impermissible consideration of race was the “predominant factor *motivating the legislature’s decision*” on the districts’ racial composition. *Miller*, 515 U.S. at 916 (emphasis added); *see also Easley*, 532 U.S. at 241 (“motivation for the drawing of a majority-minority district”); *Feeney*, 442 U.S. at 279 (was the legislature’s decision “because of” an impermissible factor). Accordingly, the question is what was the interest or motive of the enacting legislature. And a legislature can only be motivated by, and can only have an interest regarding, things that exist (Section 5), not by things that do not exist (the Supreme Court’s later invalidation of Section 5). Since it is conceded that compliance with Section 5 was the General Assembly’s predominant purpose or compelling interest underlying District 3’s racial composition in 2012, the predominant factor motivating that decision could not have been an improper consideration of race.

Consequently, every court’s assessment of a racial gerrymander purpose has examined the legislative record and evidence to determine whether the proscribed discriminatory purpose existed *at the time* the redistricting plan was enacted, not some later time. *See, e.g., Shaw v.*

Hunt, 517 U.S. 899, 905–06 (1996) (*Shaw II*); *Easley*, 532 U.S. at 1464–70; *Miller*, 515 U.S. at 917; *Old Person v. Cooney*, 230 F.3d 1113, 1130 (9th Cir. 2000) (rejecting discrimination claim where “there was no discriminatory purpose in the adoption of the plan”); *Jeffers v. Beebe*, 895 F. Supp. 2d 920 (E.D. Ark. 2012) (three-judge court) (holding that past history of racial discrimination in voting did not establish discriminatory purpose in enactment of redistricting plan); *Fletcher*, 831 F. Supp. 2d at 901 (past “lamentable incidents of racism in Maryland” did not taint redistricting plan).

While legislative purpose is always assessed by what the legislature thought at the time of enactment, this analysis is particularly required when assessing a “compliance with the Voting Rights Act” justification under *Shaw*. This is because such justifications do not turn on whether Section 5 *required* the majority-minority district enacted by the legislature, but whether the legislature had a strong *reason to believe* that Section 5 so required. Specifically, “if the State has a ‘*strong basis in evidence*’ for concluding that creation of a majority-minority district is reasonably necessary to comply with [the Voting Rights Act], and the districting that is based on race ‘substantially addresses the [Voting Rights Act] violation,’ it satisfies strict scrutiny.” *Bush v. Vera*, 517 U.S. 952, 977 (1996) (quoting *Shaw I*, 509 U.S. at 656; *Shaw II*, 517 U.S. at 918 (emphasis added)); *see also Colleton County*, 201 F. Supp. 2d at 639 (“If there is a strong basis in evidence for concluding that creation of a majority-minority district is reasonably necessary to comply with the [Voting Rights] Act, and the race-based districting substantially addresses the violation, the plan will not fail under the Equal Protection analysis.”); *Backus*, 857 F. Supp. 2d at 559 (same); *Moon*, 952 F. Supp. at 1149 (same).

Here, it is undisputed and clear that the General Assembly had a strong—indeed, compelling—evidentiary basis to conclude that converting District 3 from a majority-black

district into a minority-black district would constitute impermissible retrogression, particularly under the more stringent “ability to elect” standard that was added to Section 5 for the avowed purpose of overturning *Ashcroft’s* authorization of so diminishing majority-minority districts. *See supra* p. 13 & n.1. Accordingly, District 3 indisputably satisfies *Shaw* because the General Assembly had a strong basis in evidence to conclude that it had to be maintained as a majority-black district.

Indeed, the requirement that a Voting Rights Act justification focus exclusively on legislative purpose at the time of enactment is so strong that the Supreme Court forecloses judicial inquiry even to post-enactment *evidence* supporting the legislature’s articulated Voting Right Act justification, because that evidence was not before the legislature at the time of enactment. *See, e.g., Shaw II*, 517 U.S. at 910 (rejecting a voting analysis demonstrating that the challenged district was required by Section 2 because the analysis was not before the legislature at the time of enactment). Since courts cannot consider even post-enactment *evidence* concerning Section 5 compliance because the legislature did not actually consider that available evidence, they *a fortiori* cannot consider post-enactment invalidation of Section 5, which the legislature *could not* have considered because it was not available.

The final proof that discriminatory purpose is to be assessed solely by the enacting legislature’s purpose at the time of enactment is provided by the cases striking down laws because the enacting legislature had an illicit purpose, but upholding the *same* laws when enacted by a subsequent legislature with new information and a different purpose. *See Hunter v. Underwood*, 471 U.S. 222, 231 (1985) (striking down felon disenfranchisement provision enacted with discriminatory purpose even though that purpose had dissipated and state could reenact the provision without that purpose); *Hayden v. Paterson*, 594 F.3d 150, 163 (2d Cir.

2010) (upholding dismissal of challenge to current felon disenfranchisement law where enactment could not be “traced to a purpose to discriminate on the basis of race” and there was no “discriminatory purpose behind the course of action,” even though prior disenfranchisement laws had been enacted for discriminatory purpose (emphasis in original)); *Johnson v. Gov. of Fla.*, 405 F.3d 1214, 1222-25 (11th Cir. 2005) (same). Just as a law with an unconstitutional purpose at enactment remains unconstitutional notwithstanding subsequent developments affecting purpose, a law with a constitutional purpose at enactment remains constitutional notwithstanding subsequent developments affecting purpose.

In sum, since the Enacted Plan’s District 3 concededly was motivated by a legitimate, compelling purpose, that District is constitutional because the only relevant constitutional issue is the enacting legislature’s purpose. Counter-factual hypotheticals concerning what the legislature should have or would have done if Section 5 did not exist are of no moment.

2. To the extent Plaintiffs are suggesting that District 3 should be judicially dismantled because the General Assembly in 2013 *failed* to enact “*corrective*” legislation for that District after *Shelby County*, this suggestion is equally meritless because (1) the Constitution only prohibits laws enacted with a discriminatory purpose, not legislative inaction allegedly attributable to such a purpose and (2) it is indisputable that there are obvious and important non-racial reasons why the General Assembly would not embark on a virtually unprecedented mid-decade redistricting.

At the threshold, nothing in *Shelby County* created any *new* obligation in Virginia or any other covered jurisdiction, much less a new obligation to *replace* election laws that were previously precleared under Section 5. *See Shelby County*, 133 S. Ct. at 2627–31. Section 5 obviously did *not* require any jurisdiction to *make* changes to its voting laws, but only *prohibited*

discriminatory changes. *See* 42 U.S.C. § 1973c. Thus, *Shelby County* merely relieved Virginia of Section 5 obligations for any *future* changes to its election laws. *See id.*; *Shelby County*, 133 S. Ct. at 2627–31.

Even more fundamentally, federal courts cannot remedy or invalidate legislative inaction because there is no state law that conflicts with the Constitution and thus nothing to review. That is, Plaintiffs must show that the General Assembly selected a “course of *action* . . . because of” an improper purpose. *Feeney*, 442 U.S. at 279 (emphasis added); *Washington*, 426 U.S. at 240.

In any event, Plaintiffs cannot possibly establish that race is “the predominant factor” since there are obvious non-racial reasons for deciding not to adopt “corrective” legislation for District 3. The first such reason is that the General Assembly quite sensibly disagrees with Plaintiffs’ meritless notion that District 3 *needs* any correction, since it undoubtedly adheres to the uniform view that a law enacted with a constitutional purpose cannot be struck down on the grounds that it has an unconstitutional purpose.

Second, the General Assembly has compelling non-racial reasons not to create the “costs and instability” of mid-decade redistricting. *LULAC*, 548 U.S. at 421 (plurality op.). The obvious voter confusion, disruption of constituent relations, administrative costs and severe partisan friction entailed in mid-decade redistricting are so onerous that virtually no state has ever voluntarily done so, and the rare exceptions were avowedly done to enhance the majority’s political prospects relative to the first enacted redistricting plan. *See, e.g., id.* at 448 (Stevens, J., joined by Breyer, J., concurring in part and dissenting in part) (“interests in orderly campaigning and voting, as well as in maintaining communication between representatives and their constituents” weigh heavily against mid-decade redistricting). Indeed, the obvious problems caused by mid-decade redistricting are why the Supreme Court allows “[s]tates [to] operate

under the legal fiction that their plans are constitutionally apportioned throughout the decade,” even though ongoing population shifts render the districting plan non-compliant with the one-person, one-vote requirement as a matter of fact. *Id.* at 421 (plurality op.) (citing *Ashcroft*, 539 U.S. at 488 n.2 (2003); *Reynolds v. Sims*, 377 U.S. 533, 583 (1964)). Thus, the General Assembly’s inaction in revisiting the Enacted Plan and District 3, even assuming implausibly that this is the product of conscious choice and that it is susceptible to judicial review, is amply justified by the non-racial purpose of maintaining stability in the election system and constituent-representative relationships. *Cf. McCleskey v. Kemp*, 481 U.S. 279, 298–99 (1987) (“As legislatures necessarily have wide discretion in the choice of criminal laws and penalties, and as there were legitimate reasons for the Georgia Legislature to adopt and maintain capital punishment, we will not infer a discriminatory purpose on the part of the State of Georgia” for maintaining the capital punishment statute despite evidence of “racially disproportionate impact”).

II. PLAINTIFFS HAVE NO ALTERNATIVE PLAN OR EVIDENCE THAT WOULD ENTITLE THEM TO A TRIAL

Even if Plaintiffs’ novel legal theory were cognizable, summary judgment for Defendants still would be warranted because, as in *Fletcher*, 831 F. Supp. 2d at 901–03, Plaintiffs have fallen woefully short of providing or even describing the threshold evidence needed to potentially establish a *Shaw* violation, and thus failed to provide the predicate required for “intrusive judicial intervention into the legislative realm” in a context where federal courts must exercise “extraordinary caution.” *Miller*, 515 U.S. at 916–17.

A. Plaintiffs Have Offered No Benchmark Alternative Plan As Required To Prove A Discriminatory Purpose And Entitlement To A Specific Remedy

As Defendants have explained, a plaintiff alleging racial discrimination in a districting plan must offer a benchmark alternative plan that comports with traditional redistricting

principles and the plaintiff's view of the Constitution. *See* Intervenor-Defs.' Resp. To Pls.' Br. On Available Remedies at 10–14 (DE 33) (“Intervenor-Defs.’ Resp.”); Defs.’ Memo. In Resp. To Pls.’ Br. On Available Remedies at 6 n.3 (DE 32). This requirement is a prerequisite to the plaintiff establishing both liability and entitlement to a specific remedy. *See* Intervenor-Defs.’ Resp. at 10–14; *see also* *Bossier I*, 520 U.S. at 480; *Hall v. Virginia*, 385 F.3d 421, 428 (4th Cir. 2004) (“Any claim that the voting strength of a minority group has been ‘diluted’ must be measured against some reasonable benchmark of ‘undiluted’ minority voting strength.”).

Plaintiffs do not point to an alternative plan that was before the General Assembly in 2012 and comports with Plaintiffs’ notion of constitutional requirements, as is typically done in discriminatory purpose cases, presumably because *all* such plans were drawn to comply with Section 5. *See, e.g., Shelby County*, 133 S. Ct. at 2627–31. The Justice Department, moreover, exhaustively examined all of those plans when it conducted its preclearance review—and it determined, based on comparison with those plans, that the Enacted Plan was free of “any discriminatory purpose.” 42 U.S.C. § 1973c(c).

Plaintiffs also have stubbornly refused to provide their post-*Shelby County* alternative district, *see* Pls.’ Reply Br. at 2–4, despite this Court’s Order directing them to disclose the “remedial measures sought,” Order at 2 (DE 27), their filing of *two* briefs on remedies, *see* Pls.’ Br.; Pls.’ Reply Br., and the Court’s and Defendants’ inability to litigate the case, much less on Plaintiffs’ compressed timeline, without Plaintiffs’ alternative plan, *see* Intervenor-Defs.’ Resp. at 8, 19–22.

Plaintiffs seek to justify their decision to withhold this essential nondiscriminatory alternative by contending—without a single citation to on-point authority—that they are not required to disclose their alternative district because they advance a constitutional claim, instead

of “a Section 2 claim.” Pls.’ Reply at 2–3. Plaintiffs, however, fail even to mention the ample case law applying the benchmark-alternative requirement to constitutional claims. *See, e.g., Reno v. Bossier Parish Sch. Bd.*, 528 U.S. 320, 334 (2000) (*Bossier II*) (noting that claims of racial discrimination against minority voters under the Fifteenth Amendment require “comparison . . . with a hypothetical alternative”); *Johnson v. DeSoto County*, 204 F.3d 1335, 1346 (11th Cir. 2000) (requiring benchmark alternative for Fourteenth Amendment discrimination claim); *Lopez v. City of Houston*, No. 09-420, 2009 WL 1456487, *18–19 (S.D. Tex. May 22, 2009) (same); *see also* Intervenor-Defs.’ Resp. at 11–13.

This application of the benchmark-alternative requirement makes perfect sense: as the Court has specifically warned with respect to *Shaw* claims, federal courts must “exercise extraordinary caution in adjudicating claims that a State has drawn district lines on the basis of race.” *Miller*, 515 U.S. at 916; *see also* Intervenor-Defs.’ Resp. at 11–13. A federal court simply cannot determine whether a redistricting plan is *unconstitutional* unless it knows what a *constitutional* plan would look like. *See, e.g., Bossier I*, 520 U.S. at 480; *Holder v. Hall*, 512 U.S. 874, 880 (1994) (Kennedy, J.); *Thornburg v. Gingles*, 478 U.S. 30, 88 (1986) (O’Connor, J.); *Johnson*, 204 F.3d at 1346. And a defendant cannot defend against a claim of unconstitutional legislative purpose without knowing how a legislature with a constitutional purpose allegedly would have acted. *See, e.g., Bossier I*, 520 U.S. at 480; *Holder*, 512 U.S. at 880 (Kennedy, J.); *Gingles*, 478 U.S. at 88 (O’Connor, J.); *Johnson*, 204 F.3d at 1346.

In fact, this requirement is even *more* important for constitutional claims than it is for Section 2 claims precisely because constitutional claims focus on *why* a legislature chose a district (discriminatory purpose), *see Arlington Heights*, 429 U.S. at 265, while Section 2 claims simply focus on the “result” of the district on minority voters, without regard to the legislature’s

purpose, *Gingles*, 478 U.S. at 43–44. In assessing why a legislature chose an option that allegedly relies on race to an impermissible degree, it is essential to know what non-racial options were available to it and why they were rejected, although such an inquiry is unnecessary to assess a Section 2 discriminatory “result.” This is why purpose cases focus on the available alternatives before the legislature that it rejected in favor of the alternative it adopted. *See, e.g., Arlington Heights*, 429 U.S. at 266; *Bossier II*, 528 U.S. at 334; *Johnson*, 204 F.3d at 1346.

Moreover, ending Plaintiffs’ deliberate silence on what a nondiscriminatory plan looks like is necessary to provide Defendants with a minimally fair opportunity to mount a defense. Plaintiffs remain ambiguous on the threshold questions of whether District 3 violates *Shaw* because (1) District 3’s BVAP is slightly higher than District 3’s 2010 BVAP; (2) the General Assembly considered race at all; or (3) District 3’s BVAP exceeds what Section 2 requires for blacks to elect their preferred representative. Defendants cannot defend the General Assembly unless Plaintiffs identify which of these challenges they are pursuing, and indicate what a district without these flaws would look like.

Worse still, it now appears that Plaintiffs seek to mount an attack on *virtually all* districts in the Commonwealth, even though their Complaint challenges only District 3. Compl. ¶¶ 1–6. Specifically, Plaintiffs contend that the remedy here “is controlled by *Abrams v. Johnson*,” Pls.’ Reply at 12, which approved a *state-wide* remedy for a *state-wide* violation because the *entire* redistricting plan was impermissible, since it implemented an “entirely race-focused approach to redistricting—the max-black policy,” *Abrams*, 521 U.S. at 85–86. Thus, Plaintiffs contend that this case is *not* controlled by *Upham*, which involved a defect in “two contiguous districts.” *Upham*, 456 U.S. at 38.

Thus, according to Plaintiffs, this case involves an *Abrams*-like state-wide racial policy that infects the entire map and requires “substantial changes to the existing plan” throughout the Commonwealth, rather than an impermissible purpose relating only to “two contiguous districts,” as in *Upham*. Pls.’ Reply at 12. Yet Plaintiffs have provided no clue concerning *which* “multiple districts” besides District 3 were affected by Defendants’ “entirely race-focused approach,” what that race-focused policy consisted of, or what a map would look like absent this system-wide defect. *Id.* (quoting *Abrams*, 521 U.S. at 85). Accordingly, Plaintiffs need to provide their alternative districting scheme now to enable Defendants to know whether it involves just District 3 (as their Complaint says) or a system-wide defect (as their latest brief says), and to know *how* race deformed District 3 or the other districts.

Finally, even if Plaintiffs’ alternative is not needed for liability, it *concededly* is needed for entering a remedy and Plaintiffs want that remedy entered by March. And it is undisputed that such a remedial hearing will have to assess the remedy’s compliance with Section 2, which necessarily requires complex expert analysis of minority voters’ ability to elect their preferred candidates. But Plaintiffs have not even *identified* such racial bloc voting experts or the proposed remedial districts they should analyze. Since Plaintiffs seek a remedy in roughly the next three months, they need to offer an alternative map, supported by expert racial bloc voting analysis, *now*, if their remedy can hope to be entered in 2014. Accordingly, Plaintiffs will suffer no additional burden if required to offer an alternative map now to assess liability, since all agree it is needed for remedy, and Plaintiffs contemplate a remedial hearing immediately after the liability hearing.

B. Plaintiffs Have No Evidence That The General Assembly Subordinated Traditional Race-Neutral Principles To Racial Considerations

Even if Plaintiffs could survive their failure to disclose their benchmark alternative plan, their claim still would fail because, as in *Fletcher*, they have not offered or identified a scintilla of evidence that could potentially refute the non-racial explanations for District 3's shape.

Most fundamentally, because "race and political affiliation" often "are highly correlated," plaintiffs bringing *Shaw* claims must decouple the two and prove that the purported discriminatory effect is attributable to "race *rather than* politics." *Easley*, 532 U.S. at 242 (emphasis in original). In fact, because a political purpose does not violate *Shaw*, a legislature can subordinate traditional districting principles to gerrymander (or support) Democrats "even if it so happens that the most loyal Democrats happen to be African-American Democrats and even if the State were conscious of that fact." *Hunt v. Cromartie*, 526 U.S. 541, 551 (1999); *id.* at 551–52 ("Evidence that blacks constitute even a super majority in one congressional district while amounting to less than a plurality in a neighboring district will not, by itself, suffice to prove that a jurisdiction was motivated by race."). Thus, in *Easley*, the Supreme Court overturned as *clearly erroneous* a three-judge court's finding of a *Shaw* violation concerning a contested district because the evidence adduced at trial was equally consistent with a political and a racial purpose, and therefore failed to establish that "race *rather than* politics *predominantly* explain[ed]" the challenged plan. *Easley*, 532 U.S. at 243, 257–58 (emphases in original).

The three-judge court in *Fletcher* recently applied this rule to grant the defendants summary judgment on a *Shaw* claim. *See* 831 F. Supp. 2d at 901. Without trial, *Fletcher* rejected a racial gerrymander claim against Maryland's 2011 congressional redistricting plan even though "several districts" were "unusually odd," and made the "original Massachusetts

Gerrymander look tame by comparison,” such as a district “that is more reminiscent of a broken-winged pterodactyl, lying prostrate across the center of the State.” *Id.* at 902 & n.5. The three-judge court nonetheless upheld these oddly shaped districts on summary judgment because “[m]oving Democrats for partisan purposes does not establish a violation of the Fourteenth Amendment.” *Id.* It therefore rejected the *Shaw* claim because “the plaintiffs have not shown that the State moved African-American voters from one district to another because they were African-American and not simply because they were Democrats.” *Id.* The three-judge court emphasized that “[d]istinguishing racial from political motivations is all the more important in a State like Maryland, where the vast majority of African-American voters are registered Democrats.” *Id.* at 901–02. The Supreme Court summarily affirmed. *See* 133 S. Ct. 29.

Here, District 3 is represented by a Democrat, the surrounding districts are all represented by Republicans, and the Complaint alleges that the district “packed” blacks—who, as in Maryland, are overwhelmingly Democratic—into the District. *See* Compl. ¶ 3. Accordingly, District 3’s shape and racial composition are just as readily explained by politics as race, but Plaintiffs cannot even suggest how to differentiate the two. Thus, Plaintiffs cannot show that “race *rather than* politics” explains those changes. *Easley*, 532 U.S. at 243 (emphasis in original); *Fletcher*, 831 F. Supp. 2d at 901. As in *Fletcher*, summary judgment is therefore warranted. *See* 831 F. Supp. 2d at 901.

Moreover, as in *Fletcher*, there are obvious, non-racial explanations other than politics for District 3’s shape. The plan concededly preserves District 3 as it was in the old redistricting, *see* Compl. ¶ 30, and plainly does the same for the other congressional districts. Thus, District 3’s shape is readily explained as an effort to protect incumbents of both parties, *see Karcher v. Daggett*, 462 U.S. 725, 740 (1983); *Fletcher*, 831 F. Supp. 2d at 903; *Jeffers*, 895 F. Supp. 2d at

936, and to “preserv[e] the cores of prior districts,” *Karcher*, 462 U.S. at 740; *Fletcher*, 831 F. Supp. 2d at 903; *Jeffers*, 895 F. Supp. 2d at 936. These are non-racial reasons which defeat a *Shaw* claim. *Fletcher*, 831 F. Supp. 2d at 903; *Jeffers*, 895 F. Supp. 2d at 936; *Backus*, 857 F. Supp. 2d at 561; *Colleton County*, 201 F. Supp. 2d at 646–49.

Indeed, the General Assembly had a particularly strong interest in “preserving the core” of District 3. *Karcher*, 462 U.S. at 740; *Fletcher*, 831 F. Supp. 2d at 903; *Jeffers*, 895 F. Supp. 2d at 936; *Backus*, 857 F. Supp. 2d at 561; *Colleton County*, 201 F. Supp. 2d at 646–49. As Plaintiffs recognize, the current District 3 contains “only slight variations” from the version of District 3 that the General Assembly adopted in 1998 as a *remedy* for the *Shaw* violation found in *Moon*, and then preserved in 2001. Compl. ¶ 30; *compare* 1998 District 3 Map (Ex. D) and 2001 District 3 Map (Ex. E), *with* Enacted Plan District 3 Map (Ex. F). The 1998 *Shaw* remedy dramatically altered District 3 from its challenged shape, and the post-1998 shape bears a strong judicial imprimatur. *Compare* 1991 District 3 Map (Ex. C), *with* 1998 District 3 Map. The General Assembly thus had every reason to preserve District 3 to the maximum extent practicable, and no reason to overhaul a district adopted to cure the very evil that Plaintiffs now allege.

Moreover, given Plaintiffs’ recognition of the substantial similarity between the 1998, 2001, and current versions of District 3, they bear the threshold burden to explain how the 1998 and 2001 versions that they did not challenge can be *constitutional* while the current version is somehow *unconstitutional*. Plaintiffs do not even attempt to engage this burden. Instead, they studiously ignore the 1998 version of District 3, and their lone expert focuses on the prior version struck down as a *Shaw* violation in *Moon*. *See, e.g.*, McDonald Rep. at 6, 9, 10 (Ex. O).²

² Of course, comparison of District 3 to the *unconstitutional* district struck down in *Moon*

Plaintiffs thus have made no attempt to establish that race “predominates” over race-neutral factors in the Enacted Plan. *Easley*, 532 U.S. at 241. Even at this early stage of the litigation, it is clear that Plaintiffs will not be able to offer any evidence to meet this burden. Indeed, Plaintiffs designated a single expert, Michael McDonald, before the deadline for expert disclosures in this case. But Dr. McDonald does not mention the Senate Criteria for the Enacted Plan, and does not analyze political considerations, incumbency protection, preservation of district cores, or communities of interest *at all*. See McDonald Rep. at 12–26. Due to similar deficiencies, another three-judge court last year rejected as “incomplete and unconvincing” an indistinguishable opinion from Dr. McDonald in a *Shaw* case. *Backus*, 857 F. Supp. 2d at 562. The *Backus* court found it incurably “problematic” that Dr. McDonald “failed to consider the . . . criteria that the [South Carolina] General Assembly devised for the redistricting process” and “failed to consider all the traditional race-neutral principles” that guided the challenged congressional redistricting plan, including preservation of “communities of interest” and “incumbency protection.” *Id.* Dr. McDonald’s opinion in this case is similarly flawed, and falls far short of satisfying Plaintiffs’ “demanding” burden to prove that the General Assembly “subordinated traditional race-neutral districting principles . . . to racial considerations.” *Easley*, 532 U.S. at 241.

Finally, it should be noted that Plaintiffs cannot correct these fatal deficiencies through discovery or a trial. First, additional information concerning what the General Assembly

(continued...)

tells the Court precisely nothing about the constitutionality of District 3 or the General Assembly’s purpose in adopting the Enacted Plan. Nor does Dr. McDonald’s comparison of District 3 to *other* districts in the Enacted Plan, see McDonald Rep. at 7–12, advance the constitutional analysis because those districts by definition are not *alternatives* to District 3. See, e.g., *Bossier I*, 520 U.S. at 480; *Bossier II*, 528 U.S. at 334; *Holder*, 512 U.S. at 880 (Kennedy, J.); *Gingles*, 478 U.S. at 88 (O’Connor, J.); *Johnson*, 204 F.3d at 1346.

actually considered in 2012 is beside the point under Plaintiffs' unique theory, since they want the Court to assess what would have happened in a hypothetical world where Section 5 did not exist. Moreover, Plaintiffs *cannot* inquire into or discover legislative materials and deliberations because clearly established legislative privilege shields legislators and their aides and agents from being compelled to testify or to disclose documents regarding legislative matters. *See, e.g., Arlington Heights*, 429 U.S. at 268; *Gravel v. United States*, 408 U.S. 606, 617 (1972); *EEOC v. Washington Suburban Sanitary Comm'n*, 631 F.3d 174, 180 (4th Cir. 2011).

Accordingly, Plaintiffs will have to disprove through *external, objective* evidence that District 3 was designed to achieve partisan advantage in districts surrounding District 3, to protect incumbents, or to preserve the core of a district which constituted an acceptable remedy for a *Shaw* violation. Since they have offered no expert testimony on this, and are foreclosed from acquiring direct evidence from the General Assembly, it is clear that they will not be able to offer such evidence at trial. Accordingly, since such proof is essential to prove a *Shaw* claim, judgment should be entered against Plaintiffs now, before they drag Defendants into fruitless discovery that will inevitably entail lengthy legislative privilege disputes. Indeed, Plaintiffs already have served Defendants with burdensome, irrelevant interrogatories and requests for production, and have served sweeping third-party subpoenas on the clerk of the Virginia House of Delegates, the clerk of the Virginia Senate, the Division of Legislative Services, and a former legislator for materials and information that are shielded from disclosure by legislative privilege.

CONCLUSION

The Court should grant Defendants summary judgment.

Dated: December 20, 2013

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on December 20, 2013, a copy of the INTERVENOR-DEFENDANTS VIRGINIA REPRESENTATIVES' MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT was filed electronically with the Clerk of Court using the ECF system, which will send notification to the following ECF participants:

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EXHIBIT A

CONGRESSIONAL REDISTRICTING PLAN

STATEMENT OF ANTICIPATED MINORITY IMPACT

The current congressional district plan includes the Third District in which African-Americans constitute a 56.8 percent majority of the total population and a 53.2 percent majority of the voting age population. The Fourth District includes the second highest percentage of African-Americans, who constitute 33.6 percent of the total population and 32.3 percent of the voting age population of that District.

Table 5.1 presents information relating to demographic changes in these two districts between 2000 and 2010 and the effect of Chapter 1 on the minority total and voting age percentages in these districts. Chapter 1 complies with the requirements of Section 5 of the United States Voting Rights Act by retaining minority strength in the redrawn Third District comparable to the minority strength of the current Third District under the 2010 Census.

Minority Population Trends

Virginia's African-American population increased from 1,390,293 to 1,551,399 between 2000 and 2010, a growth rate of 11.6 percent and a percentage change from 19.6 percent to 19.4 percent of the total population. Under the 2010 Census option of identifying oneself by more than one race, the total number who identified as African-American only or as African-American and some other combination was 1,653,563 or 20.7 percent of the total population. (The data used by the General Assembly in redistricting allocated those who included White as part of their multiple race identity to the minority race group. The data used in the following analysis are based on this allocation.)

The African-American population grew at a slower rate than the overall state average (11.6 percent compared to 13 percent). The attached analysis by the Weldon Cooper Center for Public Service of the University of Virginia succinctly summarizes the patterns of growth of the African-American population throughout the decade. Briefly, the distribution of African-Americans in Virginia has been relatively constant during the last decade, with the African-American population being concentrated in the eastern half of the state.

These patterns are reflected in the statistics for the current Congressional districts and had implications for drawing the new districts. As Table 5.1 demonstrates, below average growth left the Third District significantly below ideal district size. The Third District gained less than 20,000 persons and was short of the ideal district size by 63,976 persons.

As in 2000, the most dramatic change in Virginia's demographic base, mirroring national patterns, was the increase in Hispanic population. The Hispanic population increased from 4.7 percent of the state population in 2000 to 7.9 percent in 2010,

representing a gain of over 302,285 people and a growth rate of 91.7 percent. While virtually every locality showed some growth in Hispanic population, the majority of that population is concentrated in Northern Virginia. Over one-quarter of the total Hispanic population is in Fairfax County, with the adjoining localities also showing significant percentages of Hispanic population. Two current congressional districts (Districts 8 and 11) contain more than 15 percent Hispanic population, both of which are located in Northern Virginia. No current congressional district contains more than 20 percent Hispanic population. In Chapter 1, Districts 8 and 11 both still contain more than 15 percent Hispanic population, with the Hispanic population increasing in both districts. No congressional district in Chapter 1 contains more than 20 percent Hispanic population.

Asians make up 5.5 percent of Virginia's population, up from 3.7 percent, and increasing from 261,025 to 439,890 between 2000 and 2010 at a growth rate of 68.5 percent. The Asian population is most heavily concentrated in Northern Virginia and tends to be fairly evenly distributed throughout the region rather than concentrated. Two current congressional districts (Districts 8, and 10) contain more than 10 percent Asian population and one district (District 11) contains more than 15 percent, all of which are located in Northern Virginia. No current congressional district contains more than 20 percent Asian population. In Chapter 1, Districts 8 and 10 both still contain more than 10 percent Asian population, with the population decreasing slightly in District 10 and increasing slightly in District 8. In Chapter 1, District 11 still contains more than 15 percent Asian population, with the Asian population increasing. No current congressional district contains more than 20 percent Asian population.

The Majority African-American District

Chapter 1 maintains one majority minority district in Virginia. The shortfall in population in the Third District is offset by shifting the whole City of Petersburg from the Fourth to the Third district. Additional population from the Cities of Hampton, Norfolk, and Richmond and the County of Henrico also shift to the Third. New Kent County is shifted from the Third District to the Seventh and fewer people from the City of Newport News and the Counties of New Kent and Prince George are assigned to the Third District.

The Fourth District gains population primarily in Chesterfield and Prince George Counties to offset the loss of Petersburg, and it retains a significant African American population and a majority of its present component parts.

The resulting population statistics shown in Table 5.1 reflect the need to add territory so as to meet equal population requirements and the non-retrogression requirements of Section 5. Other factors came into play in the shaping of these districts, including communities of interest, incumbency, and political considerations. As Table 5.1 shows, Chapter 1 adjustments to the Third and Fourth Districts to add territory to the Third District result in an increase in the total and voting age African-American populations by 3.3 percent and 3.2 percent, respectively, and both total and voting age populations are increased to over 55 percent each. The same adjustments result in slight

reductions from the total and voting age population figures in the Fourth District of 2 percent and 2.2 percent, respectively. However, both figures remain over 30 percent and retain significant influence for African Americans in the Fourth District.

Alternative Plans

In addition to Chapter 1, four plans were presented to the General Assembly during its Special Session on redistricting held during 2011. The first plan, House Bill 5004, was introduced by William R. Janis. This plan is identical to the plan contained in Chapter 1.

There were also three alternative plans presented during the Special Session on redistricting.

The first alternative plan, Senate Bill 5003 was introduced by Senator John C. Miller. The districts in Senate Bill 5003 were drawn by students at the College of William and Mary and this plan was one of the winning plans in the Virginia College and University Redistricting Competition. Table 5.1 includes the relevant information with regard to the anticipated impact of this plan. Briefly, in Senate Bill 5003, like Chapter 1, the Third District retained a majority African-American total population; however, the configuration of the districts is different. The total and voting age African-American populations in the majority minority district are 7.1 percent and 6.2 percent less, respectively, than in Chapter 1, and the total and voting age African-American populations are both below 55 percent. In the district with the second highest percentage of African-American population, the total and voting age African-American populations are 2.5 percent and 1.5 percent higher, respectively, than in Chapter 1.

The second alternative plan, Senate Bill 5004, was introduced by Senator Mamie E. Locke. Table 5.1 includes the relevant information with regard to the anticipated impact of this plan. Briefly, this plan, like Chapter 1, contained one majority African-American district, though this district shifted from the Third District to the Fourth. The Third District, under this plan, included the second highest percentage of African-American population. The configurations of the Third and Fourth Districts in this plan are essentially a reconfiguration of the current Third and Fourth Districts. The total and voting age African-American populations in the majority minority district are 6.0 percent and 5.2 percent less, respectively, than in Chapter 1, and the total and voting age African-American populations are both below 55 percent. In the district with the second highest percentage of African-American population, the total and voting age African-American populations are 12.2 percent and 10.3 percent higher, respectively, than in Chapter 1.

The third alternative plan consists of substitute bills for Senate Bill 5004 and House Bill 5004 adopted in the Senate, which were identical. Table 5.1 includes the relevant information with regard to the anticipated impact of this plan. Briefly, this plan, like Chapter 1, contained one majority African-American district, though this district shifted from the Third District to the Fourth. The Third District, under this plan, included the second highest percentage of African-American population. The configurations of

the Third and Fourth Districts in this plan are essentially a reconfiguration of the current Third and Fourth Districts. The total and voting age African-American populations in the majority minority district are 6.5 percent and 5.5 percent less, respectively, than in Chapter 1, and the total and voting age African-American populations are both below 55 percent. In the district with the second highest percentage of African-American population, the total and voting age African-American populations are 12.6 percent and 10.8 percent higher, respectively, than in Chapter 1.

Chapter 1 was introduced as House Bill 251 by Delegate Robert B. Bell during the 2012 Regular Session of the General Assembly after the General Assembly was unable to pass a plan during the 2011 Special Session on redistricting. An identical Senate bill, Senate Bill 455, introduced by Senator Jill Holtzman Vogel, was reported out of the Senate Privileges and Elections Committee. Chapter 1 passed both houses primarily with Republican support. Six of the 13 Democratic African-American Delegates voted for Chapter 1, with the remaining seven voting against it. None of the five Democratic African-American Senators voted for Chapter 1.

[illegible]

Attachment 5-C -- Table 5.2**Senate of Virginia Majority Minority District Changes**

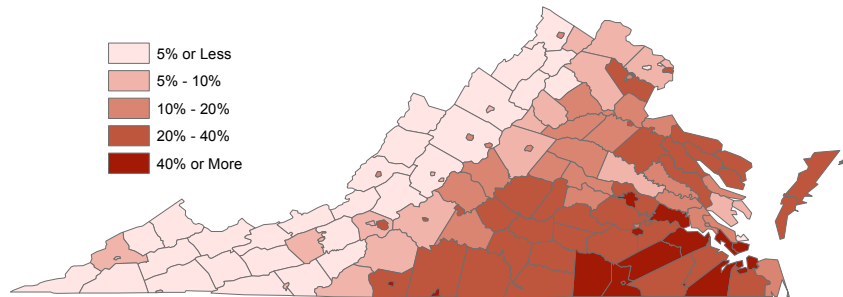
District 3 -- Additions:	more of Hampton	+ 32,941
	more of Henrico County	+ 14,550
	more of Isle of Wight County (additional split precincts with 0 population added)	+ 0
	more of Norfolk	+ 5,765
	Petersburg	+ 32,420
	more of Richmond City	+ 19,768
	part of Suffolk (split precincts with 0 population added)	+ 0
Subtractions:	New Kent County	- 18,429
	part of Newport News	- 20,090
	part of Prince George County	- 2,686
	remainder of York County	- <u>263</u>
		727,366
District 4 -- Additions:	more of Chesterfield County	+ 21,704
	more of Prince George County	+ 2,686
Subtractions:	remainder of Brunswick County	- 3,243
	part of Isle of Wight County (split precincts with 0 population moved to District 3)	- 0
	part of Suffolk (split precincts with 0 population moved to District 3)	- 0
	Petersburg	- <u>32,420</u>
		727,366

2010 Census Brief: Spotlight on Virginia's African American Population

February 22 – The United States Census Bureau recently released local level 2010 Census population counts, including data on race. This brief provides a snapshot of Virginia's black and African American population on April 1, 2010:

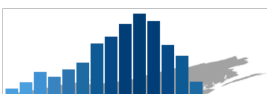
- Black/African American remains the largest minority group in Virginia. More than 1.5 million Virginia residents reported themselves to be black or African American, accounting for nearly 20 percent of the total population.
- The distribution of the black population across the commonwealth has been relatively stable over the past three decades. Blacks are concentrated in the Eastern half of the state while the Valley and Southwest regions have much smaller black populations.
- Norfolk and Richmond have the largest black populations (exceeding 100,000), while Petersburg city has the largest percentage of blacks (79 percent). Richmond lost nearly 10,000 (or 8.6 percent) of its black population between 2000 and 2010, the largest decrease in the commonwealth.

Percent of Population That Is Black or African American, April 1, 2010



Top Five Localities with the Largest Number of Black Residents		Top Five Localities with the Largest Percentage of Black Residents	
Norfolk City	104,672	Petersburg City	79.1%
Richmond City	103,342	Emporia City	62.5%
Fairfax County	99,218	Greensville County	59.8%
Henrico	90,669	Sussex County	58.1%
Virginia Beach City	85,935	Brunswick County	57.3%

This is one of a series of Census Briefs prepared by the Demographics & Workforce Group of the University of Virginia's Weldon Cooper Center for Public Service. For more information and related data tables, visit our website at www.coopercenter.org/demographics.



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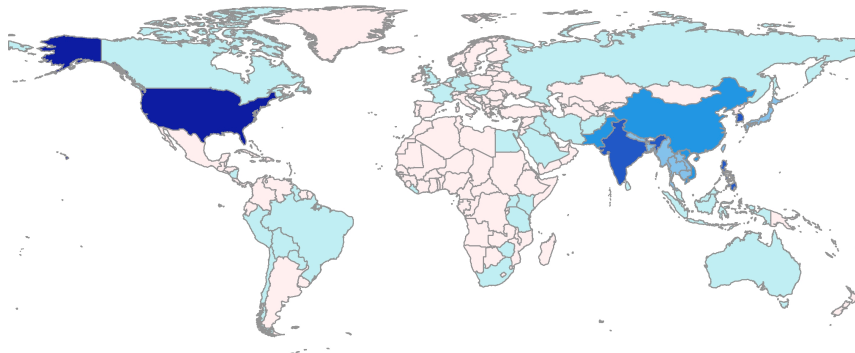
U.Va. Assesses 2010 Census Data on Virginia's Asian Population

March 2, 2011 — The latest census brief from the University of Virginia's Weldon Cooper Center for Public Service highlights census data on people of Asian origin living in Virginia.

The center continues its efforts to make 2010 U.S. Census results, released last month, more accessible and user-friendly.

- As of April 1, 2010, almost 440,000 Virginia residents were Asian, accounting for 5.5 percent of the total population. This constitutes a 69 percent increase since 2000.
- Nine out of every 10 Asians lived in Virginia's three major metropolitan areas: Northern Virginia (71 percent), Hampton Roads (13 percent) and Richmond (9 percent). High concentrations of Asians were also found in college and university communities such as Charlottesville, Williamsburg, Harrisonburg and Lynchburg cities and York, Montgomery, Albemarle and Roanoke counties.
- More than two-thirds of Virginia's Asians were U.S. citizens: 28 percent were native citizens; 40 percent were born outside of the U.S. and naturalized; and 32 percent were foreign-born non-citizens.
- The top five birth countries of Virginia's foreign-born Asians were India, Korea, Philippines, Vietnam and China.

Birthplaces of Virginia's Asian Population, April 1, 2010



Localities with the Largest Number of Asian Residents		Localities with the Largest Percentage of Asian Residents	
Fairfax Co.	189,661	Fairfax Co.	17.5%
Loudoun	46,033	Fairfax city	15.2%
Prince William	30,317	Loudoun	14.7%
Virginia Beach	26,769	Arlington	9.6%
Henrico	20,052	Falls Church	9.4%

This is one of a series of Census Briefs prepared by the Demographics & Workforce Group of the Cooper Center. For information and related data tables, visit its website at www.coopercenter.org/demographics.

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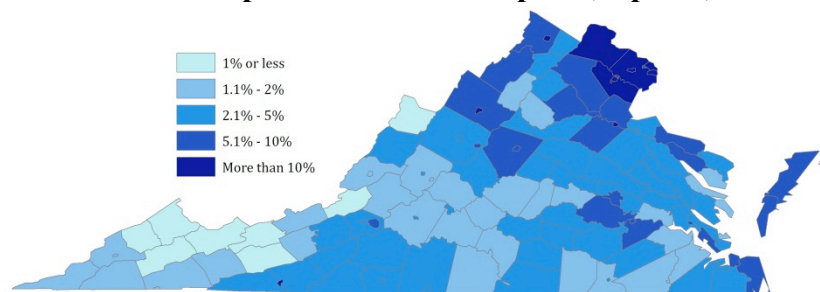
U.Va. Assesses 2010 Census Data on Virginia's Hispanic Population

February 16, 2011 — Continuing efforts to make 2010 U.S. Census data more accessible and user-friendly, demographers at the University of Virginia's Weldon Cooper Center for Public Service have assessed the data on recently released local-level 2010 population counts, including data on people of Hispanic origin living in Virginia.

Here are highlights of Virginia's Hispanic population as of April 1, 2010:

- More than 630,000 Virginia residents were of Hispanic origin, accounting for nearly 8 percent of the total population. This constitutes a 92 percent increase since 2000.
- Sixty-two percent of the commonwealth's Hispanics live in Northern Virginia. At the same time, areas such as Culpeper, James City and Orange counties and Suffolk city, which had few Hispanics in 2000, now have sizable Hispanic populations.
- Fifty-three percent of Hispanics in Virginia are native citizens. Thirteen percent of Hispanics were born abroad and became naturalized citizens of the U.S.; and 34 percent of Hispanics are foreign-born non-citizens.
- Most of Virginia's foreign-born Hispanics were born in El Salvador, Mexico, Peru, Bolivia and Guatemala.

Percent of Population That Is Hispanic, April 1, 2010



Localities with the Largest Number of Hispanic Residents		Localities with the Largest Percentage of Hispanic Residents	
Fairfax Co.	168,482	Manassas Park city	32.5%
Prince William Co.	81,460	Manassas city	31.4%
Loudoun Co.	38,576	Prince William Co.	20.3%
Arlington Co.	31,382	Alexandria city	16.1%
Virginia Beach city	28,987	Fairfax city	15.8%

This is one of a series of Census Briefs prepared by the Demographics & Workforce Group of the Cooper Center. For information and related data tables, visit its website at

www.coopercenter.org/demographics.

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U.Va. Assesses 2010 Census Data on Virginia's Multi-Racial Population

March 9, 2011 — Continuing their efforts to make 2010 U.S. Census data more accessible and user-friendly, demographers at the University of Virginia's Weldon Cooper Center for Public Service have assessed the data on recently released local-level 2010 population counts, including data on people of two or more races living in Virginia.

"The 2010 Census data reflects increasing diversity in the country, and in Virginia," said Qian Cai, director of the Cooper Center's Demographics & Workforce group. "This year, with redistricting under way in Virginia, current information on racial and ethnic heritage is of particular importance for insuring fairness in defining districts."

Here are highlights of Virginia's multi-race population as of April 1, 2010:

- More than 233,000 Virginia residents, or 2.9 percent of the population, reported that they belong to two or more of the six race categories counted in the federal census: white; black or African-American; American Indian and Alaska native; Asian; Native Hawaiian and other Pacific Islander; or some other race. (Note: People of Hispanic origin may be of any race. Hispanic ethnicity is reported in response to a different census question.)
- This is an increase from the 2000 census – the first year in which people could identify themselves as multi-racial – when 2 percent of the population reported that they belonged to two or more races.
- Most multi-racial Virginians reported belonging to just two races; only about 19,000 people reported belonging to three or more. Of the biracial Virginians, 29 percent reported being white and black; 28 percent white and Asian; and the remainder other combinations of the six race categories.
- Multi-racial Virginians tend to live in metropolitan areas, particularly Northern Virginia and Hampton Roads. Manassas Park has the highest percentage of multi-racial residents at 5.4 percent.

Localities with the Largest Number of Multi-Race Residents		Localities with the Largest Percentage of Multi-Race Residents	
Fairfax County	43,915	Manassas Park city	5.4%
Prince William	20,500	Prince William County	5.1%
Virginia Beach	17,656	Manassas City	4.3%
Loudoun County	12,575	Newport News	4.3%
Norfolk	8,825	Fairfax County	4.1%

This is one of a series of Census Briefs prepared by the Demographics & Workforce Group of the Cooper Center. For information and related data tables, visit its website at www.coopercenter.org/demographics.

EXHIBIT B

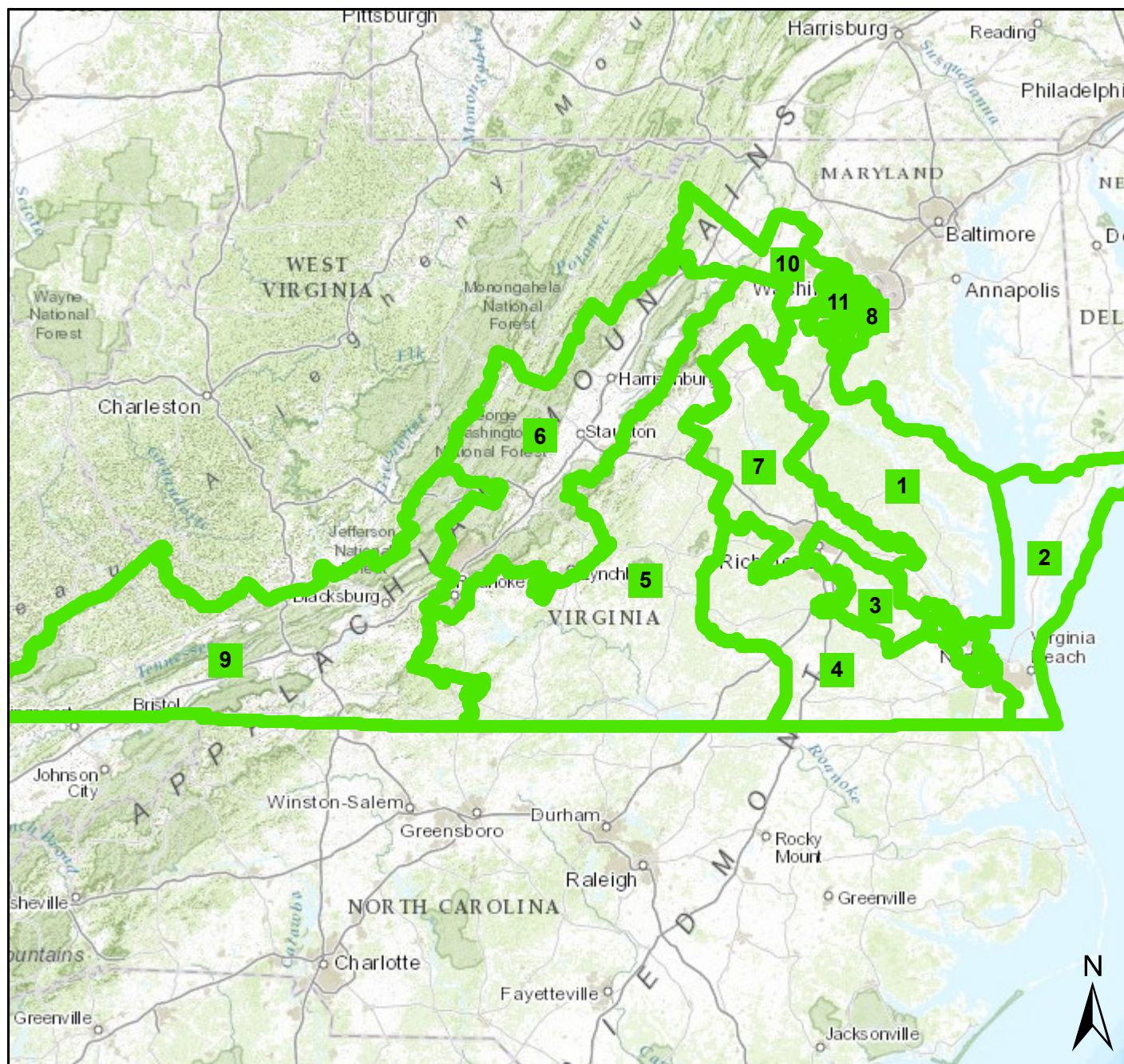


COMMONWEALTH OF VIRGINIA
DIVISION OF LEGISLATIVE SERVICES • REDISTRICTING 2010

Legend



Current Congressional (2012 HB251)



1 inch = 385,237 feet

0 12.5 25 50 75 100
Miles

EXHIBIT C

3rd Congressional District

as established 1991

and amended 1992 and 1993

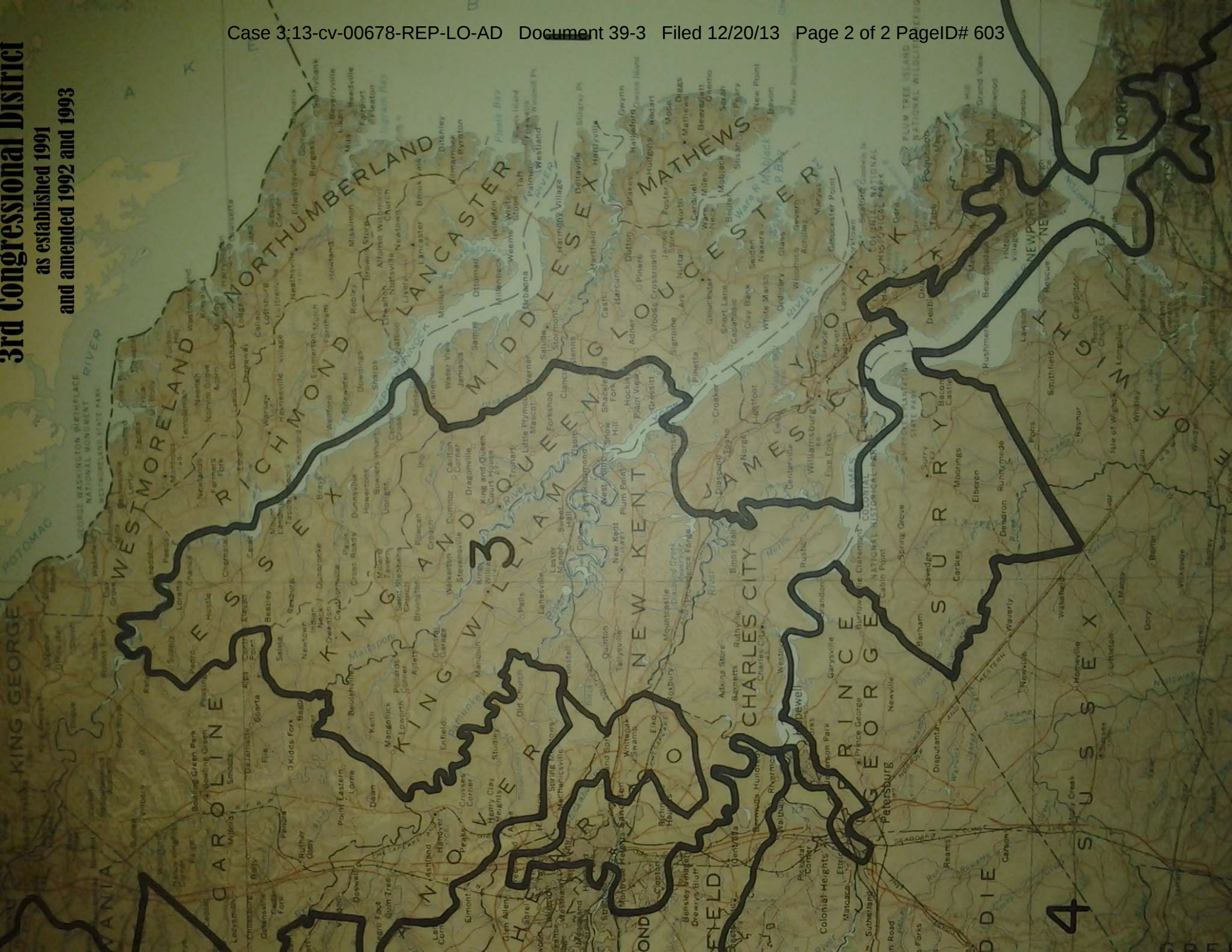


EXHIBIT D

3rd Congressional District
as established 1998

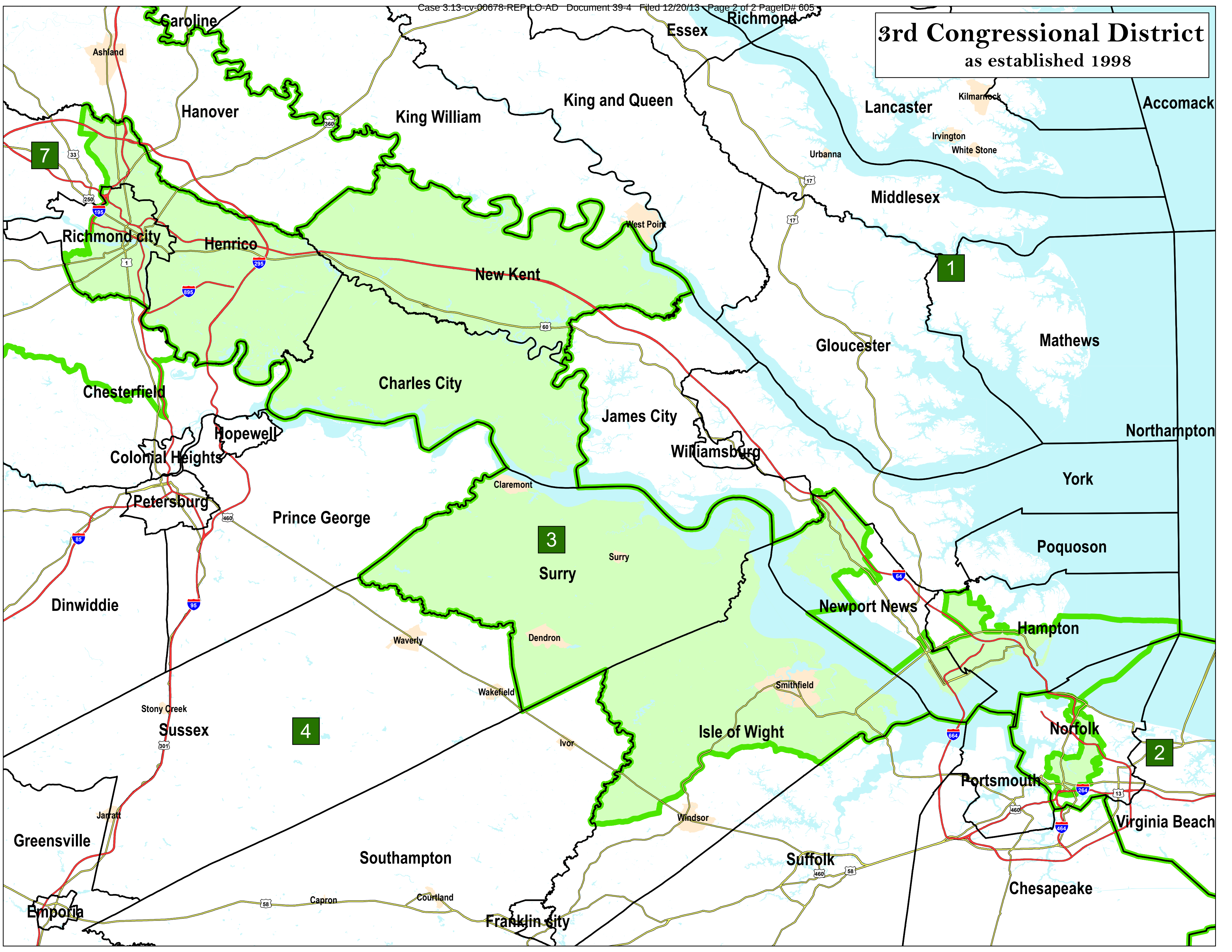


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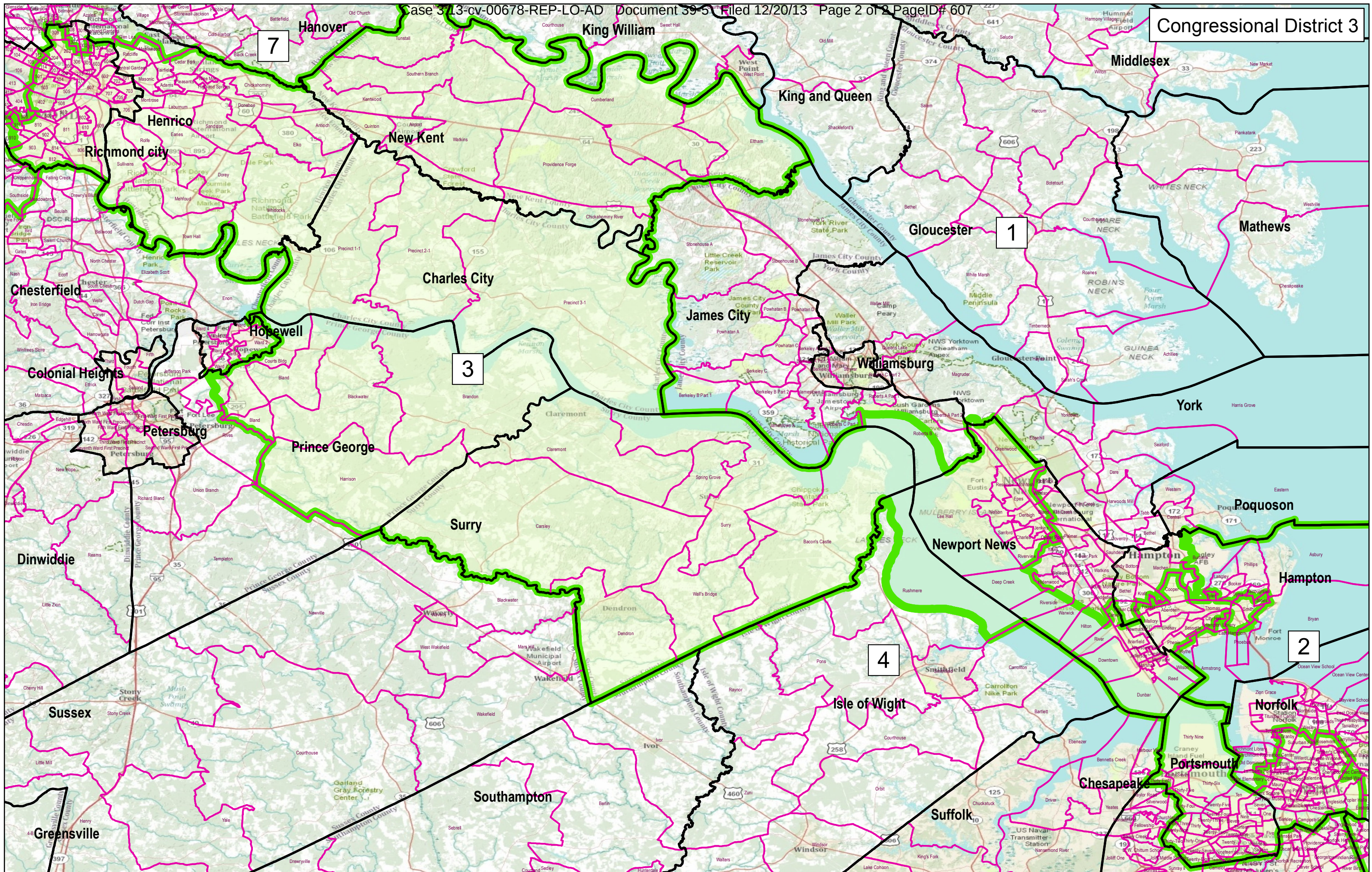


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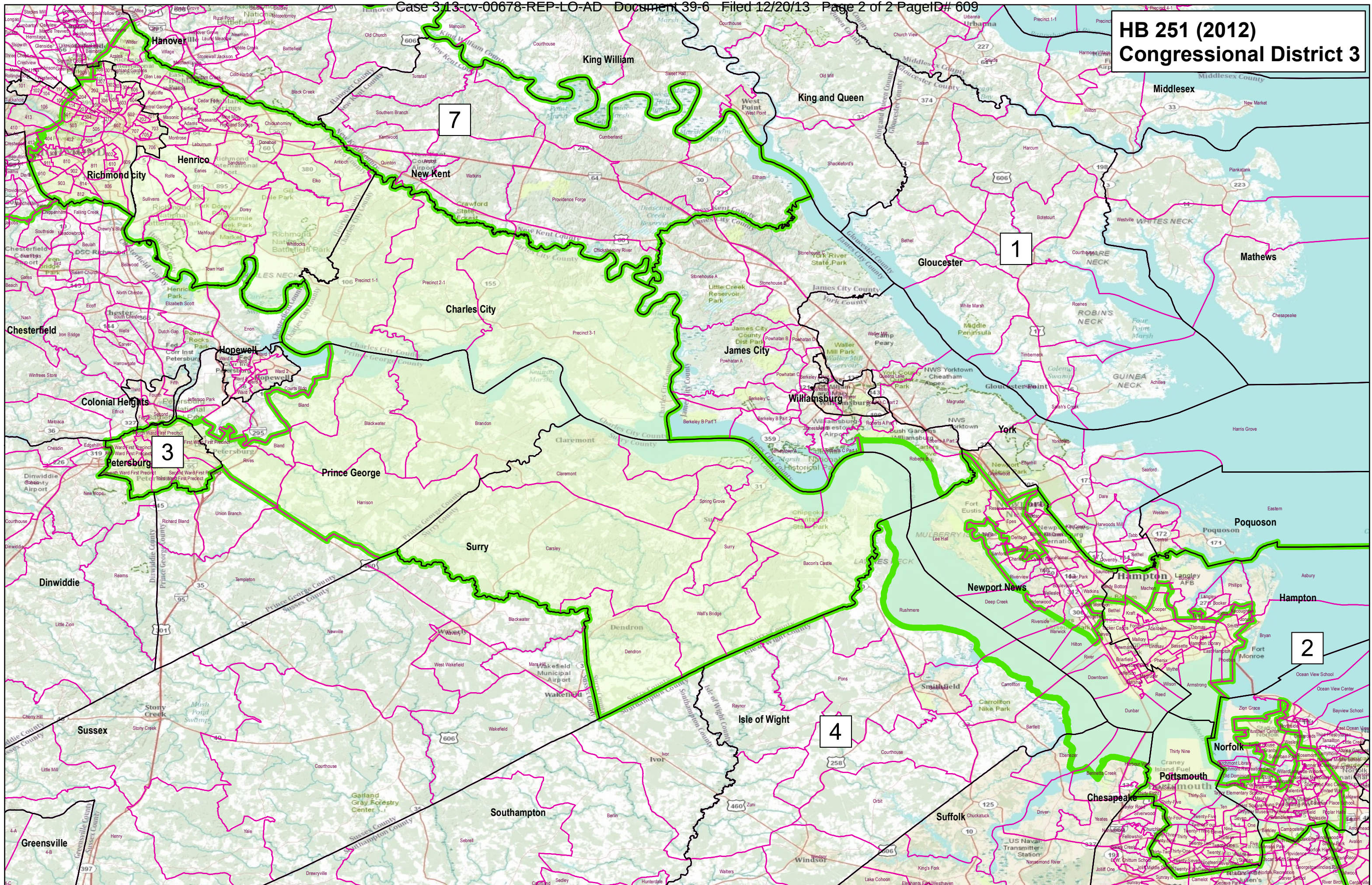


EXHIBIT G

Code 1950, § 24.2-302

CODE OF VIRGINIA
TITLE 24.2. ELECTIONS.

CHAPTER 3. ELECTION DISTRICTS, PRECINCTS, AND POLLING PLACES.

ARTICLE 2. CONGRESSIONAL, SENATORIAL, AND HOUSE OF DELEGATES DISTRICTS.

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§ 24.2-302 Congressional districts.

A. There shall be eleven Virginia members of the United States House of Representatives elected from eleven congressional districts and each district is entitled to representation by one representative.

B. The eleven congressional districts are:

First. All of Accomack, Caroline, Essex, Gloucester, James City, King and Queen, King George, King William, Lancaster, Mathews, Middlesex, Northampton, Northumberland, Richmond, Spotsylvania, Stafford, Westmoreland, and York Counties; all of the Cities of Fredericksburg, Poquoson, and Williamsburg; and part of the Cities of Hampton and Newport News.

Second. All of the City of Virginia Beach; and part of the City of Norfolk.

Third. All of Charles City, New Kent, and Surry Counties; part of Henrico and Isle of Wight Counties; and part of the Cities of Hampton, Newport News, Norfolk, and Richmond.

Fourth. All of Amelia, Brunswick, Dinwiddie, Greensville, Nottoway, Prince George, Southampton, and Sussex Counties; all of the Cities of Chesapeake, Colonial Heights, Emporia, Franklin, Hopewell, Petersburg, Portsmouth, and Suffolk; and part of Chesterfield and Isle of Wight Counties.

Fifth. All of Appomattox, Buckingham, Campbell, Charlotte, Cumberland, Fluvanna, Franklin, Halifax, Henry, Lunenburg, Mecklenburg, Nelson, Patrick, Pittsylvania, and Prince Edward Counties; all of the Cities of Bedford, Charlottesville, Danville, Martinsville, and South Boston; and part of Albemarle and Bedford Counties.

Sixth. All of Alleghany, Amherst, Augusta, Bath, Botetourt, Highland, and Rockbridge Counties; all of the Cities of Buena Vista, Clifton Forge, Covington, Harrisonburg, Lexington, Lynchburg, Roanoke, Salem, Staunton, and Waynesboro; and part of Bedford, Roanoke, and Rockingham Counties.

Seventh. All of Culpeper, Goochland, Greene, Hanover, Louisa, Madison, Orange, and Powhatan Counties; part of Albemarle, Chesterfield, and Henrico Counties; and part of the City of Richmond.

Eighth. All of Arlington County; all of the Cities of Alexandria and Falls Church; and part of Fairfax County.

Ninth. All of Bland, Buchanan, Carroll, Craig, Dickenson, Floyd, Giles, Grayson, Lee, Montgomery, Pulaski, Russell, Scott, Smyth, Tazewell, Washington, Wise, and Wythe Counties; all of the Cities of Bristol, Galax, Norton, and Radford; and part of Roanoke County.

Tenth. All of Clarke, Fauquier, Frederick, Loudoun, Page, Rappahannock, Shenandoah, and Warren Counties; all of the Cities of Manassas, Manassas Park, and Winchester; and part of Fairfax, Prince William, and Rockingham Counties.

Eleventh. All of the City of Fairfax; and part of Fairfax and Prince William Counties.

C. All references to boundaries of counties and cities shall be interpreted to refer to those in existence on April 1, 1991, and as reported by the United States Bureau of the Census in the 1990 census reports provided pursuant to United States Public Law 94-171, notwithstanding subsequent boundary changes by law, annexation, merger,

consolidation, or the voiding of boundary changes therefore made final.

D. Parts of counties and cities listed in subsection B for the Fifth, Sixth, Eighth, Ninth, Tenth, and Eleventh Congressional Districts are defined by reference to the United States 1990 Census precincts, parts of precincts, and blocks listed for each congressional district in the Statistical Report (C0830452) on file with the Clerk of the Senate of Virginia pursuant to Chapter 983 of the 1993 Acts of Assembly. Notwithstanding the Statistical Report (C0830452), that part of Timberville Precinct of Rockingham County included in the Sixth District shall be only that part of the 1990 census precinct situated within the corporate limits of the Town of Broadway as of January 1, 1992. That part of Timberville Precinct not within such 1992 corporate limits shall be included in the Tenth District.

E. Parts of counties and cities listed in subsection B for the First, Second, Third, Fourth, and Seventh Congressional Districts are defined by reference to the precincts and to the United States 1990 Census blocks listed for each congressional district in the Statistical Report (C0926750 — Dominion File) on file with the Clerk of the Senate of Virginia pursuant to this act.

(1991, 2nd Sp. Sess., c. 6, §§ 24.1-17.300 through 24.1-17.313; 1992, c. 874; 1993, cc. 641, 983; 1998, c. 1.)

NOTES, REFERENCES, AND ANNOTATIONS

Cross references. — For constitutional provisions as to apportionment of State into congressional districts, see [Va. Const., Art. II, § 6](#).

Editor's note. — Acts 1993, c. 983, amended former § 24.1-17.313, from which this section is derived. Pursuant to [§ 9-77.11](#) and Acts 1993, c. 641, cl. 6, effect has been given in this section, as set out above. In accordance with c. 983, “(C0830452)” was substituted for “(C0786555)” in the first and second sentences of subsection D.

Acts 1998, c. 1, cl. 2 provides: “That the parts of the counties and cities listed in subsection B for the First, Second, Third, Fourth, and Seventh Congressional Districts shall be defined by reference to precincts listed in Statistical Report C0926750 — Dominion File. That report incorporates, to the extent practical, locally enacted precincts in effect November 1, 1997. Congressional district lines conform to United States 1990 Census block boundaries. If a locally enacted precinct boundary divides a United States 1990 Census block, the congressional district boundary shall follow the 1990 Census block boundary as shown in the data files and maps supporting Statistical Report C0926750.

“The counties and cities divided in the First, Second, Third, Fourth, and Seventh Congressional Districts are divided as follows:

“Albemarle County: The line dividing Albemarle County between the Fifth and Seventh Congressional Districts is not changed by the provisions of this act.

“Chesterfield County: The Beach, Branches, Dutch Gap, Enon, Ettrick, Harrowgate, Matoaca, Point of Rocks, Walthall, Wells, and Winfrees Store Precincts are in the Fourth Congressional District. The balance of Chesterfield County is in the Seventh Congressional District.

“Henrico County: The Byrd, Cardinal, Causeway, Cedarfield, Coalpit, Crestview, Derbyshire, Dumbarton, Freeman, Gayton, Glen Allen, Glenside, Godwin, Greendale, Hermitage, Hilliard, Innsbrook, Jackson Davis, Johnson, Lakeside, Lakewood, Lauderdale, Longan, Maude Trevvett, Maybeury, Monument Hills, Mooreland, Pemberton, Pinchbeck, Ridge, Ridgefield, Rollingwood, Sadler, Skipwith, Spottswood, Staples Mill, Stoney Run, Summit Court, Three Chopt, Tuckahoe, Tucker, West End, and Westwood Precincts are in the Seventh Congressional District. The balance of Henrico County is in the Third Congressional District.

“Isle of Wight County: The Camps Mill, Carrsville, Orbit, Walters, and Windsor Precincts are in the Fourth

Congressional District. The balance of Isle of Wight County is in the Third Congressional District.

“City of Hampton: The Booker, Burbank, Forrest, Fox Hill, Kecoughtan, Kraft, Langley, Northampton, Phillips, Syms, and Tucker Capps Precincts are in the First Congressional District. The balance of the City of Hampton is in the Third Congressional District.

“City of Newport News: The Beaconsdale, Bland, Boulevard, Charles, Christopher Newport, Deep Creek, Hidenwood, Hilton, Jenkins, Oyster Point, Palmer, Richneck, Riverside, Riverview, Sanford, Saunders, Sedgefield, South Morrison, Warwick, Watkins, and Yates Precincts are in the First Congressional District. The balance of the City of Newport News is in the Third Congressional District.

“City of Norfolk: The Ballentine, Bowling Park, Brambleton, Coleman Place School, Crossroads, Hunton Y, Immanuel, Lafayette Library, Lafayette Presbyterian, Lafayette-Winona, Lindenwood, Maury, Monroe, Northside, Norview Methodist, Norview Recreation Center, Ocean View School, Park Place, Rosemont, Sherwood School, Stuart, Therapeutic Center, Union Chapel, and Young Park Precincts are in the Third Congressional District. The balance of the City of Norfolk is in the Second Congressional District.

“City of Richmond: Precincts 101, 102, 103, 104, 105, 106, 111, 112, 404, 409, 410, 411, 412, and 413 are in the Seventh Congressional District. The balance of the City of Richmond is in the Third Congressional District.”

Acts 1998, c. 1, cl. 3 provides: “That this act implements the General Assembly’s responsibilities for decennial redistricting and is in force from its passage [February 11, 1998] pursuant to [Article II, Section 6, of the Constitution of Virginia](#).”

The 1998 amendments. — The 1998 amendment by c. 1, in subsection B, in the First Congressional District, inserted the counties of Essex, King and Queen, King William, and Spotsylvania, and deleted “part of Hanover, and Spotsylvania Counties” following “Williamsburg,” and rewrote the Second, Third, Fourth, and Seventh Congressional Districts; in subsection D, in the first sentence inserted “for the Fifth, Sixth, Eighth, Ninth, Tenth, and Eleventh Congressional Districts”; and added subsection E.

Law Review. — For article, “The Virginia Legislative Reapportionment Case: Reapportionment Issues Of The 1980’s,” see [5 Geo. Mason L. Rev. 1](#) (1982).

Editor’s note. — The cases cited below were decided under a former law corresponding to this section.

It is the duty of the General Assembly to reapportion the congressional districts of Virginia so that each district shall be composed of contiguous and compact territory, containing as nearly as practicable an equal number of inhabitants, and, so far as can be done without impairing the essential requirement of substantial equality in the number of inhabitants among the districts, give effect to the community of interest within the districts. *Wilkins v. Davis*, [205 Va. 803, 139 S.E.2d 849](#) (1965).

Any plan of districting which is not based upon approximate equality of inhabitants will work inequality in right of suffrage and of power in elections of the representatives in Congress. *Wilkins v. Davis*, [205 Va. 803, 139 S.E.2d 849](#) (1965).

Certification of congressional candidates only for election at large from State. — Because [2 U.S.C. § 2c](#) requires that each state establish a number of districts equal to the number of congressional representatives to which such state is entitled, and that “Representatives shall be elected only from districts so established ...,” the Supreme Court cannot legally issue a peremptory writ of mandamus requiring the State Board of Elections to certify congressional candidates only for election at large from the State. *Simpson v. Mahan*, [212 Va. 416, 185 S.E.2d 47](#) (1971).

Applied in Moon v. Meadows, [952 F. Supp. 1141](#) (E.D. Va. 1997).
Code 1950, § 24.2-302
VA ST § 24.2-302

END OF DOCUMENT

EXHIBIT H

Va. Code Ann. § 24.2-302.1

WEST'S ANNOTATED CODE OF VIRGINIA
TITLE 24.2. ELECTIONS
CHAPTER 3. ELECTION DISTRICTS, PRECINCTS, AND POLLING PLACES
ARTICLE 2. CONGRESSIONAL, SENATORIAL, AND HOUSE OF DELEGATES DISTRICTS
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§ 24.2-302.1. Congressional districts

A. There shall be eleven Virginia members of the United States House of Representatives elected from eleven congressional districts and each district is entitled to representation by one representative.

B. All references in this section to counties and cities shall be interpreted to refer to those in existence on April 1, 2001, and as reported by the United States Bureau of the Census in the 2000 Census reports provided pursuant to United States Public Law § 94-171, notwithstanding subsequent boundary changes by law, annexation, merger, consolidation, or the voiding of boundary changes theretofore made final.

C. Parts of counties and cities listed in subsection D are defined by reference to the 2000 Census reports for the precincts, parts of precincts, and blocks listed for each congressional district in the Statistical Report on file with the Clerk of the Senate for the Act of Assembly containing the final enactment of this section.

D. The eleven congressional districts are:

First. All of Essex, Gloucester, King and Queen, King George, King William, Lancaster, Mathews, Middlesex, Northumberland, Richmond, Stafford, Westmoreland, and York Counties; all of the Cities of Fredericksburg, Poquoson, and Williamsburg; part of Caroline County comprised of the Bowling Green, Port Royal, Woodford, and Mattaponi Precincts; part of Fauquier County comprised of the Kettle Run, Catlett, Casanova, Lois, Morrisville, Remington, Opal, and Waterloo Precincts and part of the Baldwin Ridge Precinct; part of James City County comprised of the Berkeley A, Berkeley B, Jamestown A, Jamestown B, Jamestown C, Powhatan A, Powhatan B, Stonehouse A, Stonehouse B, Roberts A Part 1, and Roberts A Part 2 Precincts and part of the Roberts B Precinct; part of Prince William County comprised of the Dumfries, Potomac, Graham Park, Quantico, Washington-Reid, and Rippon Precincts; part of Spotsylvania County comprised of the Travelers Rest, Grange Hall, Plank Road, Summit, Frazers Gate, Salem, Battlefield, and Brent's Mill Precincts and part of the Maury Precinct; part of the City of Hampton comprised of the Kraft, Magruder, Northampton, and Tucker Capps Precincts and part of the Burbank Precinct; and part of the City of Newport News comprised of the Richneck, Windsor, Boulevard, Christopher Newport, Watkins, Hidenwood, Palmer, Saunders, Yates, Kiln Creek, Beaconsdale, Sedgefield, and South Morrison Precincts and parts of the Deep Creek, Hilton, Riverside, and Warwick Precincts.

Second. All of Accomack and Northampton Counties; all of the City of Virginia Beach; part of the City of Hampton comprised of the Lasalle, Phoebus, River, Syms, Wythe, Booker, Buckroe, Fox Hill, Kecoughtan, Langley, and Phillips Precincts and part of the Burbank Precinct; and part of the City of Norfolk comprised of the Northside, Titustown Center, Zion Grace, Canterbury, Crossroads, Larchmont Library, Larchmont Recreation Center, Therapeutic Center, Wesley, Azalea Gardens, Barron Black, Easton, Fairlawn, Houston, Bayview School, Bayview United, East Ocean View, Larrymore, Little Creek, Ocean View School, Oceanair, Tarrallton, Third Presbyterian, Ocean View Center Part 1, and Ocean View Center Part 2 Precincts and part of the St. Andrew's Precinct.

Third. All of Charles City, New Kent, and Surry Counties; all of the City of Portsmouth; part of Henrico County comprised of the Adams, Central Gardens, East Highland Park, Fairfield, Ratcliffe, Maplewood, Cedar Fork, Chickahominy, Donahoe, Eanes, Elko, Fairmount, Glen Echo, Highland Springs, Laburnum, Masonic, Town Hall, Montrose, Pleasants, Sandston, Seven Pines, Sullivans, Mehfoud, Whitlocks, Nine Mile, Dorey, and Antioch Precincts; part of Isle of Wight County comprised of part of the Rushmere Precinct; part of James City County comprised of part of the Roberts B Precinct; part of Prince George County comprised of the Blackwater, Brandon, Courts Bldg, and Bland Precincts and part of the Jefferson Park Precinct; part of the City of Hampton comprised of the Aberdeen, Bassette, City Hall, Cooper, East Hampton, Lee, Pembroke, Phenix, Smith, Tarrant, Forrest, Jones, Mallory, and Tyler Precincts; part of the City of Newport News comprised of the Denbigh, Epes, Jenkins, McIntosh, Oyster Point, Reservoir, Lee Hall, Bland, Charles, Grissom, Nelson, Sanford, Riverview, Briarfield, Carver, Chestnut, Downtown, Dunbar, Huntington, Jefferson, Magruder, Marshall, New Market, Newsome Park, Reed, River, Washington, and Wilson Precincts and parts of the Deep Creek, Hilton, Riverside, and Warwick Precincts; part of the City of Norfolk comprised of the Granby, Tucker House, Ghent Square, Immanuel, Lafayette Library, Lafayette Presbyterian, Lambert's Point, Maury, Ohef Sholom, Park Place, Stuart, Suburban Park, Willard, Ballentine, Tanner's Creek, Bowling Park, Coleman Place School, Lafayette-Winona, Lindenwood, Monroe, Norview Methodist, Norview Recreation Center, Rosemont, Sherwood School, Union Chapel, Berkley, Brambleton, Campostella, Chesterfield, Coleman Place Presbyterian, Hunton Y, Ingleside, Poplar Halls, Young Park, Sherwood Rec Center Part 1, and Sherwood Rec Center Part 2 Precincts and part of the St. Andrew's Precinct; and part of the City of Richmond comprised of the 113, 114, 203, 204, 206, 207, 208, 211, 212, 213, 303, 304, 305, 306, 309, 402, 403, 501, 502, 503, 504, 505, 508, 509, 510, 602, 603, 604, 606, 607, 608, 609, 610, 701, 702, 703, 704, 705, 706, 707, 802, 806, 807, 810, 811, 812, 813, 902, 903, 906, and 911 Precincts and part of the 910 Precinct.

Fourth. All of Amelia, Dinwiddie, Greensville, Nottoway, Powhatan, Southampton, and Sussex Counties; all of the Cities of Chesapeake, Colonial Heights, Emporia, Franklin, Petersburg, Suffolk, and Hopewell; part of Brunswick County comprised of the Alberta, Danielstown, Elmore, and Seymour Precincts and part of the King's Store Precinct; part of Chesterfield County comprised of the Bellwood, South Chester, Enon, North Chester, Drewry's Bluff, Harrowgate, Wells, Ecoff, Point of Rocks, Dutch Gap, Iron Bridge, Gates, Beulah, Bird, Falling Creek, Meadowbrook, Salem Church, Five Forks, Ettrick, Deer Run, Matoaca, Winfrees Store, Beach, Winterpock, Walthall, Branches, Bailey Bridge, and Spring Run Precincts and parts of the Jacobs and Pocahontas 307/Crenshaw 308 Precincts; part of Isle of Wight County comprised of the Smithfield, Carrollton, Pons, Courthouse, Windsor, Orbit, Walters, Camps Mill, Carrsville, and Zuni Precincts and part of the Rushmere Precinct; and part of Prince George County comprised of the Richard Bland College, Templeton, Union Branch, and Rives Precincts and part of the Jefferson Park Precinct.

Fifth. All of Albemarle, Appomattox, Buckingham, Campbell, Charlotte, Cumberland, Fluvanna, Franklin, Greene, Halifax, Lunenburg, Mecklenburg, Nelson, Pittsylvania, and Prince Edward Counties; all of the Cities of Bedford, Charlottesville, Danville, and Martinsville; part of Bedford County comprised of the Stewartsville, Hardy, Chamblissburg, Staunton River, Moneta, Mountain View, Otter Hill, Walton's Store, White House, Huddleston, Shady Grove, Thaxton, Goode, Liberty High School, and Sign Rock Precincts; part of Brunswick County comprised of the Brodnax, Rock Store, Tillman, Dromgoole, Edgerton, Fitzhugh, Sturgeon, and Lawrenceville Precincts and part of the King's Store Precinct; and part of Henry County comprised of the Axton, Irisburg, Mount Olivet, Mountain Valley, Collinsville 1, Daniels Creek, Collinsville 2, Mountain View, Figsboro, Stanleytown, Oak Level, Dyers Store, and Ridgeway Precincts and part of the Fontaine Precinct.

Sixth. All of Amherst, Augusta, Bath, Botetourt, Highland, Rockbridge, Rockingham, and Shenandoah Counties; all of the Cities of Buena Vista, Harrisonburg, Lexington, Lynchburg, Roanoke, Salem, Staunton, and Waynesboro; part of Alleghany County comprised of the Humpback Bridge, Dolly Ann, Callaghan, and Griffith

Precincts; part of Bedford County comprised of the New London, Forest, Jefferson, Cove, Big Island, Sedalia, Kelso, Boonsboro, and Montvale Precincts; and part of Roanoke County comprised of the Green Hill, Plantation, Burlington, Mountain View, Bonsack, Hollins, Poages Mill, Windsor Hills, Garst Mill, Oak Grove 304/Castle Rock 305, North Vinton, South Vinton, Lindenwood, Mount Pleasant, Cotton Hill, Penn Forest, Cave Spring, Ogden, Clearbrook, Mount Vernon, and Hunting Hills Precincts and part of the Glenvar Precinct; and part of the City of Covington, comprised of the Precinct 1-1 and parts of the 2-1 and 3-1 Precincts.

Seventh. All of Culpeper, Goochland, Hanover, Louisa, Madison, Orange, Page, and Rappahannock Counties; part of Caroline County comprised of the Madison and Reedy Church Precincts; part of Chesterfield County comprised of the Belmont, Chippenham, Skinquarter, Tomahawk, Evergreen, Woolridge, Genito, Brandermill, Providence, Lyndale, Smoketree, Monacan, Reams, Manchester, Wagstaff, Davis, Harbour Pointe 401/Swift Creek 411, Huguenot, Crestwood, Midlothian, Robious, Bon Air, Greenfield, Salisbury, Cranbeck, Sycamore, Shenandoah, Beaufont, Watkins, and Belgrade 508/Black Heath 511 Precincts and parts of the Jacobs and Pocahontas 307/Crenshaw 308 Precincts; part of Henrico County comprised of the Brookland, Dumbarton, Glen Allen, Glenside, Greendale, Hermitage, Hilliard, Hunton, Johnson, Lakeside, Longan, Maude Trevvett, Moody, Staples Mill, Stratford Hall, Summit Court, Azalea, Bloomingdale, Brook Hill, Canterbury, Chamberlayne, Glen Lea, Greenwood, Highland Gardens, Hungary, Longdale, Randolph, Upham, Wilkinson, Yellow Tavern, Chiplegate, Landmark, Cardinal, Coalpit, Crestview, Freeman, Innsbrook, Jackson Davis, Lauderdale, Monument Hills, Ridge, Sadler, Cedarfield, Skipwith, Three Chopt, Tucker, Westwood, Causeway, Stoney Run, Byrd, Lakewood, Derbyshire, Gayton, Godwin, Maybeury, Mooreland, Pemberton, Pinchbeck, Ridgefield, Rollingwood, Spottswood, Tuckahoe, and West End Precincts; part of Spotsylvania County comprised of the Partlow, Blaydes Corner, Belmont, Brokenburg, Todd's Tavern, and Holbert Precincts and part of the Maury Precinct; and part of the City of Richmond comprised of the 101, 102, 103, 104, 105, 106, 111, 112, 301, 302, 307, 308, 404, 409, 410, 411, 412, 413, 908, and 909 Precincts and part of the 910 Precinct.

Eighth. All of Arlington County; all of the Cities of Alexandria and Falls Church; part of Fairfax County comprised of the Reston #1, Reston #2, Westbriar, Dogwood, Hunters Woods, Reston #3, Glade, South Lakes, Teraset, Wolftrap, Sunrise Valley, North Point, Aldrin, Pimmit, Bush Hill, Cameron, Franconia, Groveton, Mount Eagle, Pioneer, Rose Hill, Virginia Hills, Beulah, Villages, Kingstowne, Van Dorn, Hayfield 406/Woodlawn 412/Fairfield 413, Baileys, Glen Forest, Lincolnia, Parklawn, Westlawn, Weyanoke, Willston, Skyline, Whittier, Walnut Hill #1, Bren Mar, Edsall, Belle Haven, Bellevue, Bucknell, Hollin Hall, Huntington, Kirkside, Marlan, Sherwood, Belvoir, Grosvenor, Fort Buffalo, Graham, Greenway, Marshall, Pine Spring, Shreve, Timber Lane, Woodburn, Magarity, Walnut Hill #2, and Tysons Precincts and parts of the Holmes and Westhampton Precincts.

Ninth. All of Bland, Buchanan, Carroll, Craig, Dickenson, Floyd, Giles, Grayson, Lee, Montgomery, Patrick, Pulaski, Russell, Scott, Smyth, Tazewell, Washington, Wise, and Wythe Counties; all of the Cities of Bristol, Clifton Forge, Galax, Norton, and Radford; part of Alleghany County comprised of the Arritt, Dameron, Low Moor, Jackson Heights Part 1, Jackson Heights Part 2, Iron Gate, and Peters Switch Precincts; part of Henry County comprised of the Bassett 2, Gunville, Scott's Tanyard, Fieldale, Horsepasture, Spencer, Bassett 1, and Hillcrest Precincts and part of the Fontaine Precinct; part of Roanoke County comprised of the Catawba, Mason Valley, Northside, Peters Creek, Bennett Springs, Botetourt Springs, Woodlands, and Bent Mountain Precincts and part of the Glenvar Precinct; part of the City of Covington comprised of the 4-1 and 5-1 Precincts and parts of the 2-1 and 3-1 Precincts; and Montgomery A.

Tenth. All of Clarke, Frederick, Loudoun, and Warren Counties; all of the Cities of Winchester, Manassas and Manassas Park; part of Fairfax County comprised of the Colvin, Fox Mill, Floris 203/Frying Pan 235, Chain Bridge, Chesterbrook, Churchill, Cooper, El Nido, Great Falls, Haycock, Kenmore, Kirby, Langley, Longfellow, Mclean, Salona, Westmoreland, Herndon #1, Herndon #2, Clearview, Forestville, Shouse, Herndon #3, Hutchis-

on, Stuart, Sugarland, Hickory, Seneca, Centre Ridge, Chantilly, Dulles, Franklin, Greenbriar East, Greenbriar West, Kinross, London Towne, Navy, Rocky Run, Virginia Run, Lees Corner, Deer Park, and Cub Run 903/Stone 917 Precincts and part of the Westhampton Precinct; part of Fauquier County comprised of the Warrenton, Marshall, Leeds, Upperville, The Plains, New Baltimore, and Broad Run Precincts and part of the Baldwin Ridge Precinct; and part of Prince William County comprised of the Buckhall, Parkside, Jackson, Evergreen, Loch Lomond, Sinclair, Stonewall, Sudley, Westgate, Catharpin, Bull Run, Plantation, and Mullen Precincts.

Eleventh. All of the City of Fairfax; part of Fairfax County comprised of the Bristow, Chapel, Fairview, Heritage, Kings Park, Olde Creek, North Springfield #1, North Springfield #2, North Springfield #3, Oak Hill, Ravensworth, Wakefield, Lake Braddock, Laurel, Sideburn, Villa, Long Branch, Robinson, Olley, Signal Hill, Bonnie Brae, Flint Hill, Vienna #1, Vienna #2, Vienna #4, Vienna #6, Crestwood, Garfield, Lynbrook, Barcroft, Belvedere, Masonville, Ravenwood, Sleepy Hollow, Saint Albans, Columbia, Hummer, Brook Hill, Camelot, Poe, Ridgelea, Fort Hunt, Stratford, Waynewood, Westgate, Whitman, Woodley, Gunston, Lorton, Newington, Delong, Pohick Run, Blake, Freedom Hill, Mantua, Mosby, Price, Walker, Pine Ridge, Stenwood, Thoreau, Merrifield, Oakton, Nottoway, Penderbrook, Oak Marr, Burke, Cardinal, Clifton, Fairfax Station, Keene Mill, Pohick, Valley, Woodyard, Orange, Cherry Run, Irving, Saratoga, Terra Centre, White Oaks, Hunt, Burke Centre, Sangster, Silverbrook, West Springfield, Popes Head, Parkway, Leehigh, Newgate, Vale, Waples Mill, Centreville, Green Trails, Willow Springs, Woodson Part 1, and Woodson Part 2 Precincts and part of the Holmes Precinct; part of Prince William County comprised of the Brentsville, Armory, Nokesville, Linton Hall, Woodbine, Park, Saunders, Enterprise, Coles, McCoart, Springwoods, King, Lodge, Westridge, Pattie, Henderson, Montclair, Haymarket, Lake Ridge, Occoquan, Old Bridge, Rockledge, Mohican, Bethel, Chinn, Dale, Neabsco, Godwin, Civic Center, Minnieville, Bel Air, Kerrydale, Belmont, Library, Lynn, Featherstone, Potomac View, and Kilby Precincts; and Fairfax A.

Acts 2001, Sp.S. I, c. 7.

HISTORICAL AND STATUTORY NOTES

Prior to Acts 2001, Sp.S. I, c. 7, the subject matter of this section was contained in [§ 24. 2-302](#).

The repeal of [§ 24. 2-302](#) and enactment of [§ 24. 2-302.1](#) were precleared on October 16, 2001 pursuant to the Voting Rights Act of 1965, as amended and extended, but a suit challenging the redistricting plan has been filed in Petersburg Circuit Court.

CROSS REFERENCES

Apportionment of state into districts, see [Const. Art. 2, § 6](#).

LIBRARY REFERENCES

Key Numbers

United States  11.

Westlaw Key Number Search: 393k11.

Encyclopedias

C.J.S. United States §§ 11, 13 to 15.

UNITED STATES SUPREME COURT

*Congressional districts,**Equality of population,*

Federal constitutional requirement of population equality for congressional districts, see [Kirkpatrick V. Preisler](#), U.S.Mo.1969, 89 S.Ct. 1225, 394 U.S. 526, 22 L.Ed.2d 519.

Political gerrymandering,

Reapportionment, drawing district boundaries on partisan lines, threshold requirements, justiciability under equal protection clause, see [Davis v. Bandemer](#), U.S.Ind.1986, 106 S.Ct. 2797, 478 U.S. 109, 92 L.Ed.2d 85

Racial gerrymandering,

Congressional redistricting plans, racial gerrymandering, see [Miller v. Johnson](#), U.S.Ga.1995, 115 S.Ct. 2475, 515 U.S. 900, 132 L.Ed.2d 762, on remand 922 F.Supp. 1552, on remand 922 F.Supp. 1556.

Historically disadvantaged racial groups, equal protection, reapportionment, racial gerrymandering, see [Shaw v. Reno](#), U.S.N.C.1993, 113 S.Ct. 2816, 509 U.S. 630, 125 L.Ed.2d 511 on remand 861 F.Supp. 408.

Narrowly tailored to serve compelling state interest, redistricting, racial gerrymandering, see [Shaw v. Hunt](#), U.S.N.C.1996, 116 S.Ct. 1894, 517 U.S. 899, 135 L.Ed.2d 207.

Noncompact and bizarrely shaped majority-minority districts, compelling state interest, voting rights Act, redistricting, racial gerrymandering, see [Bush v. Vera](#), U.S.Tex.1996, 116 S.Ct. 1941, 517 U.S. 952, 135 L.Ed.2d 248.

Traditional districting plans, percentage of minority voters compared to minority residents in the county, redistricting, racial gerrymandering, see [Lawyer v. Department of Justice](#), U.S.Fla.1997, 117 S.Ct. 2186.

NOTES OF DECISIONS

Mandamus 3

Standing 2

Validity 1

1. Validity

Racially gerrymandered congressional district in Virginia violated equal protection, in that using race as pre-dominate basis in drawing district lines did not serve compelling state interest, notwithstanding alleged interest in precluding exposure to liability under Voting Rights Act of 1965 (VRA), and Commonwealth failed to use narrowly tailored methods to achieve this goal; evidence did not establish that racially drawn district was necessary to avoid VRA liability, district did not meet preconditions for drawing district based on race so as to avoid such liability, and bizarre and tortured shape of district established that narrowly tailored means were not used in drawing district. [U.S.C.A. Const.Amend. 14](#); Voting Rights Act of 1965, § 2 et seq., as amended, [42 U.S.C.A. § 1973 et seq.](#); [Va.Code 1950, § 24. 2-302](#). [Moon v. Meadows](#), 1997, 952 F.Supp. 1141, affirmed 117 S.Ct. 2501, 521 U.S. 1113, 138 L.Ed.2d 1006. [Constitutional Law k 215.3](#)

Statute apportioning Commonwealth into congressional districts which had populations ranging in size from about 313,000 to 527,000 violated state constitutional provision requiring that districts contain as nearly as practicable an equal number of inhabitants and apportionment was invalid under Federal Constitution. [Code 1950, § 24-3](#); [Const. § 55](#); [U.S.C.A.Const. art. 1, § 2](#); [U.S.C.A.Const. Amend. 14](#). [Wilkins v. Davis](#), 1965, 139 S.E.2d 849, 205 Va. 803. [Constitutional Law k 225.3\(7\)](#)

2. Standing

Residents of newly created congressional district in Virginia had standing to challenge only that district as violative of Equal Protection Clause; thus, residents' challenge to state statute setting out geographical boundaries of each of Virginia's congressional districts as unconstitutional, except for that portion dealing with residents' district, failed for lack of standing. [U.S.C.A. Const.Amend. 14](#); [Va.Code 1950, § 24. 2-302](#). [Moon v. Meadows, 1997, 952 F.Supp. 1141](#), affirmed [117 S.Ct. 2501, 521 U.S. 1113, 138 L.Ed.2d 1006](#). [Constitutional Law k 42.3\(2\)](#)

3. Mandamus

Under federal Act requiring that each state establish number of districts equal to number of congressional representatives to which state is entitled and that representatives be elected only from districts so established, Supreme Court could not legally issue peremptory writ of mandamus requiring State Board of Elections to certify congressional candidates only for election at large from state. [Code 1950, § 24.1-4.1](#); [2 U.S.C.A. § 2c](#). [Simpson v. Mahan, 1971, 185 S.E.2d 47, 212 Va. 416](#). [Mandamus k 74\(1\)](#)

[Va. Code Ann. § 24.2 -302 .1](#)

[VA ST § 24.2 -302 .1](#)

END OF DOCUMENT

EXHIBIT I

**Current Congressional Districts
District Population Summary**

DISTRICT	Total Population	Target	Difference	Deviation from Ideal
1	786,237	727,366	58,871	8.1%
2	646,184	727,366	-81,182	-11.2%
3	663,390	727,366	-63,976	-8.8%
4	738,639	727,366	11,273	1.5%
5	685,859	727,366	-41,507	-5.7%
6	704,056	727,366	-23,310	-3.2%
7	757,917	727,366	30,551	4.2%
8	701,010	727,366	-26,356	-3.6%
9	656,200	727,366	-71,166	-9.8%
10	869,437	727,366	142,071	19.5%
11	792,095	727,366	64,729	8.9%

**Current Congressional Districts
Demographic Population Totals**

DISTRICT	Total Population	White	% White	Black	% Black	AIAN	% AIAN	Asian	% Asian	HawPI	% HawPI	Other	% Other	Multi	% Multi	Hispanic	% Hispanic
1	786,237	558,404	71.0%	164,455	20.9%	6,612	0.8%	26,452	3.4%	1,105	0.1%	22,428	2.9%	6,781	0.9%	53,012	6.7%
2	646,184	427,383	66.1%	149,285	23.1%	5,459	0.8%	39,012	6.0%	1,357	0.2%	16,213	2.5%	7,475	1.2%	45,210	7.0%
3	663,390	246,414	37.1%	373,134	56.2%	5,407	0.8%	15,449	2.3%	901	0.1%	14,355	2.2%	7,730	1.2%	32,713	4.9%
4	738,639	441,259	59.7%	254,180	34.4%	5,074	0.7%	17,637	2.4%	787	0.1%	14,724	2.0%	4,978	0.7%	33,353	4.5%
5	685,859	501,303	73.1%	155,886	22.7%	3,753	0.5%	12,312	1.8%	311	0.0%	10,204	1.5%	2,090	0.3%	20,935	3.1%
6	704,056	585,107	83.1%	84,891	12.1%	4,348	0.6%	12,311	1.7%	390	0.1%	14,700	2.1%	2,309	0.3%	30,117	4.3%
7	757,917	563,423	74.3%	135,386	17.9%	4,604	0.6%	32,784	4.3%	523	0.1%	17,198	2.3%	3,999	0.5%	36,794	4.9%
8	701,010	444,616	63.4%	99,886	14.2%	5,182	0.7%	84,581	12.1%	844	0.1%	59,460	8.5%	6,441	0.9%	127,533	18.2%
9	656,200	609,813	92.9%	28,039	4.3%	3,185	0.5%	8,764	1.3%	254	0.0%	5,114	0.8%	1,031	0.2%	11,632	1.8%
10	869,437	611,159	70.3%	71,471	8.2%	5,327	0.6%	119,178	13.7%	907	0.1%	55,074	6.3%	6,321	0.7%	117,278	13.5%
11	792,095	497,971	62.9%	96,841	12.2%	5,912	0.7%	130,333	16.5%	1,200	0.2%	52,413	6.6%	7,425	0.9%	123,248	15.6%

**Current Congressional Districts
Voting Age Population Totals**

DISTRICT	Voting Age Pop.	VAP White	% VAP White	VAP Black	% VAP Black	VAP AIAN	% VAP AIAN	VAP Asian	% VAP Asian	VAP HawPI	% VAP HawPI	VAP Other	% VAP Other	VAP Multi	% VAP Multi	VAP Hispanic	% VAP Hispanic
1	592,940	434,385	73.3%	116,161	19.6%	4,797	0.8%	18,735	3.2%	756	0.1%	14,488	2.4%	3,618	0.6%	33,602	5.7%
2	500,240	343,037	68.6%	107,121	21.4%	4,217	0.8%	29,285	5.9%	998	0.2%	11,259	2.3%	4,323	0.9%	30,312	6.1%
3	511,559	207,441	40.6%	271,419	53.1%	4,200	0.8%	12,758	2.5%	652	0.1%	10,357	2.0%	4,732	0.9%	22,506	4.4%
4	557,742	342,184	61.4%	186,644	33.5%	3,746	0.7%	12,349	2.2%	492	0.1%	9,614	1.7%	2,713	0.5%	21,184	3.8%
5	543,596	405,436	74.6%	117,536	21.6%	2,866	0.5%	9,685	1.8%	238	0.0%	6,529	1.2%	1,306	0.2%	13,800	2.5%
6	556,067	472,240	84.9%	60,303	10.8%	3,346	0.6%	9,008	1.6%	295	0.1%	9,455	1.7%	1,420	0.3%	19,404	3.5%
7	576,326	437,613	75.9%	98,210	17.0%	3,360	0.6%	23,110	4.0%	356	0.1%	11,362	2.0%	2,315	0.4%	24,120	4.2%
8	565,094	370,959	65.6%	75,734	13.4%	3,960	0.7%	66,225	11.7%	675	0.1%	43,128	7.6%	4,413	0.8%	93,296	16.5%
9	528,131	492,562	93.3%	21,444	4.1%	2,579	0.5%	7,287	1.4%	204	0.0%	3,343	0.6%	712	0.1%	7,810	1.5%
10	629,287	453,796	72.1%	49,016	7.8%	3,641	0.6%	82,026	13.0%	644	0.1%	36,543	5.8%	3,621	0.6%	77,158	12.3%
11	586,365	379,691	64.8%	66,660	11.4%	4,074	0.7%	95,206	16.2%	822	0.1%	35,756	6.1%	4,156	0.7%	83,665	14.3%

**Current Congressional Districts
Election Data**

DISTRICT	Rep. Gov '09	Dem. Gov '09	Rep. Lt. Gov '09	Dem. Lt. Gov '09	Rep. Att. Gen. '09	Dem. Att. Gen. '09	Rep. Pres. '08	Dem. Pres. '08	Other Pres. '08	Rep. U.S. Sen. '08	Dem. U.S. Sen. '08	Other U.S. Sen. '08
1	65%	35%	62%	38%	63%	37%	53%	47%	1%	38%	61%	1%
2	62%	38%	56%	44%	60%	40%	50%	50%	1%	34%	64%	1%
3	34%	66%	33%	67%	35%	65%	25%	75%	1%	18%	81%	1%
4	61%	39%	59%	41%	61%	39%	50%	49%	1%	37%	61%	1%
5	61%	39%	60%	40%	62%	38%	52%	47%	1%	35%	64%	1%
6	67%	33%	66%	34%	67%	33%	58%	41%	1%	41%	58%	1%
7	66%	34%	63%	37%	65%	35%	54%	45%	1%	39%	59%	1%
8	39%	61%	37%	63%	36%	64%	32%	67%	1%	25%	73%	1%
9	67%	33%	66%	34%	66%	34%	59%	39%	1%	36%	63%	1%
10	61%	39%	58%	42%	58%	42%	48%	51%	1%	38%	61%	1%
11	55%	45%	52%	48%	52%	48%	44%	56%	1%	35%	64%	1%

EXHIBIT J

STATEMENT OF CHANGE

Chapter 1 of the Acts of Assembly of 2012 (hereafter Chapter 1) revises Virginia's 11 congressional districts. Virginia's population grew at a rate of 13 percent, from 7,079,030 to 8,001,024, between 2000 and 2010. The pattern of growth was uneven across the Commonwealth, as illustrated in the attached map (Exhibit A) showing percent change in population by locality between 2000 and 2010.

Chapter 1 accommodates these population shifts and takes into account the variety of criteria and factors that traditionally shape the legislature's redistricting decisions. Each congressional district was altered both to bring the district itself into conformity with population criteria and to facilitate necessary changes in adjoining districts.

POPULATION CHANGE BY REGION

Virginia's population increase of 921,994 was concentrated in the outer suburban and exurban rings of Northern Virginia and, secondarily, along the Interstate 64 corridor running from the suburban Hampton Peninsula to the Charlottesville area. These areas account for an increase of 741,158, or 80 percent, of the overall state growth.

The largest increases in population are found in the suburban arc around the older Northern Virginia metropolitan core. Loudoun, Prince William, and Stafford Counties, along with the smaller Cities of Manassas and Manassas Park surrounded by Prince William, experienced an overall 52 percent growth rate. The increase of 307,085 accounts for one-third of the state's total population

growth. The older core of the Northern Virginia region (Arlington County, City of Alexandria, and Fairfax County and the small Cities of Fairfax and Falls Church that it surrounds) continued to gain population (144,866), but its rate of growth, 11 percent, lagged slightly behind the state's overall growth rate.

As population continued to push out from the Northern Virginia core, the next adjoining set of "exurban" localities likewise experienced heavy growth. An overall growth rate of almost 30 percent (28.8 percent) increased the state's population by 103,401 in, from north to south, Frederick, Clarke, Fauquier, Culpeper, Orange, Spotsylvania, Caroline, and King George Counties and including the Cities of Fredericksburg and Winchester.

The corridor along Interstate 64 from the North Hampton Roads suburbs to Charlottesville, skirting the Richmond metropolitan core, with a 21.1 percent overall growth rate, likewise added 84,838 to the state's total growth. (This corridor includes, from east to west, York, James City, New Kent, Hanover, Goochland, Louisa, Fluvanna, and Albemarle Counties and the Cities of Charlottesville and Williamsburg.) One additional area of growth to be noted consists of the two large counties encircling the City of Richmond. Chesterfield and Henrico Counties combined to add 100,968 in population, a growth rate of 19.3 percent.

The situation for the major cities of Hampton Roads is in contrast with the growth of the Northern Virginia and Richmond metropolitan regions. Chesapeake, Norfolk, Portsmouth, and Virginia Beach in South Hampton Roads and Hampton and Newport News in North Hampton Roads combined for a

growth rate of only 2.3 percent. Portsmouth and Hampton actually lost population over the last decade. Above average growth in the adjoining suburban jurisdictions (James City and York Counties and the City of Williamsburg in the North and the City of Suffolk and Isle of Wight County in the South) could not offset the overall lag for the entire metropolitan region.

As can be seen on the Exhibit A map, most rural localities and smaller metropolitan areas in the rest of the state grew at rates below the state average, or in some instances actually lost population, over the last decade. The populations of most of the state's 39 cities increased between 2000 and 2010, but only seven experienced growth exceeding the state average. In addition to the smaller cities cited above in the high growth areas, Harrisonburg and Lynchburg had moderately higher growth and the suburban Hampton Roads City of Suffolk grew at a rate of 32.8 percent.

IMPACT OF POPULATION SHIFTS ON DISTRICTS

The ideal population for a congressional district based on the 2010 Census is 727,366. The range of deviations from the ideal for the current, pre-Chapter 1 districts was extensive – from a plus 19.5 percent deviation (Tenth District) to a minus 11.2 percent deviation (Second District). No district is within one percent of ideal, and deviations in seven of the 11 districts exceed five percent. Adjustments were made to each district to eliminate the disparities in populations between the districts. A review of major regions of the Commonwealth illustrates the impact of the 2010 Census population shifts.

Northern Virginia

As used here, Northern Virginia consists of an older central core and suburban and exurban rings. Arlington County, the City of Alexandria, and Fairfax County and the Cities of Fairfax and Falls Church are the oldest, "central" part of the greater Northern Virginia region. The components of the rapidly growing grouping of suburban and exurban localities have been listed above (see page 2.) Northern Virginia is home to three congressional districts (Eighth, Tenth, and Eleventh), and the outer suburban-exurban localities also add population to districts that stretch south and southeast to Hampton Roads (First) and the Richmond (Seventh) area.

The current Eighth, Tenth, and Eleventh Districts are, in round numbers, collectively 180,000 over the total population for three districts. Chapter 1 first equalizes population among the three districts and then moves this excess population "downstate" to underpopulated districts centered in the Hampton Roads area and in rural western and southern Virginia. The current Eighth District, primarily an inside-the-Beltway district, was 26,356 below the ideal population in 2010. Population exchanges in Fairfax County, primarily with the current Eleventh District, add the population to bring the Eighth to the ideal number in Chapter 1.

Chapter 1 moves the largest part of the excess 180,000 directly from Prince William into the First District. The Prince William component of the First District increases from 55,000 to 167,000, a net shift of 112,000 population. Most of this population is destined for the Second-Third-Fourth District area

through Hampton and Newport News, primarily to make up the Second District's population deficit.

Chapter 1 completes the downstate transfer of population in the northwest part of Northern Virginia. Warren County moves to the Sixth District and the northwest part of Fauquier County moves to the Fifth District, for a total transfer of 68,000.

Hampton Roads

The urban southeastern corner of the state is the second largest of its metropolitan regions. It includes the South Hampton Roads Cities of Chesapeake, Norfolk, Portsmouth, Suffolk, and Virginia Beach and North Hampton Roads Cities of Hampton and Newport News, bordered by several less populous counties and small cities. As noted above, this area for the second straight decade lagged dramatically behind the state's overall growth rate.

The current Second District almost exclusively is contained in this region and is the most underpopulated of the state's districts at 81,182 below the ideal size. Almost 60 percent of the Third District also is in this area. This district, the Virginia district that has an African American majority, is 63,976 below the required population. Hampton Roads also has a share of two additional districts. Almost one-half (45 percent) of the population in the Fourth District is in Hampton Roads. This district stretches west into Southside Virginia and includes African Americans as 34 percent of its population. Its 2010 population was slightly (11,273) above ideal. Finally, the First District stretches from the Northern Virginia suburban area southeast through the rural peninsulas and into North

Hampton Roads, where it picks up approximately a third of the district's population. The First covers areas of above average growth and is 58,871 over the required population. Since Chapter 1 also moves almost 112,000 from the Northern Virginia area into the First District, that district has a significant excess population to be redistributed.

Chapter 1 uses population from the First District in the Newport News-Hampton area to make up the Second District's population deficit. In round numbers, 88,000 in Newport News is shifted from the First to the Second District. Some population is exchanged between First, Second, and Third Districts to add population to the Third District, but Chapter 1 finds most of the population required to erase the Third District deficit at the western end of the district. About 35,000 in Richmond and Henrico County transfer from the Seventh District, and the City of Petersburg (39,000) moves from the Fourth to the Third District. The Fourth District is compensated primarily by the addition of 22,000 of the population of Chesterfield County from the current Seventh District.

Rural Southern and Western Virginia

The predominantly rural Fifth (southern and central Virginia), Sixth (bordering West Virginia), and Ninth (Southwest Virginia) Districts are contiguous and all are underpopulated, the total deficit being almost 136,000. The situation of the Ninth District is most immediate, since its population deficit in 2010 was 71,166 and its geographical location demands that it add population from either the Fifth or Sixth, or both.

As noted in describing Northern Virginia, the western part of that area had excess population of approximately 68,000 that could be transferred downstate. In addition, the First District, overpopulated to begin with and boosted by the initial addition of population from Northern Virginia (Prince William) had excess population available for transfer even after providing the underpopulated Hampton Roads districts the population they required.

Chapter 1 brings the three districts under discussion up to population equality initially by extending the Fifth and Sixth Districts north to the upper Piedmont and outer Northern Virginia area for additional population, contracting the Seventh District southeast in the process. The Fifth District adds 71,000 by picking up Madison and Rappahannock Counties from the Seventh District and most (50,000) of Fauquier County from the Tenth and First Districts. The Sixth District adds Page (Seventh) and Warren (Tenth) Counties for a gain of almost 62,000. The two districts then have enough combined excess population to bring the Ninth District to the required population count. The Fifth District provides almost 33,000 by transferring the City of Martinsville and a greater part of Henry County to the Ninth. The Sixth District provides almost 37,000 by transferring the City of Salem, a larger part of Roanoke County, and the part of Alleghany County now in the Sixth to the Ninth District.

A series of smaller adjustments along the First District-Seventh District boundary from Fauquier County to New Kent County result in a net shift of population to the Seventh and reduce the First to the ideal population.

Richmond Area

The City of Richmond and surrounding Chesterfield, Hanover, and Henrico Counties have a combined population of more than 900,000. Almost 60 percent of that population currently is in the Seventh District, with significant components included in the Third District (25 percent) and Fourth District (17 percent). Chapter 1 reduces the Seventh District component by 56,000, although the Richmond area retains a slim majority (52 percent) of the district. As described above, the population taken from the Richmond area Seventh District was used to help bring the Third District and Fourth District populations up to the required district total. Approximately 34,000 of the population in Richmond City and Henrico County is shifted to the Third District; almost 22,000 of the population of Chesterfield County is moved to the Fourth District.

APPLICATION OF TRADITIONAL REDISTRICTING CRITERIA

The Privileges and Elections Committee of the Senate (the Committee) on March 25, 2011, adopted criteria that identify the standards applied in drawing new congressional districts.

Population Equality

The Committee emphasized adherence to population equality among congressional districts. Its first redistricting criterion mirrors the Virginia Constitution's statement on population equality among districts and provides:

I. Population Equality

The population of legislative districts shall be determined solely according to the enumeration established by the 2010 federal census. The population of each district shall be as nearly equal to the population of every other district as practicable. (Senate Privileges and Elections Committee, Committee Resolution No. 2. Adopted March 25, 2011).

Chapter 1 congressional districts all are at 0.00 percent deviation. Nine of the 11 districts have exactly the ideal population; two districts have an absolute deviation of one (1) person.

Equal Protection Clause and Voting Rights Act Considerations

The Committee adopted the following criterion on compliance with the United States Constitution and Voting Rights Act:

II. Voting Rights Act

Districts shall be drawn in accordance with the laws of the United States and the Commonwealth of Virginia including compliance with protections against the unwarranted retrogression or dilution of racial or ethnic minority voting strength. Nothing in these guidelines shall be construed to require or permit any districting policy or action that is contrary to the United States Constitution or the Voting Rights Act of 1965. (Senate Committee on Privileges and Elections, Committee Resolution No. 2 Adopted March 25, 2011).

The impact of Chapter 1 on racial minority groups is discussed in detail in Attachment 5. There is one district with African American total and voting age majorities in the current plan and Chapter 1 likewise includes one majority-minority district, the Third District in both cases.

Contiguity and Compactness

The third criterion adopted by the Committee incorporated Virginia's constitutional requirement for contiguity and compactness with reference to the

1992 and 2002 cases in which the Virginia Supreme Court interpreted these constitutional standards.

III. Contiguity and Compactness

Districts shall be based on legislative consideration of the varied factors that can create or contribute to communities of interest. These factors may include, among others, economic factors, social factors, cultural factors, geographic features, governmental jurisdictions and service delivery areas, political beliefs, voting trends, and incumbency considerations. Public comment has been invited, has been and continues to be received, and will be considered. It is inevitable that some interests will be advanced more than others by the choice of particular district configurations. The discernment, weighing, and balancing of the varied factors that contribute to communities of interest is an intensely political process best carried out by elected representatives of the people. Local government jurisdiction and precinct lines may reflect communities of interest to be balanced, but they are entitled to no greater weight as a matter of state policy than other identifiable communities of interest. (Senate Committee on Privileges and Elections, Committee Resolution No. 2. Adopted March 25, 2011).

The Court in *Jamerson* gave "proper deference to the wide discretion accorded the General Assembly in its value judgment of the relative degree of compactness required when reconciling the multiple concerns of apportionment." (*Jamerson v. Womack*, 244 Va. 506, 517 (1992)). Statistical measures of compactness thus are not determinative in the Virginia context; Chapter 1 compactness scores by standard measures are nearly identical to those of the current set of districts.

Average Compactness Scores

<u>Measure</u>	<u>Current Plan</u>	<u>Chapter 1</u>
Roeck	0.21	0.21
Polsby-Popper	0.17	0.15

Schwartzberg

0.66

0.66

Localities, Precincts, and Communities of Interest

Chapter 1 splits 14 localities to meet the criteria adopted by the Committee, a reduction from the 19 localities split by the current congressional plan. (These totals exclude three localities in each plan that technically are split but in which the entire locality population is in one district while one or more water blocks without population are in another district.) All of the localities split by Chapter 1 are already split in the current plan, including eight large localities with populations exceeding 100,000 (Chesterfield, Henrico, Fairfax and Prince William Counties and the Cities of Hampton, Newport News, Norfolk, and Richmond). Chapter 1 reunites four smaller localities (Alleghany, Brunswick, and Caroline Counties and the City of Covington) and York County, which were split in the current plan.

Chapter 1 splits 10 precincts across the state to meet the criteria adopted by the Committee, a significant reduction from the 26 split precincts in the current plan. (As in the case of split localities, these numbers exclude technically split precincts where all of the precinct's population is in one district and there is no population in the other district.)

The General Assembly heard, considered, and balanced many points of view on communities of interest beyond those reflected in the communities contained in localities and precincts. Testimony and debates point out the wide variety of competing communities of interest, including those defined by

geographic features such as mountain ranges and valleys, by economic character, by social and cultural attributes, and by services.

Partisan and Incumbency Considerations

As the 2011 and 2012 committee and floor transcripts reflect, respect for incumbency was taken into account in the development of Chapter 1 districts. No incumbents were placed in the same district and, with two exceptions, Chapter 1 retains 80 percent or more of the current district's core constituency population (see Tables 1 and 2). The exceptions are the Eleventh District with 29 percent new population and the First District with 24 percent new population.

The election history reports for the current plan and Chapter 1 show that the vote in Virginia's congressional districts aligns strongly with one or the other major political party (See Table 3). Chapter 1 alterations to the districts caused little or no change in the projected vote in about half the districts. Where the vote projects do change at least somewhat measurably, notable is the reduced Republican vote in the Eleventh (by five to six percent) and Third (by three percent) Districts. On the other hand, the Republican vote is projected to increase by one to two percent in Fourth, Seventh, and Tenth Districts and one percent in the Eighth District.

Chapter 1 was reported from the Privileges and Elections Committee by a 19 to 3 vote. All 14 Republicans, joined by an Independent who caucuses with the Republicans, voted to report. The votes of the seven Democratic members were split, four voting for and three against reporting HB 251. The ensuing floor

vote on passage of the bill showed the same pattern. All 64 Republicans who voted favored passage, as did the lone Independent member. Democrats were divided. Nine voted in favor of passage, while a majority (twenty-one members) of the caucus voted against the bill. Two Democrats did not vote.

Votes in the Senate followed party lines. Eight Republicans voted in favor and seven Democrats opposed the motion to report the bill from the Senate Privileges and Elections Committee. The floor vote on final passage showed all 20 Republicans in favor, all 19 Democrats who voted were opposed, and one Democrat did not vote.

The 2012 voting patterns followed those on congressional measures during the 2011 Special Session of the General Assembly. House Bill 251 in 2012 was identical to the version of House Bill 5004 that passed the House of Delegates at the 2011 Special Session. (The bill as passed by the House was identical to the introduced version except for a minor adjustment to unsplit one voting precinct.) The House Privileges and Elections Committee reported House Bill 5004 by a 17 to 2 vote, with three members not voting. All 11 Republicans who voted favored the bill; two did not vote. Five Democrats voted in the affirmative, while two were opposed and one did not vote. The floor vote on passage, 71 to 23 with six members not voting, reflected a similar pattern. All but four Republicans voted to pass the bill; two voted against passage and two did not vote. The two Independents, who caucused with the Republicans, also voted in favor of the bill. A majority (21) of Democrats opposed the bill, while 14 voted in the affirmative and four did not vote.

The Senate Privileges and Elections Committee replaced the House redistricting plan with the plan of Senate Bill 5004 (Locke) by removing the House language in House Bill 5004 and inserting the Locke bill's language in its place. The bill was reported from committee, rereferred to committee from the floor, and reported again by the committee as a substitute with some additional changes. All nine Democrats voted to report the bill on both votes. No Republicans supported either version: All six voted against on the first vote; two did not vote on the second occasion while the other four were recorded in opposition. The floor vote on the Senate version of House Bill 5004 was divided by party. All 22 Democrats voted in favor of passage, while, among Republicans, 15 opposed it and three did not vote. The House of Delegates rejected the Senate version of the bill, effectively ending 2011 consideration of redistricting. No House Republican supported the Senate version; 51 voted against and eight did not vote. One of the two Independents likewise opposed the measure and one did not vote. Among Democrats, 30 voted for the Senate version, four opposed it, and five did not vote.

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Table 1
Chapter One Districts
Components of Population Adjustments

District	2010 Total	Retained	%	Transferred	Added	Ch. 1 Total
1	786,327	556,094	76%	230,143	171,272	727,366
2	646,184	618,267	85%	27,917	109,099	727,366
3	663,390	604,608	83%	58,782	122,758	727,366
4	738,639	699,949	96%	38,690	22,417	727,366
5	685,859	652,915	90%	32,944	74,450	727,365
6	704,056	665,671	92%	38,385	61,695	727,366
7	757,917	640,903	88%	117,014	86,463	727,366
8	701,010	621,050	85%	79,960	106,316	727,366
9	656,200	656,122	90%	78	71,244	727,366
10	869,437	648,661	89%	220,776	78,704	727,366
11	792,095	518,160	71%	273,935	209,206	727,365

Table 2
Chapter One Districts
Core Constituency Report

District: 1	Total Population:	727,366	Voting Age Population:	543,139
Unchanged Area				
Population from District 1		556,094		422,033
Total Unchanged Area		556,094		422,033
From Other Districts				
Population from District 3		7,351		5,106
Population from District 7		14,481		10,797
Population from District 10		38,187		28,023
Population from District 11		111,253		77,180
Total From Other Districts		171,272		121,106
Total for District: 1		727,366		543,139
District: 2	Total Population:	727,366	Voting Age Population:	565,464
Unchanged Area				
Population from District 2		618,267		479,697
Total Unchanged Area		618,267		479,697
From Other Districts				
Population from District 1		83,598		65,718
Population from District 3		25,501		20,049
Total From Other Districts		109,099		85,767
Total for District: 2		727,366		565,464
District: 3	Total Population:	727,366	Voting Age Population:	560,158
Unchanged Area				
Population from District 3		604,608		466,232
Total Unchanged Area		604,608		466,232
From Other Districts				
Population from District 1		23,288		17,805
Population from District 2		27,917		20,543
Population from District 4		35,447		27,835
Population from District 7		36,106		27,743
Total From Other Districts		122,758		93,926
Total for District: 3		727,366		560,158
District: 4	Total Population:	727,366	Voting Age Population:	547,486
Unchanged Area				
Population from District 4		699,949		527,298
Total Unchanged Area		699,949		527,298
From Other Districts				
Population from District 3		5,713		4,176
Population from District 7		21,704		16,012
Total From Other Districts		27,417		20,188
Total for District: 4		727,366		547,486

District: 5	Total Population:	727,365	Voting Age Population:	574,341
Unchanged Area				
Population from District	5	652,915		517,503
Total Unchanged Area		652,915		517,503
From Other Districts				
Population from District	1	19,595		14,600
Population from District	4	3,243		2,609
Population from District	6	85		56
Population from District	7	20,681		16,246
Population from District	10	30,846		23,327
Total From Other Districts		74,450		56,838
Total for District:	5	727,365		574,341

District: 6	Total Population:	727,366	Voting Age Population:	572,702
Unchanged Area				
Population from District	6	665,671		525,297
Total Unchanged Area		665,671		525,297
From Other Districts				
Population from District	5	0		0
Population from District	7	24,042		18,849
Population from District	9	78		61
Population from District	10	37,575		28,495
Total From Other Districts		61,695		47,405
Total for District:	6	727,366		572,702

District: 7	Total Population:	727,366	Voting Age Population:	549,562
Unchanged Area				
Population from District	7	640,903		486,679
Total Unchanged Area		640,903		486,679
From Other Districts				
Population from District	1	66,246		46,887
Population from District	3	20,217		15,996
Total From Other Districts		86,463		62,883
Total for District:	7	727,366		549,562

District: 8	Total Population:	727,366	Voting Age Population:	580,212
Unchanged Area				
Population from District	8	621,050		502,331
Total Unchanged Area		621,050		502,331
From Other Districts				
Population from District	10	22,338		16,217
Population from District	11	83,978		61,664
Total From Other Districts		106,316		77,881
Total for District:	8	727,366		580,212

District: 9	Total Population:	727,366	Voting Age Population:	584,877
Unchanged Area				
Population from District	9	656,122		528,070
Total Unchanged Area		656,122		528,070
From Other Districts				
Population from District	5	32,944		26,093
Population from District	6	38,300		30,714
Total From Other Districts		71,244		56,807
Total for District:	9	727,366		584,877

District: 10	Total Population:	727,365	Voting Age Population:	520,811
Unchanged Area				
Population from District	10	648,661		463,505
Total Unchanged Area		648,661		463,505
From Other Districts				
Population from District	8	0		0
Population from District	11	78,704		57,306
Total From Other Districts		78,704		57,306
Total for District:	10	727,365		520,811

District: 11	Total Population:	727,366	Voting Age Population:	548,595
Unchanged Area				
Population from District	11	518,160		390,215
Total Unchanged Area		518,160		390,215
From Other Districts				
Population from District	1	37,416		25,897
Population from District	8	79,960		62,763
Population from District	10	91,830		69,720
Total From Other Districts		209,206		158,380
Total for District:	11	727,366		548,595

Table 3
Chapter One Districts
Projected Republican Vote

Current Districts			Chapter 1 Districts	
District	2009 Governor	2008 President	2009 Governor	2008 President
1	65%	53%	66%	53%
2	62%	50%	62%	50%
3	34%	25%	31%	22%
4	61%	50%	63%	51%
5	61%	52%	62%	52%
6	67%	58%	67%	58%
7	66%	54%	68%	56%
8	39%	32%	40%	33%
9	67%	59%	66%	59%
10	61%	48%	63%	50%
11	55%	44%	50%	38%

The vote by census block first was estimated from known precinct election returns. The values for each census block in a district then were summed to produce an estimated district vote for each candidate.

Counties and Cities

Percent Population Change 2000 - 2010

Legend:

- Gained over 25%
- Gained 13 - 25%
- Gained less than 13%
- Lost Population

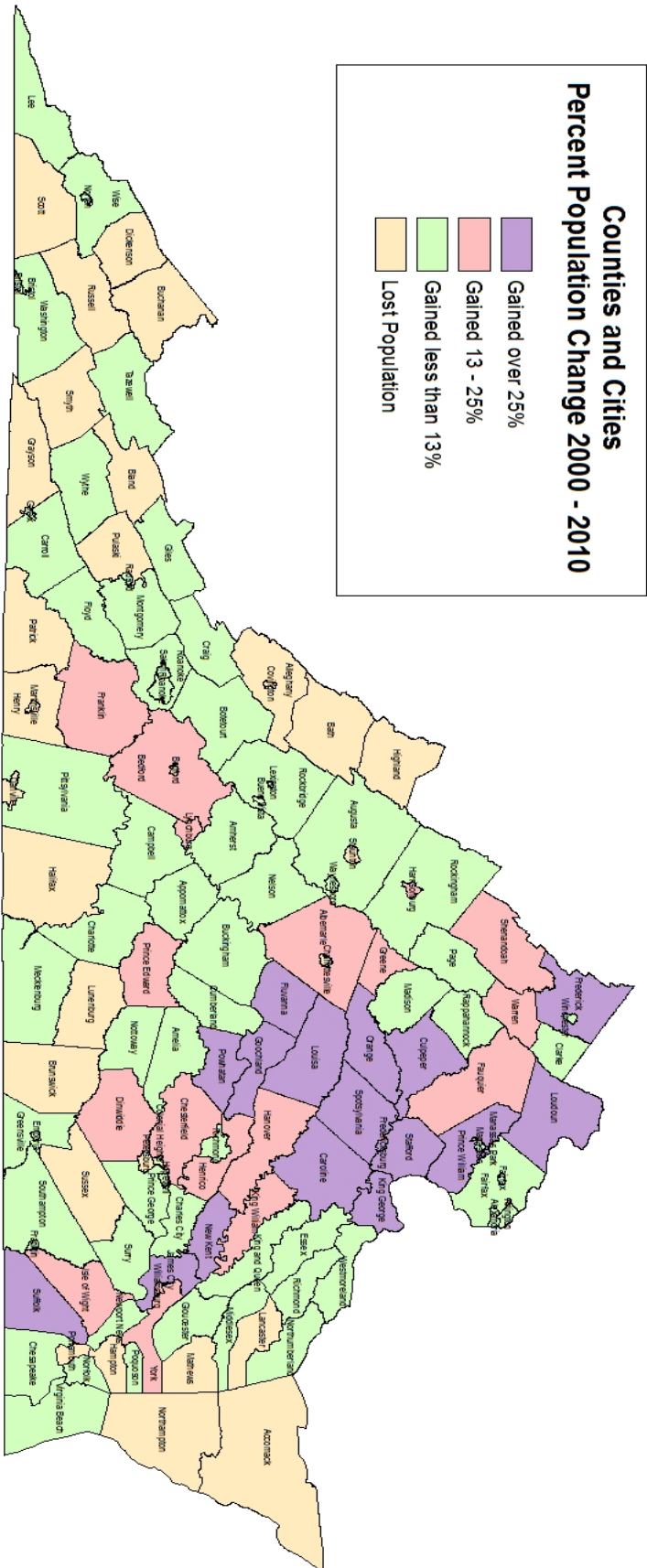


EXHIBIT K

Approved 3/25/11

SENATE COMMITTEE ON PRIVILEGES AND ELECTIONS

COMMITTEE RESOLUTION NO. 2 -- Congressional District Criteria

(Proposed by Senator Howell)

RESOLVED, That after consideration of legal requirements and public policy objectives, informed by public comment, the Senate Committee on Privileges and Elections adopts the following criteria for the redrawing of Virginia's Congressional districts:

I. Population Equality

The population of legislative districts shall be determined solely according to the enumeration established by the 2010 federal census. The population of each district shall be as nearly equal to the population of every other district as practicable.

II. Voting Rights Act

Districts shall be drawn in accordance with the laws of the United States and the Commonwealth of Virginia including compliance with protections against the unwarranted retrogression or dilution of racial or ethnic minority voting strength. Nothing in these guidelines shall be construed to require or permit any districting policy or action that is contrary to the United States Constitution or the Voting Rights Act of 1965.

III. Contiguity and Compactness

Districts shall be comprised of contiguous territory including adjoining insular territory. Contiguity by water is sufficient. Districts shall be contiguous and compact in accordance with the Constitution of Virginia as interpreted by the Virginia Supreme Court in the cases of *Jamerson v. Womack*, 244 Va. 506 (1992) and *Wilkins v. West*, 264 Va. 447 (2002).

IV. Single-Member Districts

All districts shall be single-member districts.

V. Communities of Interest

Districts shall be based on legislative consideration of the varied factors that can create or contribute to communities of interest. These factors may include, among others, economic factors, social factors, cultural factors, geographic features, governmental

jurisdictions and service delivery areas, political beliefs, voting trends, and incumbency considerations. Public comment has been invited, has been and continues to be received, and will be considered. It is inevitable that some interests will be advanced more than others by the choice of particular district configurations. The discernment, weighing, and balancing of the varied factors that contribute to communities of interest is an intensely political process best carried out by elected representatives of the people. Local government jurisdiction and precinct lines may reflect communities of interest to be balanced, but they are entitled to no greater weight as a matter of state policy than other identifiable communities of interest.

VI. Priority

All of the foregoing criteria shall be considered in the districting process, but population equality among districts and compliance with federal and state constitutional requirements and the Voting Rights Act of 1965 shall be given priority in the event of conflict among the criteria. Where the application of any of the foregoing criteria may cause a violation of applicable federal or state law, there may be such deviation from the criteria as is necessary, but no more than is necessary, to avoid such violation.

DLS/mrs
3/25/11

EXHIBIT L

Code of Virginia

TITLE 24.2. ELECTIONS

CHAPTER 3. Election Districts, Precincts, and Polling Places (§§ 24.2-300 through 24.2-301.1 to 24.2-313)

◀ Prev

Code of Virginia § 24.2-302.2

Next ▶

Section 24.2-302.2. Congressional districts

A. There shall be 11 Virginia members of the United States House of Representatives elected from 11 congressional districts and each district is entitled to one representative.

B. All references in this section to boundaries of counties and cities shall be interpreted to refer to those in existence on April 1, 2011, and as reported by the United States Bureau of the Census in the 2010 Census reports provided pursuant to United States Public Law 94-171, notwithstanding subsequent boundary changes by law, annexation, merger, consolidation, or the voiding of boundary changes theretofore made final.

C. Parts of counties and cities listed in subsection D are defined by reference to the 2010 Census reports for the precincts, parts of precincts, and blocks listed for each congressional district in the Statistical Report for this enrolled House bill on file with the Clerk of the House of Delegates. Precincts shall be interpreted to refer to those in existence on April 1, 2011, and as reported by the United States Bureau of the Census in the 2010 Census reports provided pursuant to United States Public Law 94-171, notwithstanding subsequent changes made by localities.

D. The 11 congressional districts are:

First. All of Caroline, Essex, Gloucester, King and Queen, King George, King William, Lancaster, Mathews, Middlesex, Northumberland, Richmond, Stafford, Westmoreland, and York Counties; all of the Cities of Fredericksburg, Poquoson, and Williamsburg; part of Fauquier County comprised of the Bealeton (303), Catlett (102), Lois (104), and Morrisville (301) Precincts and part of the Remington (302) Precinct; part of James City County comprised of the Berkeley A Part 1 (101), Berkeley A Part 2 (1012), Berkeley B Part 1 (1021), Berkeley B Part 2 (1022), Berkeley C (103), Jamestown A (201), Jamestown B (202), Powhatan A (301), Powhatan B (302), Powhatan C (303), Powhatan D (304), Roberts A Part 1 (5011), Roberts A Part 2 (5012), Roberts C Part 1 (5031), Roberts C Part 2 (5032), Stonehouse A (401), Stonehouse B (402), and Stonehouse C (403) Precincts and part of the Roberts B (502) Precinct; part of Prince William County comprised of the Ashland (309), Bennett (102), Benton (203), Brentsville (101), Bristow Run (111), Cedar Point (112), Ellis (106), Forest Park (310), Glenkirk (408), Henderson (307), Lake Ridge (501), Limestone (113), Lodge (207), Marshall (202), Marsteller (107), McCoart (204), Montclair (308), Mullen (411), Nokesville (104), Park (109), Pattie (305), Penn (210), Powell (211), Quantico (304), Sinclair (404), Stonewall (405), Sudley North (409), Victory (108), Washington-Reid (306), Westgate (407), Westridge (208), and Woodbine (209) Precincts and part of the Buckland Mills (110) Precinct; part of Spotsylvania County comprised of the Battlefield (701), Brent's Mill (702), Grange Hall (303), Hazel Run (302), Plank Road (301), and Summit (401) Precincts and part of the Lee Hill (403) Precinct; and part of the City of Newport News comprised of the Greenwood (110) Precinct.

Second. All of Accomack and Northampton Counties; all of the City of Virginia Beach; part of the City of Hampton comprised of the Asbury (205), Booker (201), Bryan (202), Burbank (203), Langley (209), Phillips (213), Sandy Bottom (216), and Syms (113) Precincts and part of the Machen (210) Precinct; part of the City of Newport News comprised of the Boulevard (202), Charles

(203), Deer Park (219), Hidenwood (208), Kiln Creek (218), Nelson (210), Oyster Point (105), Palmer (211), Richneck (107), Riverview (217), Sanford (213), Saunders (319), Sedgefield (315), Watkins (320), Wellesley (204), Windsor (109), and Yates (216) Precincts and parts of the Deep Creek (205), Hilton (209), Riverside (212), and Warwick (215) Precincts; and part of the City of Norfolk comprised of the Azalea Gardens (512), Barron Black (406), Bayview School (501), Crossroads (511), East Ocean View (503), Easton (408), Fairlawn (409), Lafayette (205), Larchmont Library (208), Larchmont Recreation Center (209), Larrymore (504), Little Creek (505), Northside (103), Ocean View Center (506), Ocean View School (102), Oceanair (508), Old Dominion (201), Suburban Park (215), Tarrallton (509), Third Presbyterian (510), Willard (218), and Zion Grace (106) Precincts.

Third. All of Charles City and Surry Counties; all of the Cities of Petersburg and Portsmouth; part of Henrico County comprised of the Adams (201), Antioch (501), Azalea (202), Cedar Fork (502), Central Gardens (206), Chickahominy (503), Donahoe (504), Dorey (505), Eanes (506), Elko (507), Fairfield (208), Glen Lea (209), Highland Gardens (211), Highland Springs (508), Laburnum (509), Maplewood (215), Masonic (510), Mehfoud (511), Montrose (512), Nine Mile (513), Pleasants (514), Ratcliffe (220), Rolfe (519), Sandston (515), Sullivans (516), Town Hall (517), Whitlocks (518), and Wilder (222) Precincts; part of Isle of Wight County comprised of parts of the Bartlett (201), Carrollton (202), and Rushmere (301) Precincts; part of James City County comprised of part of the Roberts B (502) Precinct; part of Prince George County comprised of the Blackwater (202), Bland (201), Brandon (203), and Harrison (105) Precincts and part of the Rives (104) Precinct; part of the City of Hampton comprised of the Aberdeen (101), Armstrong (106), Bassette (102), Bethel (212), City Hall (103), Cooper (104), East Hampton (105), Forrest (204), Hampton Library (111), Jones (116), Kecoughtan (117), Kraft (208), Lindsay (107), Mallory (118), Phenix (109), Phoebus (110), Smith (112), Thomas (108), Tucker Capps (214), Tyler (215), and Wythe (115) Precincts and part of the Machen (210) Precinct; part of the City of Newport News comprised of the Bland (201), Briarfield (302), Carver (303), Chestnut (304), Denbigh (101), Downtown (305), Dunbar (306), Epes (102), Huntington (307), Jefferson (308), Jenkins (103), Lee Hall (108), Magruder (309), Marshall (310), McIntosh (104), Newmarket (311), Newsome Park (312), Reed (313), Reservoir (106), River (314), South Morrison (316), Washington (317), and Wilson (318) Precincts and parts of the Deep Creek (205), Hilton (209), Riverside (212), and Warwick (215) Precincts; part of the City of Norfolk comprised of the Ballentine (301), Berkley (402), Bowling Park (303), Brambleton (403), Campostella (404), Chesterfield (405), Chrysler Museum (211), Coleman Place School (304), Ghent Square (203), Granby (101), Hunton Y (411), Immanuel (204), Ingleside (412), Lafayette-Winona (305), Lambert's Point (207), Lindenwood (306), Maury (210), Norview Methodist (308), Norview Middle School (309), Park Place (212), Poplar Halls (413), Rosemont (310), Sherwood Rec Center (311), Sherwood School (312), Stuart (214), Tanner's Creek (302), Taylor Elementary School (213), Titustown Center (104), Tucker House (105), Union Chapel (313), United Way (415), Wesley (217), and Young Park (414) Precincts; part of the City of Richmond comprised of the 113 (113), 114 (114), 203 (203), 204 (204), 206 (206), 207 (207), 208 (208), 211 (211), 212 (212), 213 (213), 301 (301), 302 (302), 303 (303), 304 (304), 305 (305), 306 (306), 307 (307), 308 (308), 402 (402), 501 (501), 503 (503), 504 (504), 505 (505), 508 (508), 509 (509), 510 (510), 602 (602), 603 (603), 604 (604), 606 (606), 607 (607), 609 (609), 610 (610), 701 (701), 702 (702), 703 (703), 705 (705), 706 (706), 707 (707), 802 (802), 806 (806), 810 (810), 811 (811), 812 (812), 814 (814), 902 (902), 903 (903), 908 (908), 909 (909), 910 (910), and 911 (911) Precincts and part of the 404 (404) Precinct; and part of the City of Suffolk comprised of parts of the Bennetts Creek (104), Ebenezer (201), and Harbour View (103) Precincts.

Fourth. All of Amelia, Dinwiddie, Greensville, Nottoway, Powhatan, Southampton, and Sussex Counties; all of the Cities of Chesapeake, Colonial Heights, Emporia, Franklin, and Hopewell; part of Chesterfield County comprised of the Bailey Bridge (315), Beach (305), Bellwood (101), Beulah (202), Bird (203), Birkdale (317), Carver (112), Chippenham (207), Cosby (307), Crenshaw (414), Deer Run (302), Drewry's Bluff (105), Dutch Gap (110), Ecoff (108), Elizabeth Scott (109), Enon (103), Ettrick (301), Falling Creek (205), Five Forks (210), Gates (201), Harrowgate (106), Iron Bridge (111), Jacobs (204), Matoaca (303), Meadowbrook (208), Nash (211), North Chester (104), S. Manchester (308), Salem Church (209), South Chester (102), Southside (213), Spring Run (316), St. Lukes (212), Wells (107), Winfrees Store (304), and Winterpock (306) Precincts; part of Isle of Wight County comprised of the Camps Mill (502), Carrsville (503), Courthouse (401), Orbit (403), Pons (302), Raynor (505), Smithfield (101), Walters (501), Windsor (402), and Zuni (504) Precincts and parts of the Bartlett (201), Carrollton (202), and Rushmere (301) Precincts; part of Prince George County comprised of the Courts Bldg (204), Jefferson Park (205), Richard Bland (101), Templeton (102), and Union Branch (103) Precincts and part of the Rives (104) Precinct; and part of the City of Suffolk comprised of the Airport (401), Chuckatuck (202), Cypress Chapel (303), Driver (102), Elephants Fork/Westhaven (603), Holland (502), Hollywood (701), Holy Neck (503), John F. Kennedy (302), Kilby's Mill (501), King's Fork (203), Lake Cohoon (504), Lakeside (601), Nansemond River (703), Olde Towne (602), Southside (403), Whaleyville (402), White Marsh (301), and

Yeates (705) Precincts and parts of the Bennetts Creek (104), Ebenezer (201), and Harbour View (103) Precincts.

Fifth. All of Albemarle, Appomattox, Brunswick, Buckingham, Campbell, Charlotte, Cumberland, Fluvanna, Franklin, Greene, Halifax, Lunenburg, Madison, Mecklenburg, Nelson, Pittsylvania, Prince Edward, and Rappahannock Counties; all of the Cities of Bedford, Charlottesville, and Danville; part of Bedford County comprised of the Bedford Christian Church (703), Bedford County PSA (302), Bethesda Methodist Church (303), Body Camp Elem School (204), Chamblissburg First Aid Bldg (103), Goode Rescue Squad (701), Goodview Elem School (101), Hardy Fire & Rescue Bldg (102), Huddleston Elem School (305), Liberty High School (702), Moneta Elem School (203), Saunders Grove Brethren Church (604), Saunders Vol Fire Dept (205), Shady Grove Baptist Church (602), Staunton River High School (202), and Thaxton Elem School (603) Precincts and part of the New London Academy (301) Precinct; part of Fauquier County comprised of the Airlie (202), Baldwin Ridge (203), Broad Run (503), Casanova (103), Courthouse (201), Kettle Run (101), Leeds (402), Marshall (401), New Baltimore (502), Opal (105), The Plains (501), Warrenton (204), and Waterloo (403) Precincts and part of the Remington (302) Precinct; and part of Henry County comprised of the Axton (302), Irisburg (303), Mountain Valley (305), Mountain View (405), and Ridgeway #1 (603) Precincts and part of the Mount Olivet (304) Precinct.

Sixth. All of Amherst, Augusta, Bath, Botetourt, Highland, Page, Rockbridge, Rockingham, Shenandoah, and Warren Counties; all of the Cities of Buena Vista, Harrisonburg, Lexington, Lynchburg, Roanoke, Staunton, and Waynesboro; part of Bedford County comprised of the Big Island Elem School (502), Boonsboro Elem School (505), Boonsboro Ruritan Club (506), Forest Elem School (401), Forest Youth Athletic Assoc. (304), Knights Of Columbus Bldg (403), Montvale Elem School (601), Odd Fellows Hall (504), Pleasant View (507), Sedalia Center (503), Suck Springs (704), and Thomas Jefferson Elem School (402) Precincts and part of the New London Academy (301) Precinct; and part of Roanoke County comprised of the Bonsack (402), Burlington (202), Castle Rock (305), Cave Spring (503), Clearbrook (505), Cotton Hill (501), Garst Mill (306), Hollins (206), Hunting Hills (507), Lindenwood (405), Mount Pleasant (406), Mount Vernon (506), Mountain View (203), North Vinton (403), Oak Grove (304), Ogden (504), Orchards (205), Penn Forest (502), Plantation (201), Poages Mill (302), South Vinton (404), and Windsor Hills (303) Precincts.

Seventh. All of Culpeper, Goochland, Hanover, Louisa, New Kent, and Orange Counties; part of Chesterfield County comprised of the Beaufont (513), Belgrade (508), Belmont (206), Black Heath (511), Bon Air (505), Brandermill (403), Cranbeck (509), Crestwood (502), Davis (515), Evergreen (312), Genito (402), Greenfield (506), Harbour Pointe (401), Huguenot (501), La Prade (405), Manchester (409), Midlothian (503), Monacan (407), Providence (404), Reams (408), Robious (504), Salisbury (507), Shenandoah (413), Skinquarter (309), Smoketree (406), Swift Creek (411), Sycamore (510), Tomahawk (310), Wagstaff (410), Watkins (514), and Woolridge (313) Precincts; part of Henrico County comprised of the Belmont (203), Brookland (204), Byrd (401), Canterbury (205), Causeway (301), Cedarfield (302), Chamberlayne (207), Coalpit (101), Crestview (303), Derbyshire (402), Dumbarton (102), Freeman (403), Gayton (404), Glen Allen (103), Glenside (104), Godwin (405), Greendale (105), Greenwood (210), Hermitage (106), Hilliard (107), Hollybrook (212), Hungary (213), Hungary Creek (116), Hunton (108), Innsbrook (304), Jackson Davis (305), Johnson (109), Lakeside (110), Lakewood (406), Lauderdale (407), Longan (111), Longdale (214), Maude Trevvett (112), Maybeury (408), Monument Hills (306), Moody (216), Mooreland (409), Mountain (217), Nuckols Farm (307), Oakview (218), Pemberton (410), Pinchbeck (411), Pocahontas (308), Randolph (219), Ridge (309), Ridgefield (412), Rivers Edge (317), Rollingwood (413), Sadler (310), Shady Grove (311), Short Pump (318), Skipwith (312), Spottswood (414), Springfield (313), Staples Mill (113), Stoney Run (314), Stratford Hall (221), Summit Court (114), Three Chopt (315), Tuckahoe (415), Tucker (316), Wellborne (417), West End (416), Westwood (115), and Yellow Tavern (223) Precincts; part of Spotsylvania County comprised of the Belmont (501), Blaydes Corner (102), Brock (505), Brokenburg (502), Chancellor (204), Courthouse (504), Elys Ford (201), Fairview (703), Frazers Gate (402), Massaponax (104), Ni River (203), Partlow (101), Piedmont (603), Salem (601), Smith Station (602), Todd's Tavern (503), Travelers Rest (103), and Wilderness (202) Precincts and part of the Lee Hill (403) Precinct; and part of the City of Richmond comprised of the 101 (101), 102 (102), 104 (104), 105 (105), 106 (106), 111 (111), 112 (112), 309 (309), 409 (409), 410 (410), 412 (412), and 413 (413) Precincts and part of the 404 (404) Precinct.

Eighth. All of Arlington County; all of the Cities of Alexandria and Falls Church; and part of Fairfax County comprised of the Alban (623), Baileys (501), Belle Haven (601), Belleview (602), Belvoir (619), Bren Mar (526), Brook Hill (521), Bucknell (604), Bush Hill (401), Cameron (402), Chesterbrook (302), Clermont (423), Crestwood (415), Edsall (527), El Nido (305), Fairfield (413), Fort Buffalo (703), Fort Hunt (605), Franconia (404), Garfield (417), Glen Forest #2 (529), Glen Forest (505), Graham (705), Greenway (706), Grosvenor (621), Groveton (405), Gunston (616), Haycock (307), Hayfield (406), Hollin Hall (606), Holmes #1 (506), Huntington (607), Huntley (424), Island Creek (427), Kingstowne (421), Kirby (310), Kirkside (608), Lane (419), Leewood (531), Lincolnia (507), Longfellow (312), Lorton (617), Lorton Center (625), Lorton Station (622), Lynbrook (418), Marlan (609), Marshall (708), Mount Eagle (408), Parklawn (510), Pimmit (315), Pine Spring (710), Pioneer (409), Poe (523), Rose Hill (410), Salona (316), Saratoga (626), Sherwood (610), Shreve (712), Skyline (520), Stratford (611), Timber Lane (713), Van Dorn (422), Villages (420), Virginia Hills (411), Walnut Hill # 1 (525), Walnut Hill # 2 (728), Waynewood (612), Westgate (613), Westhampton (317), Westlawn (515), Westmoreland (318), Weyanoke (516), Whitman (614), Whittier (524), Willston (517), Wilton (425), Woodlawn (627), and Woodley (615) Precincts and parts of the Magarity (726) and Saint Albans (513) Precincts.

Ninth. All of Alleghany, Bland, Buchanan, Carroll, Craig, Dickenson, Floyd, Giles, Grayson, Lee, Montgomery, Patrick, Pulaski, Russell, Scott, Smyth, Tazewell, Washington, Wise, and Wythe Counties; all of the Cities of Bristol, Covington, Galax, Martinsville, Norton, Radford, and Salem; part of Henry County comprised of the Bassett No. 1 (501), Bassett No. 2 (101), Collinsville Number 1 (401), Collinsville Number 2 (404), Daniel's Creek (402), Dyers Store (505), Fieldale (201), Figsboro (502), Fontaine (601), Gunville (102), Hillcrest (602), Horsepasture #1 (202), Horsepasture #2 (203), Oak Level (504), Ridgeway #2 (604), Scott's Tanyard (103), Spencer (204), and Stanleytown (503) Precincts and part of the Mount Olivet (304) Precinct; and part of Roanoke County comprised of the Bennett Springs (107), Bent Mountain (301), Botetourt Springs (204), Catawba (101), Glenvar (103), Green Hill (106), Mason Valley (102), Northside (104), Peters Creek (105), and Wildwood (108) Precincts.

Tenth. All of Clarke, Frederick, and Loudoun Counties; all of the Cities of Manassas, Manassas Park, and Winchester; part of Fairfax County comprised of the Brookfield (902), Bull Run (923), Chain Bridge (301), Churchill (303), Clearview (321), Clifton (803), Colvin (330), Cooper (304), Cub Run (903), Deer Park (921), Dulles (904), Fairfax Station (805), Forestville (322), Fountainhead (845), Fox Mill (229), Franklin (905), Great Falls (306), Greenbriar West (847), Hickory (328), Kenmore (309), Kinross (908), Langley (311), Lees Corner (920), Lees Corner West (927), McLean (314), Navy (911), Newgate North (849), Newgate South (854), Popes Head (841), Poplar Tree (928), Rocky Run (913), Sangster (838), Seneca (329), Shouse (323), Silverbrook (839), South Run (850), Spring Hill (331), Stone (917), Sugarland (327), Vale (914), Virginia Run (915), Waples Mill (916), and Woodyard (815) Precincts and part of the Old Mill (925) Precinct; and part of Prince William County comprised of the Alvey (406), Battlefield (402), Buckhall (103), Bull Run (403), Evergreen (401), Mountain View (410), Pace West (412), Parkside (105), Pr. William A (000), and Signal Hill (114) Precincts and part of the Buckland Mills (110) Precinct.

Eleventh. All of the City of Fairfax; part of Fairfax County comprised of the Aldrin (234), Barcroft (502), Belvedere (503), Blake (701), Bonnie Brae (126), Bristow (102), Burke (801), Burke Centre (127), Camelot (522), Cameron Glen (238), Cardinal (128), Centerpointe (844), Centre Ridge (901), Centreville (918), Chapel (104), Cherry Run (825), Columbia (518), Coppermine (239), Dogwood (220), Eagle View (853), Fair Oaks (848), Fairfax A (0700), Fairlakes (843), Fairview (105), Flint Hill (202), Floris (203), Freedom Hill (704), Frying Pan (235), Glade (223), Green Trails (919), Greenbriar East (846), Greenspring (426), Heritage (106), Herndon #1 (319), Herndon #2 (320), Herndon #3 (324), Holmes #2 (530), Hummer (519), Hunt (624), Hunters Woods (221), Hutchison (325), Irving (827), Keene Mill (129), Kilmer (733), Kings Park (108), Lake Braddock (118), Laurel (119), Laurel Hill (628), London Towne East (910), London Towne West (924), Long Branch (122), Mantua (707), Masonville (508), McNair (237),

Code of Virginia, Section 24.2-302.2. Congressional districts

Merrifield (721), Monument (852), Mosby (709), Newington (618), North Point (233), North Springfield # 1 (110), North Springfield # 2 (111), Nottoway (729), Oak Hill (113), Oak Marr (732), Oakton (727), Olde Creek (109), Olley (124), Orange (824), Parkway (842), Penderbrook (730), Pine Ridge (718), Pohick (811), Powell (926), Price (711), Ravensworth (115), Ravenwood (511), Reston #1 (208), Reston #2 (209), Reston #3 (222), Ridgelea (528), Robinson (123), Sideburn (120), Signal Hill (125), Sleepy Hollow (512), South County (629), South Lakes (224), Stenwood (719), Stuart (236), Sunrise Valley (227), Terra Centre (130), Terraset (225), Thoreau (720), Tysons (731), Valley (812), Vienna #1 (213), Vienna #2 (214), Vienna #4 (216), Vienna #6 (218), Villa (121), Wakefield (116), Walker (714), West Springfield (840), Westbriar (219), White Oaks (833), Willow Springs (851), Wolftap (226), Woodburn (717), and Woodson (117) Precincts and parts of the Magarity (726), Old Mill (925), and Saint Albans (513) Precincts; and part of Prince William County comprised of the Bel Air (606), Belmont (701), Bethel (506), Beville (205), Chinn (507), Civic Center (604), Dale (601), Dumfries (301), Enterprise (608), Featherstone (704), Freedom (609), Godwin (603), Graham Park (303), Kerrydale (607), Kilby (707), King (206), Library (702), Lynn (703), Minnieville (605), Mohican (505), Neabsco (602), Occoquan (502), Old Bridge (503), Potomac (302), Potomac View (705), Rippon (706), River Oaks (708), Rockledge (504), Saunders (201), Springwoods (508), and Swans Creek (311) Precincts.

2012, c. 1.

◀ Prev**Code of Virginia § 24.2-302.2**

Next ▶

EXHIBIT M

HB 251 Introduced - Delegate Bell**Population Totals**

DISTRICT	Total Pop.	Target	Difference	Deviation
1	727,366	727,366	0	0.0%
2	727,366	727,366	0	0.0%
3	727,366	727,366	0	0.0%
4	727,366	727,366	0	0.0%
5	727,365	727,366	-1	0.0%
6	727,366	727,366	0	0.0%
7	727,366	727,366	0	0.0%
8	727,366	727,366	0	0.0%
9	727,366	727,366	0	0.0%
10	727,365	727,366	-1	0.0%
11	727,366	727,366	0	0.0%

HB 251 Introduced - Delegate Bell
Racial Demographics

DISTRICT	Total Population	White	% White	Black	% Black	AIAN	% AIAN	Asian	% Asian	HawPI	% HawPI	Other	% Other	Multi	% Multi	Total Hispanic	% Hispanic
1	727,366	527,650	72.5%	130,061	17.9%	6,435	0.9%	29,672	4.1%	1,035	0.1%	26,577	3.7%	5,936	0.8%	61,279	8.4%
2	727,366	483,615	66.5%	167,162	23.0%	5,983	0.8%	42,530	5.8%	1,489	0.2%	18,340	2.5%	8,247	1.1%	50,019	6.9%
3	727,366	246,712	33.9%	432,581	59.5%	5,554	0.8%	16,134	2.2%	967	0.1%	16,781	2.3%	8,637	1.2%	37,044	5.1%
4	727,366	447,441	61.5%	235,678	32.4%	5,098	0.7%	18,153	2.5%	782	0.1%	15,248	2.1%	4,966	0.7%	34,360	4.7%
5	727,365	542,589	74.6%	154,368	21.2%	4,149	0.6%	13,088	1.8%	371	0.1%	10,554	1.5%	2,246	0.3%	22,973	3.2%
6	727,366	607,889	83.6%	84,851	11.7%	4,609	0.6%	12,343	1.7%	407	0.1%	14,868	2.0%	2,399	0.3%	31,018	4.3%
7	727,366	556,598	76.5%	111,369	15.3%	4,698	0.6%	33,412	4.6%	559	0.1%	16,836	2.3%	3,894	0.5%	36,815	5.1%
8	727,366	454,669	62.5%	105,900	14.6%	5,554	0.8%	89,760	12.3%	962	0.1%	63,612	8.7%	6,909	0.9%	135,594	18.6%
9	727,366	666,198	91.6%	40,053	5.5%	3,526	0.5%	9,626	1.3%	272	0.0%	6,506	0.9%	1,185	0.2%	13,904	1.9%
10	727,365	527,743	72.6%	54,611	7.5%	4,011	0.6%	96,867	13.3%	778	0.1%	38,400	5.3%	4,955	0.7%	85,367	11.7%
11	727,366	425,748	58.5%	96,820	13.3%	5,246	0.7%	137,228	18.9%	957	0.1%	54,161	7.4%	7,206	1.0%	123,452	17.0%

HB 251 Introduced - Delegate Bell**Voting Age Population**

DISTRICT	Voting Age Persons	VAP White	% VAP White	VAP Black	% VAP Black	VAP AIAN	% VAP AIAN	VAP Asian	% VAP Asian	VAP HawPI	% VAP HawPI	VAP Other	% VAP Other	VAP Multi	% VAP Multi	Voting Age Hispanic	% VAP Hispanic
1	543,139	405,154	74.6%	91,813	16.9%	4,600	0.8%	20,586	3.8%	681	0.1%	17,157	3.2%	3,148	0.6%	38,845	7.2%
2	565,464	389,929	69.0%	120,213	21.3%	4,640	0.8%	32,067	5.7%	1,102	0.2%	12,768	2.3%	4,745	0.8%	33,688	6.0%
3	560,158	208,802	37.3%	315,603	56.3%	4,358	0.8%	13,297	2.4%	687	0.1%	12,123	2.2%	5,288	0.9%	25,479	4.5%
4	547,486	346,507	63.3%	171,434	31.3%	3,750	0.7%	12,721	2.3%	493	0.1%	9,926	1.8%	2,655	0.5%	21,796	4.0%
5	574,341	436,040	75.9%	116,491	20.3%	3,156	0.5%	10,186	1.8%	283	0.0%	6,784	1.2%	1,401	0.2%	15,077	2.6%
6	572,702	488,611	85.3%	60,264	10.5%	3,520	0.6%	9,010	1.6%	305	0.1%	9,534	1.7%	1,458	0.3%	19,899	3.5%
7	549,562	428,788	78.0%	80,425	14.6%	3,398	0.6%	23,375	4.3%	373	0.1%	10,975	2.0%	2,228	0.4%	23,883	4.3%
8	580,212	375,269	64.7%	79,591	13.7%	4,213	0.7%	69,715	12.0%	738	0.1%	46,039	7.9%	4,647	0.8%	98,819	17.0%
9	584,877	538,799	92.1%	30,113	5.1%	2,853	0.5%	7,897	1.4%	219	0.0%	4,201	0.7%	795	0.1%	9,226	1.6%
10	520,811	387,308	74.4%	36,962	7.1%	2,706	0.5%	65,528	12.6%	541	0.1%	25,026	4.8%	2,740	0.5%	55,325	10.6%
11	548,595	334,137	60.9%	67,339	12.3%	3,592	0.7%	101,292	18.5%	710	0.1%	37,301	6.8%	4,224	0.8%	84,820	15.5%

HB 251 Introduced - Delegate Bell
Election Data

DISTRICT	Rep. Gov '09	Dem. Gov '09	Rep. Lt. Gov '09	Dem. Lt. Gov '09	Rep. Att. Gen. '09	Dem. Att. Gen. '09	Rep. Pres. '08	Dem. Pres. '08	Other Pres. '08	Rep. U.S. Sen. '08	Dem. U.S. Sen. '08	Other U.S. Sen. '08
1	66%	34%	63%	37%	64%	36%	53%	46%	1%	39%	60%	1%
2	62%	38%	57%	43%	60%	40%	50%	49%	1%	35%	64%	1%
3	31%	69%	29%	71%	31%	69%	22%	78%	1%	16%	83%	1%
4	63%	37%	60%	40%	62%	38%	51%	48%	1%	39%	60%	1%
5	62%	38%	61%	39%	62%	38%	52%	47%	1%	36%	63%	1%
6	67%	33%	67%	33%	68%	32%	58%	41%	1%	42%	57%	1%
7	68%	32%	65%	35%	67%	33%	56%	43%	1%	41%	58%	1%
8	40%	60%	38%	62%	38%	62%	33%	66%	1%	26%	73%	1%
9	66%	34%	66%	34%	66%	34%	59%	40%	1%	36%	63%	1%
10	63%	37%	60%	40%	60%	40%	50%	50%	1%	39%	60%	1%
11	50%	50%	47%	53%	47%	53%	38%	61%	1%	30%	68%	1%

EXHIBIT N



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

MAR 14 2012

The Honorable E. Duncan Getchell, Jr.
Solicitor General
Office of the Attorney General
900 East Main Street
Richmond, Virginia 23219

Dear Solicitor General Getchell:

This refers to Chapter 1 (H.B. 251) (2012), which redistricts the congressional districts for the State of Virginia, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. We received your submission on February 2, 2012; additional information was received on February 6, 2012.

The Attorney General does not interpose any objection to the specified change. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 28 C.F.R. 51.41.

Because the Section 5 status of the redistricting plan is before the court in *Virginia v. Holder*, Civil Action No. 1:12-cv-00148 (D.D.C.), we are providing a copy of this letter to the Court and to counsel of record in that case.

Sincerely,

A handwritten signature in black ink, appearing to read "T. E. Perez", is located below the "Sincerely," text.

Thomas E. Perez
Assistant Attorney General

EXHIBIT O

Expert Report of Dr. Michael P. McDonald

Page v. State Board of Elections

1. Biographical Information

I am Associate Professor of Government and Politics at George Mason University and a non-resident Senior Fellow at the Brookings Institution.

I have been involved in redistricting since the late 1980s when I prepared racial bloc voting analyses for the Department of Justice in *Garza v Los Angeles Board of Supervisors*. Since then I have been involved as a consultant to redistricting authorities or parties in litigation in fourteen states. I have also provided court testimony at trial or by deposition in a number of redistricting cases. Finally, I have produced numerous scholarly writings on the American electoral system. Please see my attached vita for more information regarding my academic publications and professional experience.

I have a specific interest in Geographic Information System applications to enable greater public participation in redistricting. I co-led a team with Dr. Micah Altman that developed award-winning open-source redistricting software called DistrictBuilder that allows users to draw districts through web-browsers. We deployed this software to support advocacy efforts and actual redistricting efforts by government officials in several jurisdictions within the United States and Mexico.

Among the government bodies that used our software was Virginia Governor Bob McDonnell's Independent Bipartisan Advisory Redistricting Commission, to which I also served as a mapping consultant. The software was also deployed to support a Virginia college student redistricting competition that occurred concurrently with the Commission's and the General Assembly's redistricting deliberations.

I have been retained by Perkins Coie LLP on behalf of Plaintiffs in *Page v. Virginia State Board of Elections* to provide expert witness testimony regarding their challenge to Virginia's Third Congressional District as the product of an unlawful racial gerrymander. I am being compensated at a rate of \$300/hr.

2. Executive Summary

This expert report presents evidence that the adopted Third Congressional District was the product of an unlawful racial gerrymander. First, it examines the geography of the district, specifically demonstrating how the district is not compact, not contiguous, and splits multiple counties, independent cities, and precincts. Second, it demonstrates that, notwithstanding the fact that the minority candidate of choice had consistently won landslide victories, the Virginia General Assembly strategically traded populations in and out of the Third Congressional District so as to *increase* the Black Voting Age Population of the District. Finally, the analysis compares

the adopted Third District to the Third District deemed unconstitutional by a federal three-judge panel in 1997, demonstrating the striking similarities between both the goals and the results of the two districts.

In sum, the boundaries and composition of Virginia's Third Congressional District demonstrate that race predominated in the drawing of the District.

3. Background and Data Sources

A. Background

Following the 1990 census, the Commonwealth of Virginia created an African-American majority Third Congressional District that was further amended in 1993.

In 1997, this Third District became the subject of federal litigation in *Moon v. Meadows*. The Eastern District of Virginia three-judge panel found the Third District to be the product of an unlawful racial gerrymander and enjoined the conduct of any elections based on that District.

Following the 2010 redistricting, the General Assembly adopted a congressional redistricting plan in HB 251, that was approved by the Governor. The adopted Third District and surrounding Districts are the subjects of my expert report.

B. Population and Geographic Data Sources

I obtained from the Census Bureau Virginia's 2010 census population and geographic data produced in support of redistricting.¹ Virginia's congressional districts prior to the last redistricting are described in the Census Bureau's geographic data. I refer to these as "benchmark" districts.

In 2012, the General Assembly adopted new congressional districts in HB 251. I obtained the census block assignment file for HB 251, which describes the adopted districts in the census geography, from the General Assembly's redistricting website.²

4. Geographical Description

In Figure 1, I provide a map of the adopted Third Congressional District. In Figures 2 through 5, I provide detailed maps of portions of the district. Figure 2 is a detailed map of Norfolk and Portsmouth. Figure 3 is a detailed map of Newport News and Hampton. Figure 4 is a detailed map of Petersburg, Prince George, and Surry. Figure 5 is a detailed map of Henrico and Richmond.

¹ These data were modified from the original Census Bureau release due to the incorrect location of the Norfolk Naval Base in the census geography. See http://www2.census.gov/census_2010/01-Redistricting_File--PL_94-171/Virginia/VA_errata%5B1%5D.pdf.

² See: <http://redistricting.dls.virginia.gov/2010/RedistrictingPlans.aspx#31>

The adopted Third District is colored red. The adopted First District is yellow. The adopted Second District is Green. The adopted Fourth District is lavender. The adopted Seventh District is olive green.

Water is colored blue. To demonstrate where districts cross water, districts are overlaid onto the water such that the water has slightly different coloring depending on which district the water is assigned to. Water assigned to the adopted Third District appears with a purplish hue.

Virginia's counties and independent cities — what I refer to as "localities" — are labeled and outlined by a dark solid line.

Within localities are voting precincts, which I refer to as VTDs. VTD is short for "Voting Tabulation District," which is the Census Bureau's generic name for precincts, wards, and election districts. VTDs are outlined by a faint dotted line.

I identify significant connecting bridges in the Third District and adjacent districts as outlined yellow line segments.

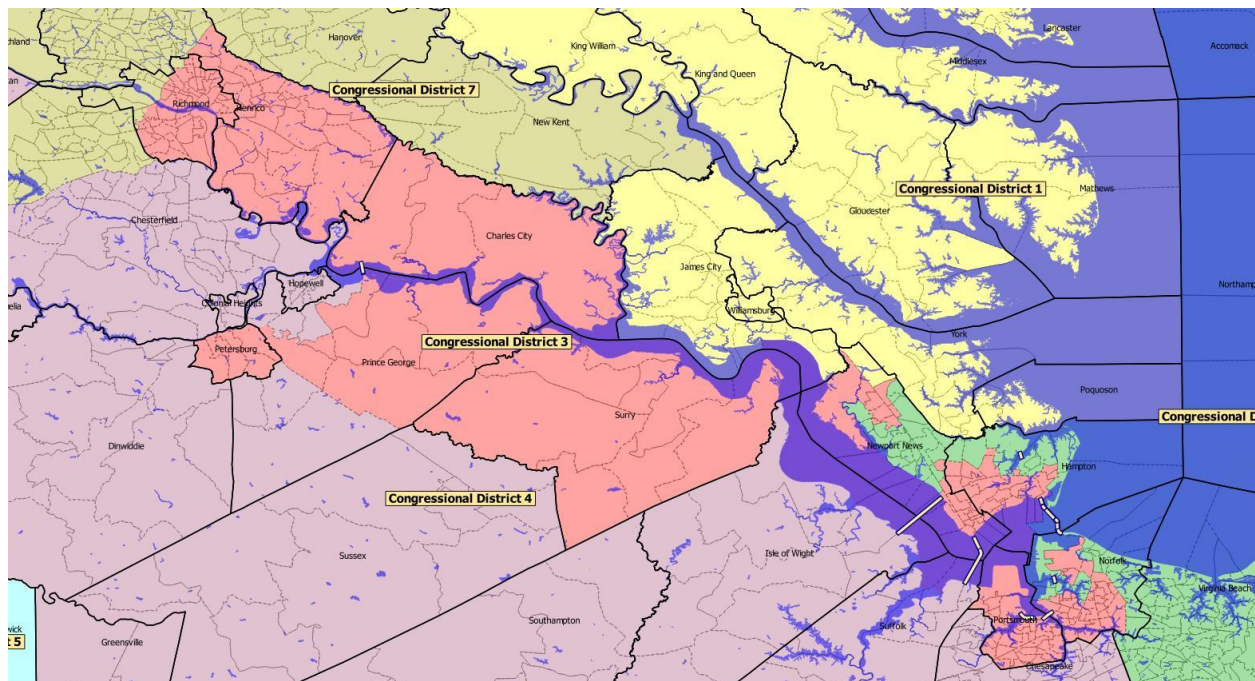


Figure 1. The Adopted Third Congressional District

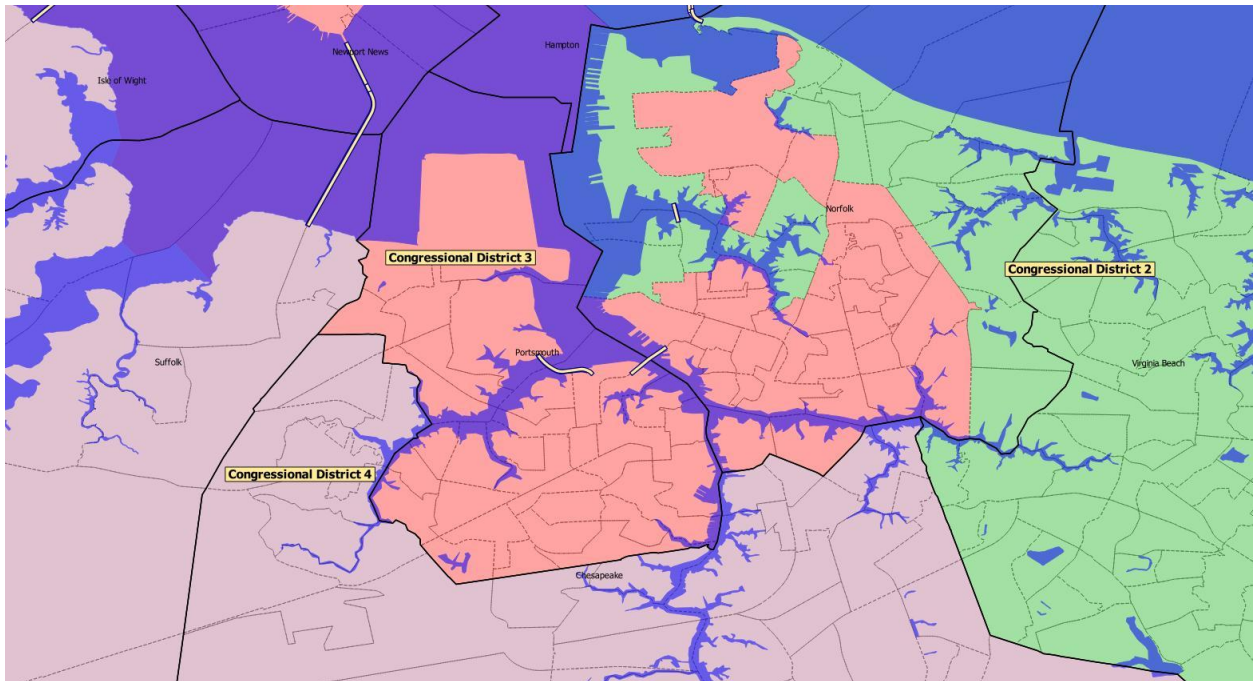


Figure 2. The Adopted Third Congressional District, Norfolk and Portsmouth Detail

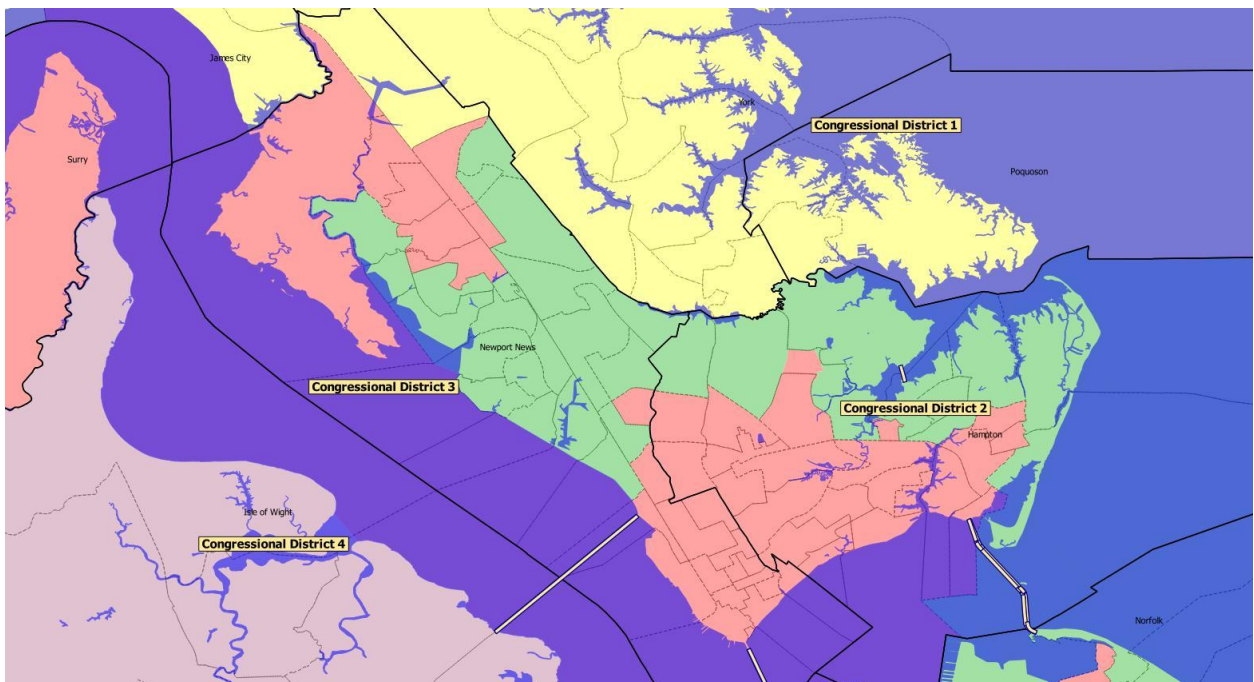


Figure 3. The Adopted Third Congressional District, Newport News and Hampton Detail

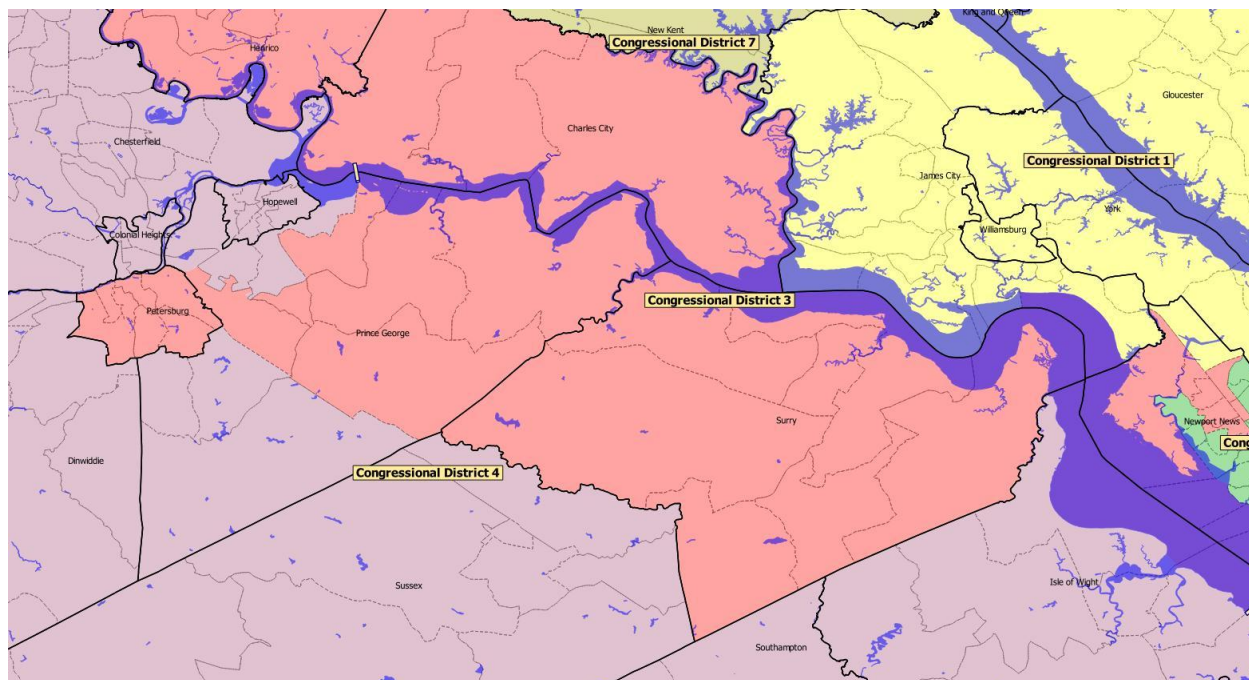


Figure 4. The Adopted Third Congressional District, Petersburg, Prince George, and Surry Detail

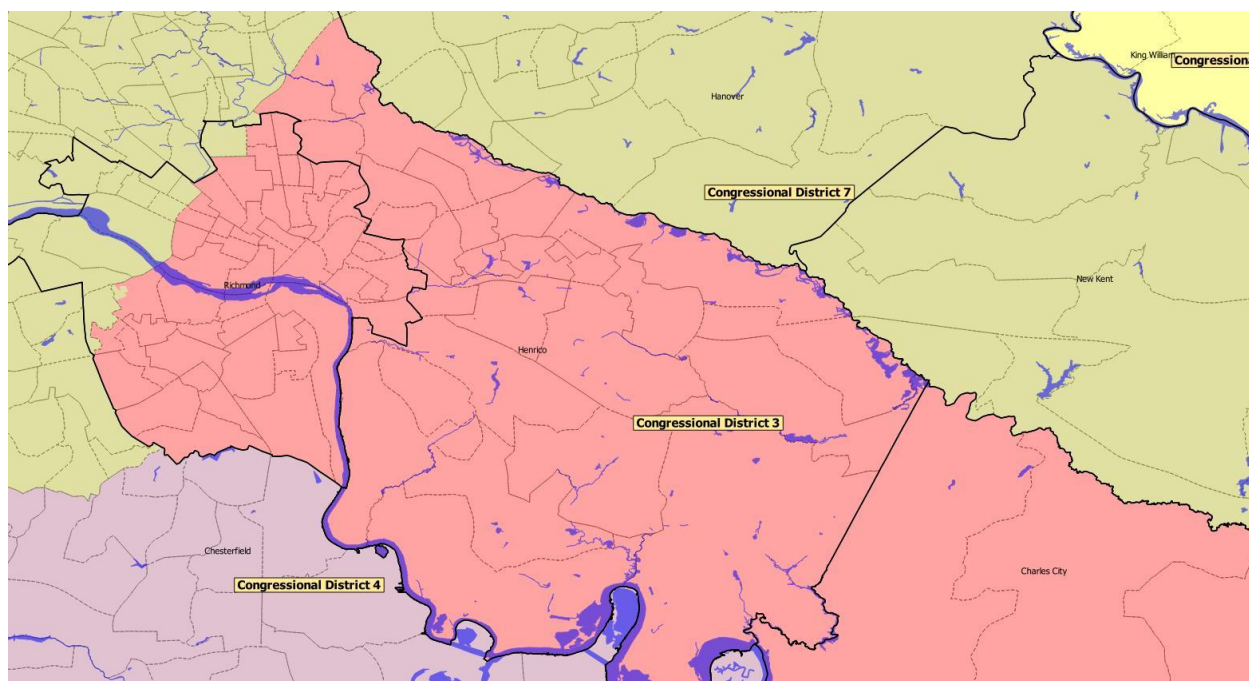


Figure 5. Adopted Third Congressional District, Henrico and Richmond Detail

The *Moon* Court described the physical geography of the unconstitutional Third District in these terms:

"The District has been aptly described as follows:

The Third Congressional District, as presently configured, is an amalgamation principally of African-American citizens contained within the legislatively determined boundaries for the obvious purpose of establishing a safe black district. The district is anchored in the tidewater cities of Norfolk, Suffolk, and Portsmouth. It crosses the Chesapeake Bay to include portions of the cities of Hampton and Newport News where the African-American population is the majority, using only the open water of the Chesapeake Bay and the James River to connect the disparate and non-contiguous portions of these two small cities. The District then crosses the James River into the largely rural Surry County, recrossing the James River to take in all of the African-American majority Charles City County. In Charles City County the district splits in three directions. To the south the District runs through Prince George County and slices through the City of Hopewell, including only those areas where blacks predominate, before terminating some 30 miles away in the City of Petersburg, which it also divides racially. To the east, the District takes in part of rural southeastern Henrico County before reaching the more built up and heavily black eastern suburbs of Richmond, racially dividing the capital city nearly in half before terminating in a small black neighborhood in northern Henrico County. To the north, the district widens out to take all of the rural and agricultural counties of New Kent, King William, King and Queen, and ends its roughly 225 mile trek in Essex County along the banks of the Rappahannock River. (Pl.'s Complaint)."

The adopted Third District can be described in strikingly similar terms to the unconstitutional Third District.

The Third Congressional District, as presently configured, is an amalgamation principally of African-American citizens contained within the legislatively determined boundaries for the obvious purpose of establishing a safe black district. The district is anchored in the tidewater cities of Norfolk, Suffolk, and Portsmouth. It crosses the Chesapeake Bay to include portions of the cities of Hampton and Newport News where the African-American population is the majority, using only the open water of the Chesapeake Bay and the James River to connect the disparate and non-contiguous portions of these two small cities. The District then crosses the James River into the largely rural Surry County and dividing Prince George County. In Prince George County, the District splits in two directions. To the south the District takes in all of the African-American majority City of Petersburg. To the north the District recrosses the James River to take in all of the African-American majority Charles City County. The District then takes in rural eastern Henrico County before reaching the more built up and heavily black eastern suburbs of Richmond, racially dividing the capital city nearly in half before terminating in a black neighborhood in northern Henrico County.

I examine below in greater detail the Third District's (1) compactness, (2) contiguity, (3) locality splits, and (4) Voting Tabulation District splits.

A. Compactness

In Table 1, I report the compactness of the adopted congressional districts. I report three commonly used compactness measures called the Reock Test, Polsby-Popper Test, and the Schwartzberg Test.

The Reock Test compares a district to a circle, considered by many to be the most compact shape. The test involves calculating the ratio of the area of a district to the area of the smallest circle that can be drawn around it. This ratio ranges between zero and one, with one being the most compact shape (in this case, the district is a circle). Thus, lower values of the Reock Test correspond with less compact districts.

The Polsby-Popper Test also compares a district to a circle. This test involves calculating the ratio of the area of a district to a circle with the same perimeter as the district. As with the Reock Test, a lower value indicate a less compact district.

The Schwartzberg Test also compares a district to a circle. This test involves calculating the ratio of the perimeter of the district to the perimeter of a circle with the same area. Unlike the two other compactness measures, higher values indicate less compact districts.

District	Reock	Polsby-Popper	Schwartzberg
1	0.28	0.18	2.09
2	0.27	0.20	2.09
3	0.19	0.08	3.07
4	0.32	0.20	2.04
5	0.30	0.15	2.30
6	0.26	0.16	2.17
7	0.30	0.13	2.34
8	0.37	0.26	1.76
9	0.20	0.18	2.13
10	0.29	0.12	2.60
11	0.23	0.09	3.06

Table 1. Compactness of Adopted Congressional Districts

Table 1 illustrates the adopted Third District is an extreme district on all three compactness measures. By any of these measures, the adopted Third Congressional District is the least compact of any adopted district, with a Reock Test score of 0.19, a Polsby-Popper Test score of .08 and a Schwartzberg Test score of 3.07.

B. Contiguity

Contiguity means that all parts of a district are connected. Specifically, a district is contiguous if any part of the district can be reached from any other part without crossing the district boundary — in other words, if the district is not divided into two or more discrete pieces.

Figure 1 demonstrates that the adopted Third District is contiguous at points only by virtue of being connected via water, particularly the James River, without a connecting bridge. Furthermore, the adopted Second District's contiguity is affected by the shape of adopted Third District.

As Figure 2 illustrates, the adopted Second District wraps around the north end of the Norfolk portion of the adopted Third District, crossing Willoughby Bay without a connecting bridge. As the Second District continues to wrap around the Third District, it crosses the Lafayette River without a connecting bridge.

As Figure 3 illustrates, the Second District then crosses the James River to Hampton. Although there is a connecting bridge and tunnel, the northern terminus of the bridge is in the Third District. The Second Congressional District then wraps around the Third District on the northern portion of Hampton crossing the Southwest Branch Back River, this time connected by a bridge.

The Third District is connected from Portsmouth by bridges across intervening water to Norfolk and Hampton. However, further along the west of the James River, only water connects the Hampton and Newport News portions of the Third District. Likewise, only water connects the Newport News and Surry portions of the Third District.

Figure 4 shows that the Third District again crosses the James River just to the east to Hopewell. It is not clear from the Census Bureau's geographical data if the Third Congressional District is connected across the James River between Prince George and Charles City. The Third District's boundary stops at a bridge, but there is insufficient geospatial information to determine if the eastern portion of the bridge is indeed contained in the Third District.

C. Locality Splits

I refer to Virginia's Counties and Independent Cities as "localities," which are defined in the Census Bureau's geography. If a district does not entirely contain a geography, in this case a locality, within its borders, the geography is considered to be "split" by the district.

Seventeen (17) localities are split by all adopted Districts.

In Table 2, I calculate the number of times each adopted District splits a Virginia locality and the number of locality splits that involve the Third Congressional District.

District	Number of Locality Splits by District	Number of Locality Splits Involving CD3
1	5	2
2	3	3
3	9	9
4	4	3
5	3	
6	2	
7	4	2
8	1	
9	2	
10	2	
11	2	

Table 2. Localities Split by Adopted Congressional Districts

The adopted Third District splits nine localities, the most of any adopted district. The next largest number of locality splits are by the First Congressional District, with five, then the Fourth and Seventh Congressional Districts, with four apiece. The adopted Second Congressional district splits three localities.

The adopted Third District contributes to the higher number of locality splits with its surrounding districts. All three of the adopted Second District's locality splits involve the Third District. Three of four of the adopted Fourth District's locality splits involve the Third District. Two of four of the adopted Seventh District's locality splits involve the Third District. Two of five of the adopted First District's locality splits involve the Third District.

The statistics presented in Table 2 illustrate that a typical adopted Virginia Congressional District splits at most three localities. The adopted Third District is an anomaly. The Third District splits nine localities, the most of any district. Since another district must be involved in a split, the districts adjacent to the Third Congressional District have a higher number of locality splits due to the unusually large number of locality splits involving the Third Congressional District.

In determining that race was the predominant factor in the creation of the unconstitutional Third District, the *Moon* Court noted that "[a]s of 1993, the Congressional district plan splits some 21 independent cities and counties, with more than half of those county and city splits (11) in the Third District." 952 F. Supp. at 1148. Similarly here, the adopted Third District splits 17 independent cities and counties, with more than half of those locality splits in the adopted Third District.

District	Number of VTD Splits by District	Number of VTD Splits Involving CD3
1	4	1
2	5	5
3	14	14
4	7	7
5	3	
6	1	
7	2	1
8	2	
9	1	
10	2	
11	3	

Table 3. Voting Tabulation District Splits by Adopted Congressional Districts

D. Voting Tabulation District Splits

In Table 3, I calculate the number of times Virginia Voting Tabulation Districts (VTDs) are split by the adopted districts and the number of VTD splits that involve the Third District.

Twenty (20) VTDs are split by all adopted Districts.

The adopted Third District splits fourteen VTDs, the most of any adopted district. The next largest number of VTD splits are in the Fourth District, with seven, then the Second District, with five, and the First District, with four. The adopted Seventh District splits two VTDs.

The Third District contributes to the higher number of VTD splits in its surrounding districts. All seven of the Fourth District's VTD splits involve the Third Congressional District, as do all five of the VTD splits of the Second District. One of four of the First District's VTD splits involves the Third Congressional District. One of two of the Seventh District's locality splits involves the Third Congressional District.

The statistics presented in Table 3 illustrate that, without factoring in the Third District, a typical adopted Virginia Congressional District splits, at most, three VTDs. The adopted Third District is again an extreme outlier, as it is with locality splits presented in Table 2. The Third Congressional District splits 14 VTDs, twice as many as any other district. Since another district must be involved in a split, the districts adjacent to the Third District — particularly the Second and Fourth Districts — have a higher number of locality splits due to the unusually large number of locality splits involving the Third District.

In its determination that race was the predominant factor in the creation of the unconstitutional Third District, the *Moon* Court noted that "the entire State's redistricting had only 54 split precincts, but 37 of them were in the Third District." 952 F. Supp. at 1148. Similarly here, the

adopted Congressional District plan has only 20 VTD splits, but 14 of them are within the Third District.

E. Summary

The adopted Third Congressional District is bizarrely shaped. It is the least compact of all the adopted congressional districts. At least at two points, perhaps three, it is contiguous only across water without a connecting bridge. The adopted Third District is involved in a majority of the locality and VTD splits across all adopted Districts.

These are all factors that the *Moon* Court considered when determining that Virginia used race as the predominant factor when adopting the Third District in 1993.

Furthermore, the bizarrely shaped Third Congressional District negatively affects the Second Congressional District's contiguity. At three points the Second Congressional District wraps around the Third Congressional District in a manner that traverses water without a connecting bridge.

5. Historical Performance of Candidates to the Third District

Candidate	2002	2004	2006	2008	2010	2012
<i>Rep. Bobby Scott</i>	96.1%	69.3%	96.1%	97.0%	70.0%	81.3%
<i>Republican Opponent</i>		30.5%			27.2%	18.5%
<i>Other Candidates</i>	3.9%	0.1%	3.9%	3.0%	2.8%	0.3%

Table 4. Election Results for the Third Congressional District, 2002-2012

As reported in Table 4, the African-American candidate in the Third District, and presumably African-American candidate of choice, Rep. Bobby Scott was reelected to the district from 2002 to 2012 with an average vote share of 85.0%. In the 2010 election, a historically good election for Republican candidates nationwide, Rep. Scott received 70.0% of the vote. In the subsequent election, following the increase of the Black voting-age population of the Third District, Rep. Scott received 81.3% of the vote.

Rep. Scott has won overwhelmingly lopsided election victories in the benchmark and adopted Third District before the recent redistricting. The increase of the Black voting-age population of the Third District is thus at face value not needed to continue to elect the African-American candidate of choice.

The Commonwealth of Virginia did not include in its Section 5 submission to the Department of Justice an analysis to determine if the Black voting-age population of the benchmark Third District needed to be increased in order for the African-American community to continue to elect a candidate of choice. Other jurisdictions in the United States have performed such analyses. In South Carolina, for example, a "to elect" analysis of State Senate District 10 found that a Black

voting-age population of 33.3% was effective for the African-American community to have the ability to elect candidates of its choice, and the Department of Justice approved the district.³

As analyses in other states demonstrate, the Black voting-age population of the Third District needed to elect an African-American candidate of choice may be substantially lower than the adopted or even benchmark Third District's Black voting-age population.

6. The Black Voting-Age Population of the Third District Was Strategically Increased

In addition to an examination of the shape of the Third District, the Court's analysis in *Moon v. Meadows* examined how "[t]hroughout the redistricting process, the Legislature sought to protect and indeed enhance this initial ratio [of Black population]." 952 F. Supp. at 1146. The Court examined changes to the District adopted by the General Assembly through amendments by the Governor — Virginia's Governor has amendatory veto power — and through subsequent amendments to the district in 1993. The Court found these moves were further evidence of "Virginia's predominant attention to the principal goal of creating a safe black district" *Id.*

I perform a similar analysis as the *Moon v. Meadows* Court, using the benchmark Third District as the baseline for comparison. I begin by describing important aspects of the data and proceed with analyzing trades made between the Third District and surrounding Districts.

Notwithstanding the historical performance of the African-American candidate of choice in the Third District, the General Assembly increased the Black voting-age population of the District.

In my opinion, similar to the process observed by the *Moon v. Meadows* Court, Virginia traded population among the Third and surrounding Districts with the purpose of increasing the Black voting-age population of the adopted Third District.

A. Defining the Black Voting-Age Population

Prior to the 2000 census individuals could identify themselves as one – and only one – of five racial populations: American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, or White.

Beginning with the 2000 census, individuals may identify themselves as belonging to one or more of the five racial populations. With some frequency, individuals identify themselves as belonging to more than one of these racial groups.

To address the potential non-comparability of race statistics, the Office of Management and Budget (OMB) issued Bulletin No. 00-02, which provides guidance on the allocation of multiple-race responses for use in civil rights monitoring and enforcement. The Bulletin directs

³ Exhibit 14 of South Carolina's Section 5 submission, "Retrogression Analysis for the South Carolina Senate Districting Plan Adopted in 2001" by Richard L. Engstrom, July 27, 2011.

federal agencies to treat an individual who lists more than one race as belonging to the minority group that is the subject of the complaint or enforcement action under consideration.

The Department of Justice also has published a statement regarding allocation of multiple-race categories in the Federal Register Notice "Guidance Concerning Redistricting and Retrogression Under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c". The Department of Justice describes a process to evaluate Section 5 retrogression whereby a minority race population is calculated in two steps. First, the minority population is calculated as consisting of those persons who identify themselves as belonging to (1) the minority race alone and (2) the minority race and the White population. Second, other combinations of minority races will be considered if it appears there are significant numbers of responses among the other racial combinations. This Guidance was written prior to the release of the census population data in 2000. The Guidance language is couched in terms of what Department of Justice expected – that the number of responses to multiple-race categories would be small.

Plaintiffs allege racial gerrymandering with respect to Black or African-American voters. Virginia congressional districts are drawn to equalize total population. Voting rights questions involve voters, and thus minority voting rights analyses primarily examine the voting-age population (VAP) of the minority group at issue.

Consistent with the OMB Bulletin and Department of Justice Guidance, I calculate two statistics for the Black VAP. First, I calculate Black VAP as a combination of census responses identifying a person as Black or Black and White. I call this the “exclusive” method since it excludes some multi-race individuals who identified themselves to the Census Bureau as African-American. Second, I calculate Black VAP as any response where Black is chosen alone or in combination with one or more other races. I call this the “inclusive” method since it includes all individuals who identified themselves to the Census Bureau as African American.

It is my opinion that the inclusive method is the valid calculation consistent with the OMB Bulletin and DOJ Guidance for the voting rights allegations raised by Plaintiffs. I report these statistics alongside the exclusive method calculations, as the Virginia General Assembly reports only the exclusive method calculations in their redistricting statistical reports.

B. Population of Adopted and Benchmark Third District

In Table 5, I report population statistics for the benchmark and adopted Third Congressional District.

The ideal population for each Virginia congressional district following the 2010 census is 727,366 persons. Prior to the last redistricting, the benchmark Third District had 663,390 persons according to the 2010 census. The benchmark Third District needed to add 63,976 persons to achieve population equality with other Virginia congressional districts.

	Total Pop.	Ideal Pop.	Deviation	VAP	Black VAP (Exclusive Method)	Black VAP (Inclusive Method)	%Black VAP (Exclusive Method)	%Black VAP (Inclusive Method)
<i>Benchmark</i>	663,390	727,366	-63,976	511,559	271,419	275,499	53.1%	53.9%
<i>Adopted</i>	727,366	727,366	0	560,158	315,604	320,210	56.3%	57.2%
<i>Change from Benchmark to Adopted</i>	63,976			48,599	44,185	44,711	3.3%	3.3%
<i>%Black VAP of Net VAP Added to Benchmark District</i>					90.9%	92.0%		

Table 5. Selected Population Statistics for the Benchmark and Adopted Third Congressional District

Prior to the redistricting, the benchmark Third District had a total voting-age population of 511,559 persons. As calculated using the exclusive method, 271,419 of those persons were Black, or 53.1% of the VAP. As calculated using the inclusive method, 275,499 of those persons were Black, or 53.9% of the VAP. The inclusive method counts 4,080 additional voting-age persons over the exclusive method as identifying themselves as Black or African-American in the benchmark Third District.

The adopted Third District's total population is 727,366 persons, exactly equal to the ideal population for a Virginia congressional district, and represents an increase of 63,976 persons over the Benchmark Third District.

Following the redistricting, the adopted Third District had a voting-age population of 560,158 persons. This represents an increase of 48,599 persons of voting-age over the benchmark Third District. As calculated using the exclusive method, 315,604 of those persons were Black, or 56.3% of the VAP. This represents an increase 3.3 percentage points over the benchmark Third District (the apparent discrepancy is due to rounding). As calculated using the inclusive method, 320,210 of those voting-age persons were Black, or 57.2% of the VAP. This also represents an increase of 3.3 percentage points over the benchmark district. The inclusive method counts 4,606 additional voting-age persons over the exclusive method as identifying themselves as Black in the adopted Third District.

C. Detailed Changes to the Third District

For Virginia to increase the Black VAP from the Benchmark to the Adopted Third District, given that the benchmark Third District required additional population, areas with substantially higher Black VAP than the benchmark Third District were added to the benchmark district. During the redistricting process, either a net of 44,185 (exclusive method) or 44,711 (inclusive method) Blacks of voting-age were added to the district. In other words, among the net voting-age population added from the surrounding benchmark districts to the adopted Third District, 90.9% (exclusive method) or 92.0% (inclusive method) were Black.

Four congressional districts are adjacent to the benchmark Third District: the First, Second, Fourth, and Seventh. While the Black voting-age population of the adopted Third District was

increased relative to the benchmark district, all four of these adjacent districts saw a decrease in Black voting-age population percentages. The Black VAP of the First District decreased 2.6 percentage points (either method), the Second District decreased 0.2 percentage points (either method), the Fourth District decreased 2.2 percentage points (either method), and the Seventh District decreased 2.4 percentage points (either method).

Table 6 presents population statistics for the population that was removed from the benchmark Third District into the surrounding adopted congressional districts and the population that was removed from the surrounding benchmark districts into the adopted Third Congressional District.

Benchmark to Adopted District	Total Pop	VAP	Black VAP (exclusive method)	Black VAP (inclusive method)	% Black VAP (exclusive method)	% Black VAP (inclusive method)
1 → 3	23,288	17,805	7,736	7,933	43.4%	44.6%
3 → 1	7,351	5,106	2,224	2,286	43.6%	44.8%
2 → 3	27,917	20,543	7,548	7,785	36.7%	37.9%
3 → 2	25,501	20,049	3,661	3,774	18.3%	18.8%
4 → 3	35,447	27,835	20,917	21,089	75.1%	75.8%
3 → 4	5,713	4,176	1,729	1,757	41.4%	42.1%
7 → 3	36,106	27,743	17,853	18,035	64.4%	65.0%
3 → 7	20,217	15,996	2,255	2,314	14.1%	14.5%
Net Change to Third District	63,976	48,599	44,185	44,711	90.9%	92.0%

Table 6. Population Movement Between Benchmark and Adopted Congressional Districts

Although the benchmark Third District needed to gain population, population was not only added to the adopted Third District from surrounding benchmark districts, population was also moved *from* the benchmark Third Congressional District into the surrounding adopted districts. Since the Third District needed to add population to reach population equality, the population moved from the benchmark Third District made the redistricting more complex, as even more population needed to be added to the Third District to compensate for the population removed from the District.

A simple strategy to increase the Black VAP of the adopted Third District might involve moving high density African-American communities into the district from the surrounding benchmark districts. A sophisticated strategy to increase the Black VAP of the adopted Third District further involves removing lower density Black VAP communities from the benchmark Third District and replacing them with higher density Black VAP communities from surrounding benchmark districts.

The sophisticated strategy of trading lower density Black VAP communities in the benchmark Third District with higher density Black VAP communities in the surrounding benchmark districts is evident in Table 6.

In the trades between the Third District and the Second, Fourth, and Seventh Districts, lower density Black VAP communities were removed from the benchmark Third Congressional District and higher density Black VAP communities were added to the adopted Third District from these surrounding benchmark districts. The communities traded between the benchmark Third and First Districts appear to have substantially similar Black VAP, however these trades were part of a complex three-way trade that involved the Second District.

I discuss below trades of population and geography between the (1) First and Third Districts, (2) Second and Third Districts, (3) Fourth and Third Districts, and (4) Seventh and Third Districts.

Figures 6 through 10 illustrate changes to the benchmark and surrounding Districts. The adopted congressional districts are presented in the same color scheme as before. Benchmark congressional district boundaries are presented as red lines. Locality boundaries are presented as black lines and VTD boundaries are presented as gray lines. Water is colored blue and shaded according to adopted district colors. Bridges are presented as yellow.

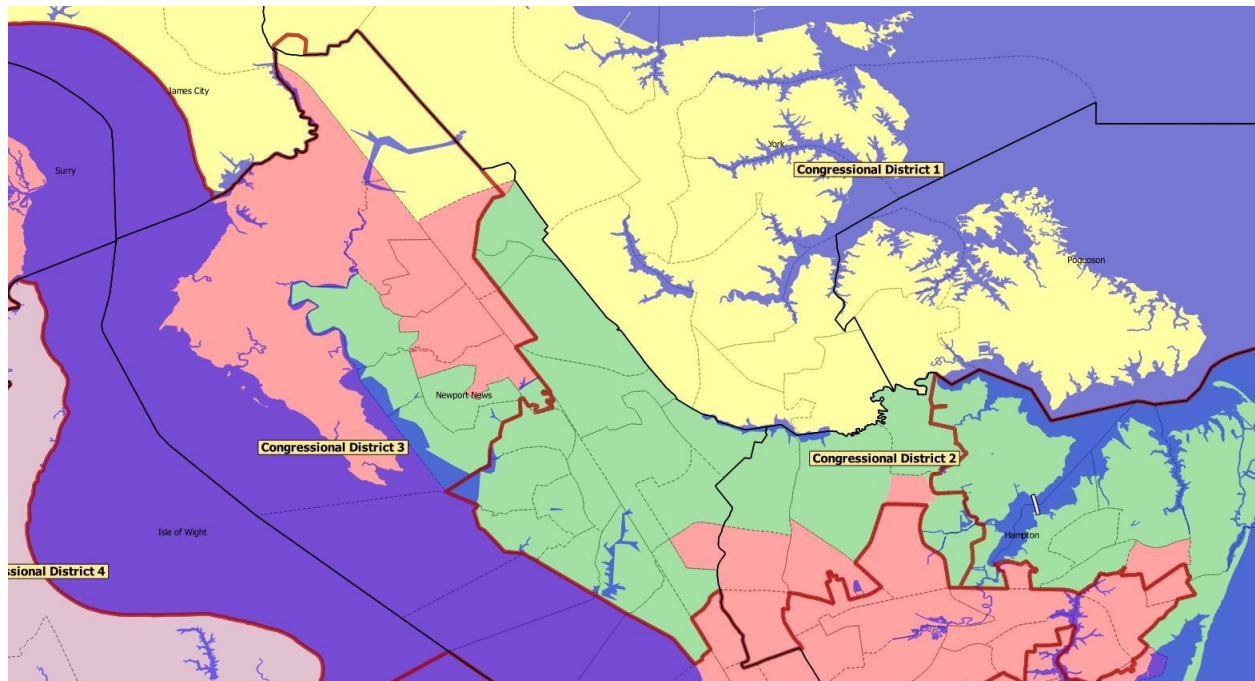


Figure 6. Geography Trades between the First and Third Districts

(1) Trades between the First and Third Districts

Trades between the First and Third Districts primarily involved a complex trade between the First and Second Districts. Race predominated in these trades in how Hampton and Newport News population formerly assigned to the benchmark First District was segregated along racial lines, with predominantly White population given to the Second District and predominantly Black population given to the Third District.

Prior to the redistricting, the benchmark First and Third Districts shared common borders in Hampton and Newport News. The adopted First District's southern border was removed entirely from Hampton and almost entirely from Newport News.

Much of the Newport News territory surrendered by the First District is predominantly White according to the 2010 census. Giving this population to the adopted Third District would have avoided the necessity of linking the Hampton and Newport News portions of the Third District via the James River with no connecting bridge. Instead, the General Assembly chose to wrap the adopted Second District around the Hampton portion of the adopted Third District, at one point creating a narrow neck less than a mile wide. This neck then enabled the General Assembly to segregate Newport News along racial lines between the Second and Third Districts.

Fifteen of sixteen whole Newport News VTDs formerly in the benchmark First District were assigned to the adopted Second District, plus parts of three more VTDs formerly split between the benchmark First and Third Districts. One whole VTD formerly in the benchmark First District was assigned to the adopted Third District.

The single Newport News VTD formerly located in the benchmark First District assigned to the adopted Third District — South Morrison — has the highest Black voting-age population of any of the whole VTDs formerly located in the benchmark First District. South Morrison has a total population of 4,473 persons, a VAP of 3,267 persons, and a Black VAP of 46.9% (exclusive method) or 48.1% (inclusive method).

The total of all other Newport News population formerly located in the benchmark First District and assigned to the Second District has a total population of 70,701 persons, a VAP of 55,944 persons, and a Black VAP of 22.6% (exclusive method) or 23.1% (inclusive method).

Three of six whole Hampton VTDs formerly in the benchmark First District were assigned to the Second District and the remaining three whole VTDs were assigned to the Third District. A part of one VTD in Hampton was split between the Second and Third.

The four Hampton VTDs formerly located in the benchmark First District and assigned to the adopted Second District (three wholly and one in part) have a total population of 12,897 persons, a VAP of 9,774 persons, and a Black VAP 44.6% (exclusive method) or 45.7% (inclusive method).

The four Hampton VTDs formerly located in the benchmark First District and assigned to the adopted Third District (three wholly and one in part) have a total population of 18,815 persons, a VAP of 14,538 persons, and a Black VAP 42.7% (exclusive method) or 43.8% (inclusive method).

The Hampton population assigned from the benchmark First District to the adopted Third District has a slightly lower Black VAP percentage than the population assigned to the adopted

Second District — 2.0 percentage points lower by either calculation method. At the same time, however, the geography assigned to the adopted Second District is less densely populated, such that although both the adopted Second and Third Districts were each assigned three VTDs formerly in the benchmark First District and one was split between them, 5,918 fewer Hampton residents formerly in the benchmark First District were assigned to the Second District compared to the Third District. The lower total population gain realized in the Second District's connection through Hampton meant a larger number of Newport News Whites could be added to the Second District, thereby more than offsetting the slightly higher Hampton Black VAP percentage formerly in the First District assigned to the Second District.

One whole Newport News VTD formerly assigned to the benchmark Third District was assigned to the First District. Additionally, a portion of Greenwood was assigned to the adopted First District (a very small portion of this VTD was formerly split between the benchmark First and Third Districts). A small portion of one York County VTD — Magruder — formerly located in the benchmark Third District was also assigned to the adopted First District. (It is appropriate to mention this York VTD here since it is contiguous to the Newport News VTDs.)

The total of these three assignments of VTD portions from the benchmark Third District to the adopted First District are reported in Table 6 and have a total population of 7,351 persons, a VAP of 5,106 persons, and a Black VAP of 43.6% (exclusive method) or 44.8% (inclusive method).

The population moved from the benchmark First District to the adopted Third District have a total population of 23,288 persons, a VAP of 17,805 persons, and a Black VAP of 43.4% (exclusive method) or 44.6% (inclusive method).

There may appear to be no racial component to the trades between the First and Third Districts from the Table 6 statistics since a slightly higher BVAP percentage was transferred into the First District. However, race played a role. Predominantly White Newport News VTDs could have been given to the adopted Third District when the benchmark First District was removed from these localities. This population was instead given to the adopted Second District. The Newport News population that was given to the adopted Third District had the highest Black VAP of any VTD in the benchmark First District.

Furthermore, the adopted Second District was made contiguous to Newport News by way of a low-population mile-wide finger wrapping around the Hampton portion of the adopted Third District. Indeed, as described in the next section, even further segregation of Newport News was enabled by this configuration since the adopted Second District was now able to take additional predominately White Newport News population from the benchmark Third District.

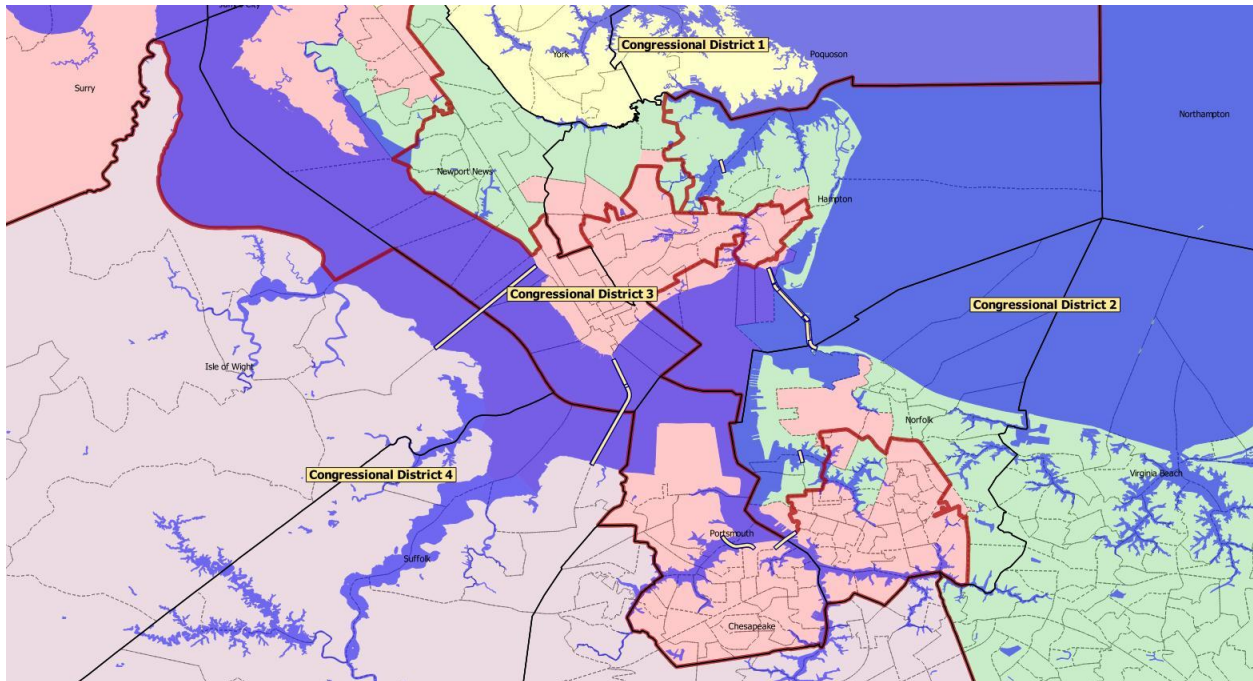


Figure 7. Geography Trades between the Second and Third Districts

(2) Trades between the Second and Third Districts

As reported in Table 6, population trades between the Second and Third Districts further segregated these districts' populations along race by moving higher Black VAP areas from the benchmark Second District into the adopted Third District in exchange for lower Black VAP territory moved from the benchmark Third District to the adopted Second District. Furthermore, these trades reduced the compactness of the Second and Third Districts and resulted in three instances where the Second District is contiguous by water with no connecting bridge.

The population moved from the benchmark Second District to the adopted Third District had a total population of 27,917 persons, a VAP of 20,543 persons, and a Black VAP of 36.7% (exclusive method) or 37.9% (inclusive method).

The population moved from the benchmark Third District to the adopted Second District had a total population of 25,501 persons, a VAP of 20,049 persons, and a Black VAP of 18.3% (exclusive method) or 18.8% (inclusive method).

I review below trades between the Second and Third Districts, which occurred in the localities of (a) Newport News, (b) Norfolk, and (c) Hampton.

a. Newport News

In Newport News, all trades between the Second and Third Districts involved moving predominantly White population from the benchmark Third District to the adopted Second

District. Four whole VTDs and parts of two others were assigned from the benchmark Third District to the adopted Second District.

Furthermore, these trades resulted in a less compact alignment of the Second and Third Districts as an arm of the adopted Second District was extended along the James River shore. While it may appear from visual inspection that a sizable VTD connects the Newport News portion of the adopted Third District to the James River, all but a small sliver on the northern end of the shore has zero-population.

These trades from the benchmark Third District to the adopted Second District resulted in moving a total population of 17,745 persons, a VAP of 13,592 persons, and a Black VAP of 19.1% (exclusive method) or 19.7% (inclusive method).

As described in the section above regarding trades between the First and Third Districts, none of these trades between the Second and Third Districts would have been possible if the Second District had not been connected to Newport News through a complex series of trades with the benchmark First District. Thus, trades between the First and Third Districts should not be viewed in isolation since they enabled the adopted Second District to take predominantly White Newport News population from the benchmark Third District.

b. Norfolk

In Norfolk, trades between the Second and Third District involved moving higher density Black VAP areas from the benchmark Second to adopted Third District in exchange for lower density Black VAP areas from the benchmark Third to the adopted Second District. Furthermore, these trades negatively affected the compactness of both districts and created three portions of the adopted Second District to be connected by water with no connecting bridge.

Three whole VTDs and a part of one were assigned from the benchmark Second District to the adopted Third District. At the same time, three whole VTDs were assigned from the benchmark Third District to the adopted Second District.

In sum, the Norfolk population shifts from the benchmark Second District to the adopted Third District resulted in moving a total population of 13,791 persons, a VAP of 9,694 persons, and a Black VAP of 35.0% (exclusive method) or 36.0% (inclusive method).

In sum, the Norfolk population shifts from the benchmark Third District to the adopted Second District resulted in moving a total population of 8,026 persons, a VAP of 64,57 persons, and a Black VAP of 16.6% (exclusive method) or 16.9% (inclusive method).

Reassignment of four Norfolk VTDs exemplify how the reconfiguration had a negative effect on the traditional redistricting principles of compactness and contiguity. One VTD, Titustown Center, was moved from the benchmark Second District to the adopted Third District. Three

VTDs with roughly similar population — Suburban Park, Willard, and Lafayette — were moved from the benchmark Third District to the adopted Second District.

Titustown Center has 7,528 persons, of whom 4,990 are of voting-age, and among the voting-age population 1,649 (exclusive method) or 1,700 (inclusive method) persons are African-American or Black. The Black percentage of the voting-age population is 33.0% (exclusive method) or 34.1% (inclusive method).

Suburban Park, Willard, and Lafayette combined have a total population of 8,026 persons, of whom 6,467 are of voting-age, and among the voting-age population 1,070 (exclusive method) or 1,093 (inclusive method) persons are African-American or Black. The Black percentage of the voting-age population is 16.6% (exclusive method) or 16.9% (inclusive method).

The reconfiguration of these four VTDs caused two portions of the adopted Second District to be connected across water, with no connecting bridge. Following the assignment of Titustown Center from the benchmark Second District to the adopted Third District, the western Norfolk portion of the adopted Second District is contiguous to the remainder of the district only across Willoughby Bay, with no connecting bridge. Following the assignment of Suburban Park, Willard, and Lafayette from the benchmark Third District to the adopted Second District, these three precincts are contiguous to the Second District only across the Lafayette River, with no connecting bridge.

A simple visual inspection reveals that the benchmark Second District divided Norfolk with the benchmark Third District in a more compact manner than the adopted districts. Following the redistricting, the adopted Second District wraps around four VTDs assigned to the adopted Third District so that Suburban Park, Willard, and Lafayette may be assigned to the adopted Second District.

In sum, traditional redistricting principles were subsumed to race to accomplish this move, which results in visually less compact districts and an adopted Second District that must twice traverse water without a bridge.

c. Hampton

In Hampton, all trades between the Second and Third Districts involved moving population from the benchmark Second District to the adopted Third District. Four whole VTDs and a portion of one VTD were assigned from the benchmark Second District to the adopted Third District.

These trades from the benchmark Second District to the adopted Third District resulted in moving a total population of 14,126 persons, a VAP of 10,849 persons, and a Black VAP 38.3% (exclusive method) or 40.0% (inclusive method).

The reassignment of these VTDs simultaneously improved and degraded the connectedness of the adopted Second and Third Districts over water. A portion of the benchmark Second District

formerly connected only via the James River was assigned to the adopted Third District. However, the assignment of the whole VTD at the northern terminus of the Hampton Roads Bridge-Tunnel — Pheobus — from the benchmark Second District to the adopted Third District resulted in all of the Hampton and Newport News portions of the adopted Second District to be connected by water without a connecting bridge to the remainder of the Second District.

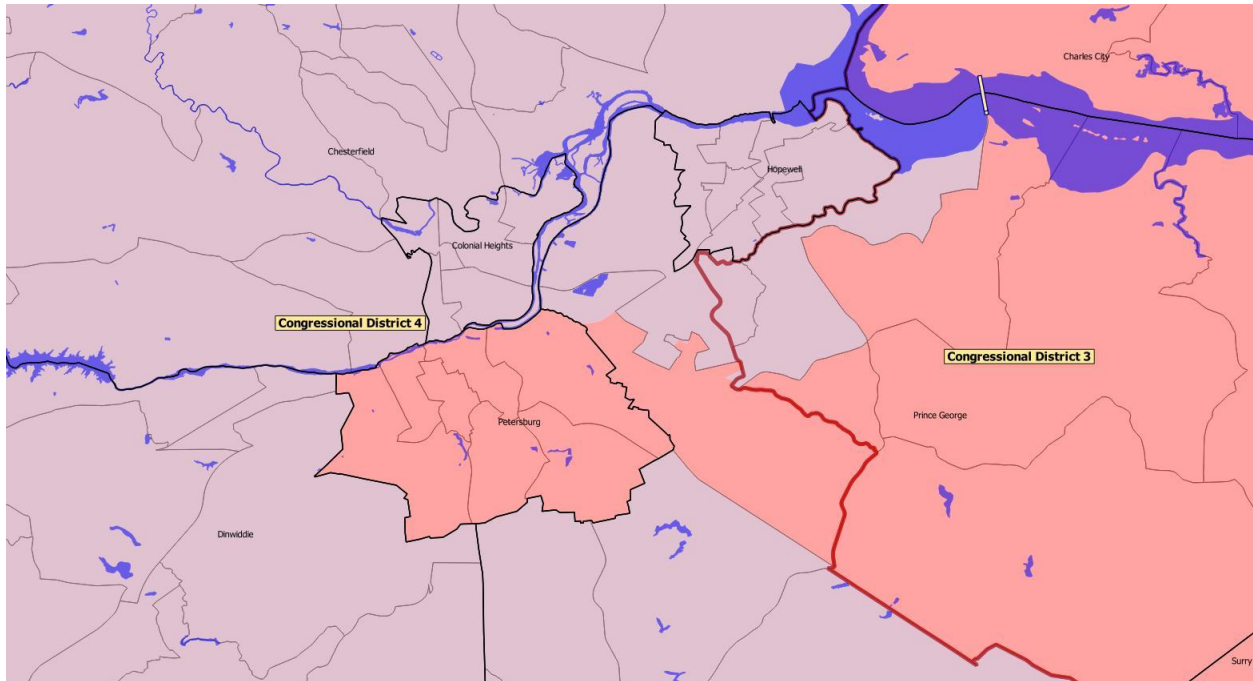


Figure 8. Geography Trades between the Third and Fourth Districts

(3) Trades between the Fourth and Third Districts

Trades between the Fourth and Third Districts are located in Prince George and Petersburg. The primary result of these trades was to move the entirety of the densely African-American community of Petersburg from the benchmark Fourth District to the adopted Third District.

The population moved from the benchmark Fourth District to the adopted Third District had a total population of 35,447 persons, a VAP of 27,835 persons, and a Black VAP of 75.1% (exclusive method) or 75.8% (inclusive method).

The population moved from the benchmark Third District to the adopted Fourth District had a total population of 5,713 persons, a VAP of 4,176 persons, and a Black VAP of 41.4% (exclusive method) or 42.1% (inclusive method).

In Prince George, the whole of one VTD and a portion of another were assigned from the benchmark Third District to the adopted Fourth District. A portion of one VTD was assigned from the benchmark Fourth District to the Third District. Although the net of the Prince George

changes alone is largely a wash,⁴ the assignment of this latter portion enabled the whole of densely-Black Petersburg to be assigned from the benchmark Fourth District to the adopted Third District.

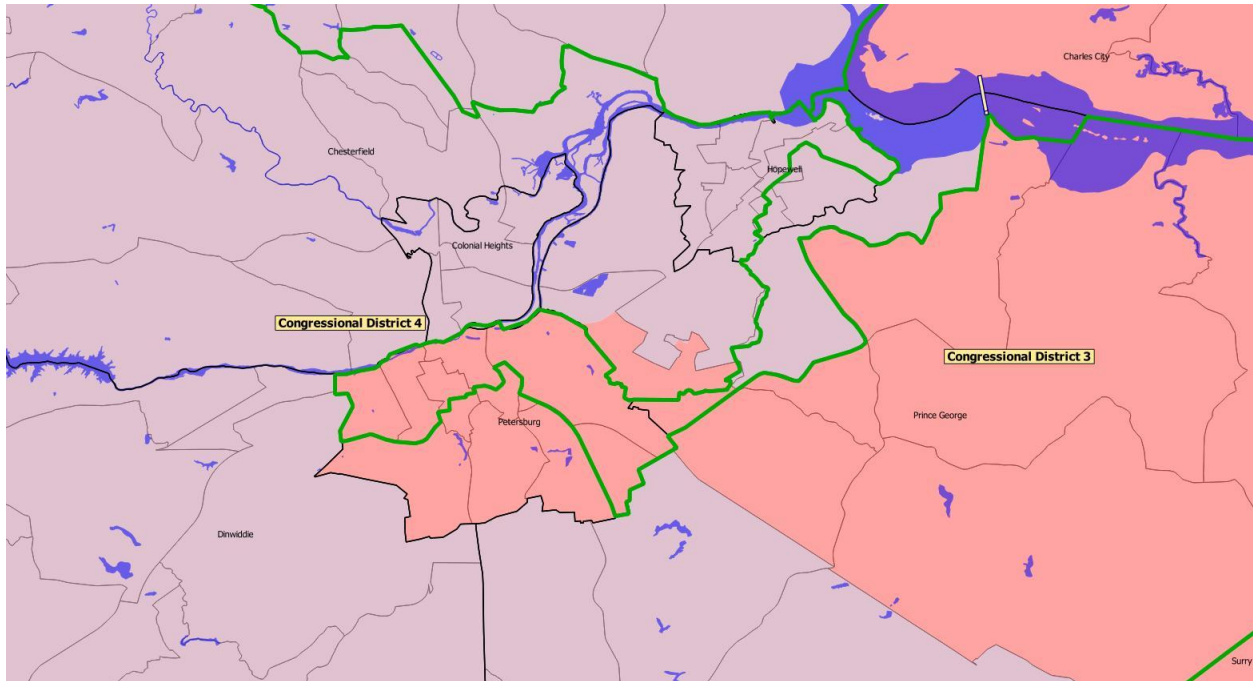


Figure 9. Geography Trades between the Third and Fourth Districts, Unconstitutional 1990s District Boundary in Green.

The Petersburg population shifts from the benchmark Fourth District to the adopted Third District resulted in moving a total population of 32,420 persons, a VAP of 25,713 persons, and a Black VAP of 78.0% (exclusive method) or 78.6% (inclusive method).

The assignment of Petersburg to the adopted Third District is similar to the unconstitutional District at issue in *Moon v. Meadows*. To demonstrate, I overlay in Figure 11 the unconstitutional Districts, identified by a dark green line, onto the adopted Districts, colored as before.

The unconstitutional Third District extended from Charles City through portions of Prince George to connect to then-predominantly Black portions of Petersburg. The adopted Third District similarly extends through portions of Prince George to connect all of Petersburg.

⁴ The Prince George population shifts from the benchmark Third District to the adopted Fourth District resulted in moving a total population of 5,713 persons, a VAP of 4,176 persons, and a Black VAP of 41.4% (exclusive method) or 42.1% (inclusive method). The Prince George population shifts from the benchmark Fourth District to the adopted Third District resulted in moving a total population of 3,027 persons, a VAP of 2,122 persons, and a Black VAP of 40.3% (exclusive method) or 41.2% (inclusive method).

The unconstitutional Third District split Petersburg, while the adopted Third District does not. Because Petersburg has become more densely Black since the 1990s census, the end result is still the same: adding densely-Black Petersburg population to the Third District.

1990 census statistics for Petersburg were provided by Plaintiffs' counsel to me in a document with the file name "1998 - Book 1.pdf," provided by the Division of Legislative Services. In 1990, the lowest Black voting-age percentage of any Petersburg VTD was Ward Three, Precinct Two, with 22.1% BVAP. Four of 14 VTDs had BVAP below fifty percent.

As of the 2010 census, the Petersburg VTD with the smallest Black voting-age population is the Third Ward, First Precinct, with a Black VAP of 67.3% (exclusive method) or 67.6% (inclusive method).

With Petersburg now so heavily African-American, there is less need to divide the locality if one has the intent to concentrate African-Americans into a district.

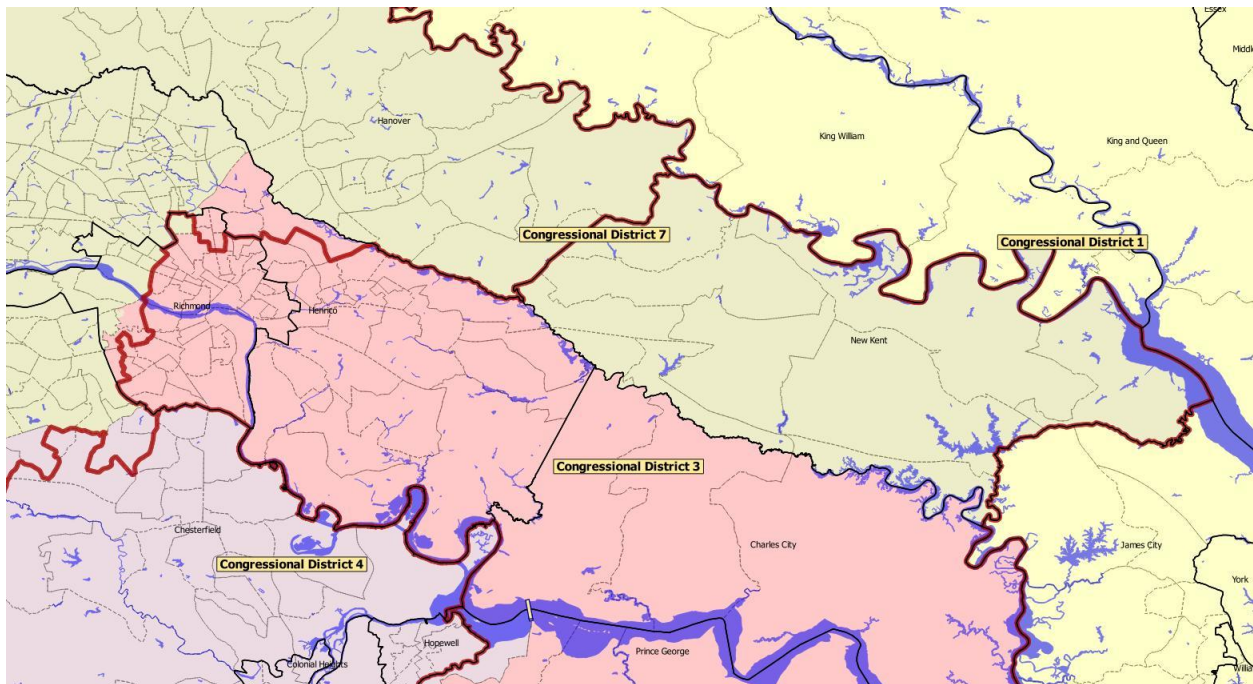


Figure 10. Geography Trades between the Third and Seventh Districts

(4) Trades between the Seventh and Third Districts

Trades between the Seventh and Third Districts primarily involved shifting lower Black VAP New Kent and one Richmond VTD from the benchmark Third District to the adopted Seventh District in exchange for much higher Black VAP VTDs moved from the benchmark Seventh District to the adopted Third District in Henrico and Richmond.

The population moved from the benchmark Seventh District to the adopted Third District had a total population of 36,101 persons, a VAP of 27,743 persons, and a Black VAP of 64.4% (exclusive method) or 65.0% (inclusive method).

The population moved from the benchmark Third District to the adopted Seventh District had a total population of 20,217 persons, a VAP of 15,996 persons, and a Black VAP of 14.1% (exclusive method) or 14.5% (inclusive method).

The whole of New Kent was moved from the benchmark Third District to the adopted Seventh District. These New Kent population shifts from the benchmark Third District to the adopted Seventh District resulted in moving a total population of 18,429 persons, a VAP of 14,328 persons, and a Black VAP of 14.0% (exclusive method) or 14.4% (inclusive method).

In Henrico, all trades between the Seventh and Third Districts involved moving population from the benchmark Seventh District to the adopted Third District. Four whole VTDs were assigned from the benchmark Seventh District to the adopted Third District.

These Henrico population shifts from the benchmark Seventh District to the adopted Third District resulted in moving a total population of 14,550 persons, a VAP of 10,526 persons, and a Black VAP of 77.0% (exclusive method) or 77.8% (inclusive method).

In Richmond, seven whole VTDs and a part of one were moved from the benchmark Seventh District to the adopted Third District. One VTD was moved from the benchmark Third District to the adopted Seventh District.

The Richmond population shifts from the benchmark Seventh District to the adopted Third District resulted in moving a total population of 21,556 persons, a VAP of 17,217 persons, and a Black VAP of 56.6% (exclusive method) or 57.2% (inclusive method).

The single Richmond VTD moved from the benchmark Third District to the adopted Seventh District resulted in moving a total population of 1,788 persons, a VAP of 1,688 persons, and a Black VAP of 14.9% (exclusive method) or 15.1% (inclusive method).

Summary

The net effect of these trades among the Third District and surrounding Districts is reported in Table 6. Predominantly greater Black VAP was moved into the adopted Third District and predominantly lesser Black VAP was moved out of the benchmark Third District. The net result is that 63,976 persons were added to the adopted Third District, 48,599 of whom were persons of voting age; 90.9% (exclusive method) or 92.0% (inclusive method) of this voting-age population is Black.

The overall racial composition of these trades are reflected in the trades made within localities as well. In Norfolk and Richmond, 45,161 persons were traded between the Third District and

surrounding Districts, and in both localities substantially higher Black VAP formerly in surrounding benchmark Districts were swapped for substantially lower Black VAP in the benchmark Third District. The Hampton and Prince George trades between districts were essentially a wash, whereby slightly lower Black VAP in surrounding benchmark districts were swapped for slightly higher Black VAP in the benchmark Third District. Importantly, however, these trades created contiguous geography that enabled one-way trades between Districts, thereby adding substantially higher Black VAP to the adopted Third District in Petersburg and Henrico, and removing substantially lower Black VAP from the benchmark Third District in Newport News.

As a result of similar changes in *Moon v. Meadows*, the Court found the direction of increasing the Black VAP of the unconstitutional District a "...deliberate and integral part of Virginia's predominant intention to the principal goal of creating a safe black district." 952 F. Supp. at 1146. In my opinion, the same holds true for the adopted Third District. Virginia chose to further racially segregate localities from Norfolk to Richmond. Virginia did so through trades that involved removing predominantly White population from the Third District — even though the Third District needed to add population to reach population balance — in exchange for predominantly Black population. This provides further evidence that race was the predominant factor in the creation of the adopted Third District.

7. Conclusions

In my opinion, race predominated in the construction of the adopted Third Congressional District. The bizarre shape of the adopted Third District serves the purpose of segregating localities along racial lines in order to create a majority Black district.

Furthermore, in my opinion changes made to the adopted Third District only intensified racial segregation among the Third and surrounding Districts. The Commonwealth's Section 5 submission to the Department of Justice confirms this. The Commonwealth describes how the changes to the benchmark Third Congressional District resulted in "...an increase in the total and voting-age African-American populations by 3.3 percent and 3.2 percent, respectively, and both total and voting-age populations are increased to over 55 percent." (These percentages are calculated using the exclusive method.)⁵

In my opinion, the fact that the African-American candidate of choice, Rep. Bobby Scott, successfully won reelection by landslide margins throughout the last decade indicates that not only was it unnecessary to increase the Black voting-age population of the Third District, the African-American community would have the ability to elect its candidate of choice with substantially less percentage of the voting-age population.

⁵ See: http://redistricting.dls.virginia.gov/2010/Data/Ref/DOJSubmission2012/Attachment_5_cong.pdf, at 2.

The Department of Justice found similarly that the Black VAP of the Third District can be safely reduced. In the wake of the *Moon v. Meadows* decision Virginia adopted a remedial Third District that reduced the Black VAP of the Third District from 61.6% to 50.5%.⁶ The Department of Justice approved the remedial Third District under the non-retrogression standard.

⁶ See page 2 of a letter from then-Virginia Attorney General Mark Early to the Chief of the Department of Justice Voting Section with the heading "Submission under Section 5 of the Voting Rights Act: Ch. 1, 1998 Va. Acts Redistricting U.S. Congressional Seats." This letter was provided to me by Plaintiff's counsel as part of a FOIA request from the General Assembly's Division of Legislative Services.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on December 6, 2013, in Fairfax, Virginia.

A handwritten signature in cursive script, appearing to read "Michael P. McDonald", written in dark ink on a light background.

Michael P. McDonald