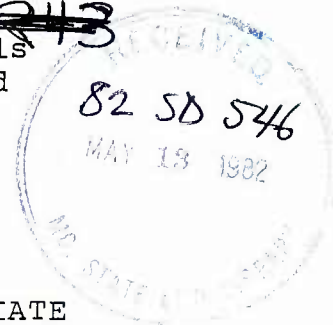


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In the Matter
of the
Legislative Districting
of the State
1982

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In the
Court of Appeals
of Maryland



TO THE HONORABLES, CHIEF JUDGE MURPHY AND THE ASSOCIATE
JUDGES OF THE COURT OF APPEALS OF MARYLAND

REPORT OF THE SPECIAL MASTER

History of the Legislative Plan

A brief summary of the sequence of activities leading to eventual passage of H.J.R. 32 may be of value to the Court.

On April 13, 1981, Governor Harry Hughes appointed an Advisory Committee on Reapportionment (hereafter Advisory Committee) with the Honorable William S. James as Chairman, and with Senate President, James Clark, Jr.; House Speaker, Benjamin L. Cardin; Dr. C. Vernon Gray, a professor at Morgan State University; and Barbara Fetterhoff, a Republican and a member of the League of Women Voters, as Members.

The Advisory Committee conducted seventeen hearings in all parts of the State (see Minutes, Exhibit 1 P) between May 19, 1981 and December 8, 1981, and heard the testimony of 213 persons (see: Affidavit of James, Exhibit 2 H). Guidelines were adopted; legislative input was requested and a maximum standard of plus or minus 5% population deviation fixed (Exhibit 2 H).

For planning purposes, the State was divided into five regions; (1) Eastern Shore Planning Area (Eastern Shore and Harford County), 5 districts; (2) Baltimore City Planning Area, 9 districts; (3) Baltimore County Planning Area, 7 districts; (4) Central and Western Maryland Planning Area (the 5 Western Maryland Counties, Montgomery County, a small portion of Baltimore County and the excess population from Southern Maryland), 13 districts; (5) Central and Western Maryland Planning Area (Southern Maryland and most of Anne Arundel and Prince George's Counties, 13 districts.

The Advisory Committee made this brief summary of its labors:

"The Committee plan is entirely consistent with its goal of substantial population equality. No senatorial district contains a population deviation of + 5%. Although it was constitutionally impossible to maintain all county lines, the Committee strove to keep intact all municipal lines to fashion compact and contiguous districts. Finally, the Committee's Plan does not dilute existing minority strength and, in fact, in some cases augments that strength." (Affidavit of James, Exhibit 2 H, p. 3).

The Report of the Advisory Committee may be found in the Maryland Register, Part II, Vol. 8, Issue 25, dated 2/11/81, pp. 1-94 incl. (Exhibit 2 P).

Subsequent to the filing of the Report of the Advisory Committee, Governor Hughes conducted a hearing on December 21, 1981, at which 24 witnesses spoke concerning redistricting in many State areas (see: Minutes, Exhibit 1 D-B); and on December 23, 1981, at which 46 witnesses addressed the issue of redistricting. (See: Minutes, Exhibit 1 D-C).

Governor Hughes adopted most of the recommendations of the Advisory Committee but did not do so with respect to 13A, 13B, 14A and 14B (see: Affidavit Ex. 1¹ D).

Federal and State constitutional questions are raised in all petitions filed in the subject proceedings. In the light of this fact and to avoid repetition of quotations from decided cases in the seriatum consideration of the several petitions, this report will discuss the decided cases believed to be controlling on the constitutional issues in accordance with the following outline:

1. United States Constitution
 - a. Population equality
 - b. Freedom from invidious discrimination
2. Maryland Constitution.

1. The differences between the Advisory Committee Plan and the Legislative Plan will be discussed infra under the heading Miscellaneous Petition 3.

United States Constitution
Population Equality

The seminal case concerning the constitutional power of the Federal Courts to control State action in the establishment of legislative districts within its borders is Baker v. Carr, 369 U.S. 186 (1962).

In Baker v. Carr, Mr. Justice Brennan, speaking for the Court, declared at page 197:

"[W]e hold today only (a) that the court possessed jurisdiction of the subject matter; (b) that a justiciable cause of action is stated upon which appellants would be entitled to appropriate relief; and (c) because appellees raise the issue before this Court, that the appellants have standing to challenge the 'Tennessee apportionment statutes.'"

The Supreme Court did not reach the merits of the cause, being content to declare that an adequate complaint had been filed.

Justice Frankfurter's dissent (joined only by Mr. Justice Harlan) declared that "The Court today reverses a uniform course of decision"² and stated that historically, "The Court has been particularly unwilling to intervene in matters concerning the structure and organization of the political institutions of the States";³ distinguished the cases involving black disfranchisement;⁴

2. At page 266; compare:
Colegrove v. Green, 328 U.S. 549 (1946);
MacDougall v. Green, 335 U.S. 281;
South v. Peters, 339 U.S. 276;
Anderson v. Jordan, 343 U.S. 912.

3. At page 284.

stated that courts are not fit instruments of decision in "the composition of those large contests of policy traditionally fought out in non-judicial forums, by which governments and the actions of government are made and unmade";⁵ and particularly was critical of the Court's failure to "vouchsafe the lower courts - state and federal - guidelines for formulating specific, definite, wholly unprecedented remedies for the inevitable litigations that today's umbrageous disposition is bound to stimulate in connection with politically motivated reapportionments in so many States."⁶

The first Supreme Court progeny explicating Baker v. Carr, not directly related to legislative redistricting, applied its holdings as to jurisdiction, justiciability and standing to State nominating procedures⁷ and to State congressional redistricting,⁸ and required population equality in all elections within the State.

5. At page 287.

6. At page 267.

7. *Gray v. Sanders*, 372 U.S. 368 (1963) (struck down under the 14th Amendment's Equal Protection Clause Georgia's county unit system for nomination of United States Senate candidates and candidates for statewide office).

8. *Westberry v. Sanders*, 376 U.S. 1 (1963) (struck down congressional redistricting because "the command of Article 1, Section 2, that Representatives be chosen 'by the people of the several States,' means that as nearly as practicable one man's vote in a congressional election is to be worth as much as another's."

Justice Frankfurter's forecast "of inevitable litigations" proved prophetic. In the course of 2-1/4 years following the decision in Baker v. Carr, a frenzy of legislative and judicial activity occurred throughout the United States, culminating in six guideline decisions of the Supreme Court filed on June 15, 1964.

The leading case was Reynolds v. Sims, 377 U.S. 533, in which the Supreme Court held unconstitutional three Alabama legislative reapportionment plans. Under the existing plan, 25.7 percent of the state's population lived in counties which could elect a majority of the house, and 25.1 percent lived in senatorial districts electing a majority of the state senate. Under a proposed constitutional amendment, 43 percent of the state's population would live in counties electing a majority of the house, and only 19.4 percent of the state's population would elect a majority of the state senate. Under "standby" legislation, 37 percent of the state's population would elect a majority of the house, while 27.6 percent would elect a majority of the senate.

In rejecting these plans, the Court made the following holdings:

"We hold that, as a basic constitutional standard, the Equal Protection Clause requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis. Simply stated, an individual's right to vote for state legislators is unconstitutionally impaired when its weight is in a substantial fashion diluted when compared with votes of citizens living in other parts of the State."
(At p. 568.)

It noted that it is a practical impossibility to arrange legislative districts so that each one has an identical number of residents. What the Equal Protection Clause requires of the states, it said, is "an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable." At 577.⁹

9. The remaining five cases decided with *Reynolds, supra*, were *WMCA v. Lomenzo*, 377 U.S. 633 (1964) (invalidating New York's legislative apportionment plan, under which 37.5% of the population lived in districts electing a majority of the state assembly, and 38.1% in districts electing a majority of the senate. The Court stated at page 635: "However complicated or sophisticated an apportionment scheme might be, it cannot, consistent with the Equal Protection Clause, result in a significant undervaluation of the weight of the votes of certain of a state's citizens merely because of where they happen to reside."); *Maryland Committee v. Tawes*, 377 U.S. 656 (1964) (holding unconstitutional Maryland's apportionment procedures, pointing out that 14.1% of the population would elect a majority of the senate, and 24.7% would elect a majority of the house, and adding that "[Maryland's] reliance on the so-called federal analogy as a sustaining principle for the Maryland apportionment scheme . . . is clearly misplaced." at 675); *Davis v. Mann*, 377 U.S. 678 (1964) (striking down Virginia's apportionment procedures, holding that

The definitive case explicating the permissible deviation from population equality in state legislative redistricting is Mahan v. Howell, 410 U.S. 315 (1973). In Mahan, supra, a four-judge District Court, relying on Kirkpatrick v. Preisler, 394 U.S. 526; Wells v. Rockefeller, 394 U.S. 542, and Reynolds v. Sims, supra, concluded that a maximum 16.4% variation in the legislative redistricting of Virginia required it to declare the legislative

9. (contd.) attempts to balance urban and rural power do not justify deviations from population equality, even if those deviations do not exceed those found in the composition of the Federal Electoral College); Roman v. Sincock, 377 U.S. 695 (1964) (rejecting Delaware's apportionment procedures, noting, however, that reapportionment does not lend itself to precise, mathematical formulas. Rather, the issue is whether any minor deviations that do occur are free from "any taint of arbitrariness or discrimination" at 709); Lucas v. Colorado General Assembly, 377 U.S. 713 (1964) (declaring unconstitutional a state Constitutional Amendment, which was adopted by the Colorado electorate in 1962, which provided for the apportionment of the State House on the basis of population, but which essentially maintained the existing apportionment of the senate, made on the basis of factors other than strict equality of population. Said the Court:

"An individual's constitutionally protected right to cast an equally weighted vote cannot be denied even by a vote of a majority of a State's electorate, if the apportionment scheme adopted by the voters fails to measure up to the requirements of the Equal Protection Clause. Manifestly, the fact that an apportionment plan is adopted in a popular referendum is insufficient to sustain its constitutionality or to induce a court of equity to refuse to act." At 736.

reapportionment statutes unconstitutional. In reversing the District Court, the Supreme Court explained that its decisions in Kirkpatrick, supra, and Wells, supra, dealt with congressional districting under the command of Article 1, Section 2 of the United States Constitution. Therefore, "[t]he principal question . . . presented for review is whether or not the Equal Protection Clause of the Fourteenth Amendment likewise permits only 'the limited population variances which are unavoidable despite a good faith effort to achieve absolute equality' in the context of state legislative reapportionment." (410 U.S. at 320; footnote omitted. It concluded that

"the constitutionality of Virginia's legislative redistricting plan was not to be judged by the more stringent standards that Kirkpatrick and Wells make applicable to congressional reapportionment, but instead by the equal protection test enunciated in Reynolds v. Sims, supra. . . . We . . . reaffirm its conclusion that '[s]o long as the divergences from a strict population standard are based on legitimate considerations incident to the effectuation of a rational state policy, some deviations from the equal-population principle are constitutionally permissible with respect to the apportionment of seats in either or both of the two houses of a bicameral state legislature.' Id. at 579."¹⁰

10. Mahan v. Howell, supra, at 324-25.

Using this more flexible standard, the Court held that since the people of Virginia had decided to grant the General Assembly the power to enact local legislation dealing with political subdivisions, the General Assembly's policy of maintaining the integrity of traditional county and city boundaries in drafting legislative district lines was constitutionally valid and that this policy was indeed furthered by the plan adopted by the legislature. The only remaining question was whether the population divergences resulting from the plan were within tolerable limits. On this point, the Court noted:

"There was uncontradicted evidence offered in the District Court to the effect that the legislature's plan, subject to minor qualifications, 'produces the minimum deviation above and below the norm, keeping intact political boundaries. . . .'
(Defendants' Exhibit 8.)" At 326.

The Court concluded that these population disparities did not exceed constitutional limits.

"Neither courts nor legislatures are furnished any specialized calipers that enable them to extract from the general language of the Equal Protection Clause of the Fourteenth Amendment the mathematical formula that establishes what range of percentage deviations is permissible, and what is not. The 16-odd percent maximum deviation that the District Court found to exist in

the legislative plan for the reapportionment of the House is substantially less than the percentage deviations that have been found invalid in the previous decisions of this Court. While this percentage may well approach tolerable limits, we do not believe it exceeds them. Virginia has not sacrificed substantial equality to justifiable deviations.

". . . We, therefore, hold the General Assembly's plan for the reapportionment of the House of Delegates constitutional and reverse the District Court's conclusion. . . ." At 329.

There having been no subsequent deviation from the rule announced in Mahan v. Howell, supra, it is plain that decisions in congressional redistricting litigation simply are irrelevant insofar as population equality is concerned.

(b). Invidious Discrimination

The Supreme Court has held that invidious discrimination must be avoided against racial or ~~ethnic~~ minorities. Gomillion v. Lightfoot, 364 U.S. 339, 81 S.Ct. 125 (1960); Wright v. Rockefeller, 376 U.S. 52, 84 S.Ct. 603 (1964); White v. Regester, 412 U.S. 755, 93 S.Ct. 2332 (1973); Whitcomb v. Chavis, 403 U.S. 124, 91 S.Ct. 1858 (1971); Chapman v. Meier, 420 U.S. 1, 95 S.Ct. 751 (1975); City of Mobile, Ala. v. Bolden, 446 U.S. 55, 100 S.Ct. 1490 (1980). It has also afforded this same protection to political groups. City of Mobile, Ala. v. Bolden, supra; Chapman v. Meier, supra; Gaffney v. Cummings, 412 U.S. 735, 93 S.Ct. 2321 (1973); Whitcomb v. Chavis, supra; Reynolds v. Sims, supra.

The Constitution of Maryland

Article III, Section 4 of the Constitution of Maryland reads as follows:

"Each legislative district shall consist of adjoining territory, be compact in form, and of substantially equal population. Due regard shall be given to natural boundaries and the boundaries of political subdivisions."

As previously shown, State action in applying and interpreting the above provisions of the Maryland Constitution is limited, restricted and constrained by the dual Federal constitutional imperatives of (a) "one person - one vote"; and (b) "freedom from invidious discrimination."

So, too, must State action in their application and interpretation be undertaken in the light of other imperatives imposed upon those provisions by Maryland Constitution Article III, Section 2 and 3 that read as follows:

"Section 2.

The membership of the Senate shall consist of forty-seven (47) Senators. The membership of the House of Delegates shall consist of one hundred forty-one (141) Delegates.

Section 3.

The State shall be divided by law into legislative districts for the election of members of the Senate and the House of Delegates. Each legislative district shall contain one (1) Senator and three (3) Delegates. Nothing herein shall prohibit the subdivision of any one or more of the legislative districts for the purpose of electing members of the House of Delegates into three (3) single-member delegate districts or one (1) single-member delegate district and one (1) multimember delegate district."

Compactness

The Supreme Court has clearly stated that a State may "legitimately desire to maintain the integrity of various political subdivisions, insofar as possible, and provide for compact districts of contiguous territory in designing a legislative apportionment scheme." Reynolds v. Sims, *supra*, 84 S.Ct. at 1390. This Maryland has done in Article III, Section 4 of its Constitution, which provides:

"Each legislative district shall consist of adjoining territory, be compact in form, and of substantially equal population. Due regard shall be given to natural boundaries and the boundaries of political subdivisions."

Although facially the requirement that districts be "compact in form" appears to be a simple one, courts have almost uniformly recognized that the question of whether or not a Legislative District meets the constitutional test of "compactness" can only be answered in the context of the multiplicity of competing demands, some of imperative character, which legislatures must consider in drawing an apportionment plan. So, any decision determining the meaning and effect of "compact" in the constitutional sense must be made in the light of the imperatives imposed by the United States Constitution, and the demands of priority, or limiting factors, imposed by the Maryland Constitution itself.

The paramount constraint under the Constitution of the United States is imposed by the Fourteenth Amendment. Baker v Carr, *supra*, Reynolds v. Sims, *supra*, and Mahan v. Howell, *supra*, made crystal clear that all county, municipal or district lines, all natural or political subdivision boundaries, or the size and shape of any district must yield to the imperative that the State must make a good faith effort to create districts giving credit to the principle of one person - one vote, and must produce clear and convincing proof that any other than a slight population

deviation in its districting is the product of a rational state purpose.

Under the Constitution of Maryland, the General Assembly must consist of 47 Senators and 141 Delegates. Article III, Section 2. In addition, each Senatorial District shall provide one Senator and three Delegates (with an authorized but not compelled division into three single delegate districts or into one single member delegate district and one multimember delegate district. Article III, Section 3.) Finally, Section 4 of Article III requires that "due regard" be given to natural boundaries and the boundaries of political subdivisions. The constraining effect of this language in Section 4 must apply only to the provision of the "be compact in form" requirement of the section. This is so because: (1) the phrase "substantially equal population" constitutionally may be given no less stringent effect than that imposed by Baker v. Carr, supra, and its progeny, and (2) the injunction that a district must "consist of adjoining territory" is one of precise definition as to which the "due regard" phrase is without meaning. Of course, a final constraint is that all districts bordering on the State line must conform thereto.

a. Population Equality as a Constraint on Compactness

The issue of paramount importance in any reapportionment plan is, of course, the achievement of substantial population equality. Thus, in Kirkpatrick v Preisler, 394 U.S. 526, 89 S.Ct. 1225 (1969), the Supreme Court said:

"Finally, Missouri claims that some of the deviations from equality were a consequence of the legislature's attempt to ensure that each congressional district would be geographically compact. However, in Reynolds v. Sims, supra, at 580, 84 S.Ct. at 1391, we said, 'Modern developments and improvements in transportation and communications make rather hollow, in the mid-1960's, most claims that deviations from population-based representation can validly be based solely on geographical considerations. . . . In any event, Missouri's claim of compactness is based

solely upon the unaesthetic appearance of the map of congressional boundaries that would result from an attempt to effect some of the changes in district lines which, according to the lower court, would achieve greater equality. A State's preference for pleasingly shaped districts can hardly justify population variances." (Emphasis added.) 394 U.S. at 535-36; 89 S. Ct. at 1231.

b. Other Constraints on Compactness.

Numerous state courts have also recognized that compactness is a relative concept, to be measured only in the context of the competing demands which make up the "political thicket" of reapportionment. In this regard the Supreme Court of Rhode Island in Opinion to the Governor, 221 A. 2d 799, 101 R.I. 203 (1966), stated at p. 802:

"The term 'compact' has no precise or exact meaning within the context of the constitutional mandate to divide the state into districts which shall be 'as compact in territory as possible.' *County of Norfolk v. City of Portsmouth*, 186 Va. 1032, 45 S.E. 2d 136. While a division into tightly packed districts with regular lines might literally satisfy the constitutional requirement, our state with its irregular boundaries, its bays and its inlets, its islands, its rivers and lakes and its many other geographical features is obviously not susceptible to being divided into circular planes or squares. Moreover, the overriding requirement that the districts must be as nearly equal in population as possible would prevent the accomplishment of any such division.

The term 'compact' then, as it is used in the constitution, has reference to a principle, rather than to a definition, and has meaning only within an appropriate factual context. Its origins as a constitutional requirement lie in an intention to provide an electorate with effective representation rather than with a design to establish an orderly and symmetrical geometric pattern of electoral districts."

The Court added, at 803:

"We are persuaded then that the requirement for territorial compactness...

was intended to be peripheral in its thrust and to leave to the legislature the question of determining the territorial structuring that will provide districts as compact as possible. In short, whether there has been a complete departure from the requirement for compactness is a judicial question, but the determination of the territory that necessarily would have to be included in a district to provide that that district be as compact as possible is for legislative determination. In *People ex rel. Woodyatt v. Thompson*, 155 Ill. 451, at page 480, 40 N.E. 307, at page 315, the court noted: 'There is a vast difference between determining whether the principle of compactness of territory has been applied at all or not, and whether or not the nearest practical approximation to perfect compactness has been attained. The first is a question which the courts may finally determine; the latter is for the legislature.'

Similarly, the New Jersey Supreme Court has held that:

"Compactness is an elusive concept. We noted in *Scrimminger v. Sherwin*, supra, 60 N.J. at 498, 291 A.2d 134, that it may be of limited utility in creating legislative districts in the light of the odd configurations of our State and its municipalities. It has never been held to constitute an independent federal constitutional requirement for State legislative districts. *Gaffney v. Cummings*, supra, 412 U.S. at 752, 93 S.Ct. at 2331, 37 L.Ed.2d at 312, footnote 18. This Court has suggested that population equality is distinctly paramount to it and that where districts are created on the basis of existing political subdivisions, compactness becomes a much reduced factor. *Jackman v. Bodine*, 49 N.J. 406, 419, 231 A.2d 193 (1967)."
Davenport v. Apportionment Commission, 319 A.2d 718, 722, 65 N.J. 125 (1973). 11

In yet a third major decision, *Schneider v. Rockefeller*, 340 N.Y.S.2d 889, 31 N.Y.2d 420, 293 N.E.2d 67 (1972), the New York Court of Appeals discussed at some length the competing considerations

11. Article IV, § 2, ¶ 3 of the New Jersey Constitution provides that Assembly districts shall be "as nearly compact...as possible."

which legitimately may impinge on compactness in legislative districts:

"The term compact,...has no precise meaning within the context of the constitutional mandate. Moreover, the Constitution does not provide unqualifiedly for compactness. (Matter of Sherrill v. O'Brien, supra.) At a minimum the Legislature may, in good faith, take account of existing political subdivision lines, topography, means of transportation and lines of communication without violating this standard. (Matter of Sherrill v. O'Brien, supra.) Particularly where cities are concerned, the requirement of practical numerical equality may necessitate boundaries that are ragged at best. Moreover, it is manifest that our State, with its irregular boundaries, its islands, rivers, lakes and other geographical features is not susceptible of division into circular planes or squares. Thus, it might be said that the constitutional requirement of compactness is peripheral in its thrust, forbidding a complete departure, yet leaving to the determination and discretion of the Legislature the degree of compactness which is possible in the total representation picture." 340 NYS2d at 896.

These same concerns were recognized by the Supreme Court of Pennsylvania in Commonwealth ex rel. Specter v. Levin, 448 Pa. 1, 293 A.2d 15 (1972), where the Court cautioned:

"Before any apportionment plan can be attacked for lack of compactness it must be recognized that there is a certain degree of unavoidable non-compactness in any apportionment scheme. The population density of this state is quite uneven, and therefore attempts to achieve the overriding objective of substantial equality of population will ordinarily necessitate the drawing of districts that are not models of geometric compactness. In addition, attempts to maintain the integrity of the boundaries of political subdivisions will add another increment of unavoidable non-compactness. Thus, in the words of one commentator: 'Dragons, bacon strips, dumbbells, and other strained shapes are not always reliable signs that partisan (or racial or ethnic or factional) interests are being served....' (footnote omitted.)

at 23.

Two cases present semingly contrary authority. See In re Legislative Districting of General Assembly, 193 N.W.2d 784, 790-91 (Iowa, 1972); Acker v. Love, 496 P.2d 75 (Colo., 1972). The Master is convinced, however, that these cases are readily distinguishable.

In short, the constitutional requirement for compactness should be considered in the light of what must be its principal purposes - the assurance of mutually reasonable access between citizens and their representatives for exchange of views and the prevention of discriminatory districting.

The use of mathematical measures of compactness that relate solely to geographic configurations do nothing to achieve either such purpose and no court has adopted them. As is pointed out in the Affidavit of Professor H. Peyton Young (Exhibit 2A) these mathematical tests give excellent grades to some very strange configurations.

The latest final State decision upon the constitutionality of State legislative redistricting is: In re Reapportionment Plan for the Pennsylvania General Assembly, 442 A.2d 661 (S.Ct. Pa. Dec. 29, 1981).

The decision is in full accord with the cases previously cited and quoted herein. The Court, after quoting from Lucas v. Colorado, supra, that "in determining whether a good faith effort to establish districts substantially equal in population has been made, a court must necessarily consider a State's legislative apportionment scheme as a whole," stated at 668:

"None of the arguments presented by appellants convinces us that the drawing of district lines, which necessarily involves value judgments by the Commission, has been based upon impermissible

considerations. Mere dissatisfaction with the fact that certain political subdivisions have been divided or have been included within particular legislative districts is not sufficient to invalidate the Final Reapportionment Plan as unconstitutional. Moreover, the Supreme Court of the United States has made clear that 'neither history alone, nor economic or other sorts of group interests, are permissible factors in attempting to justify disparities from population-based representation.' Reynolds v. Sims, 377 U.S. at 579-80, 84 S.Ct. at 1391 (1964)."

See also Schrage v. State Board, 430 N.E.2d 483 (Ill. 1981).

MISCELLANEOUS PETITION 2
PETITION OF C. LAWRENCE WISER
MONTGOMERY COUNTY DISTRICTS

This Petitioner's attack would alter all districts and sub-districts within Montgomery County, namely 14A, 14B,¹² 15, 16, 17, 18, 19 and 20.

His attack, mounted upon United States constitutional grounds alleges unconstitutional gerrymandering. His attack mounted upon Maryland constitutional grounds alleges violation of Article III, Section 4, in that (a) the Legislative Plan does not provide districts that are compact in form; and (b) does not give due regard to natural boundaries and the boundaries of political subdivisions. He urges the additional ground, upon a somewhat ethereal unconstitutionality claim, an alleged failure to respect "communities of interest."

Except for the noted effect upon sub-district 14B (see footnote), substitution of the Wiser Plan for the Legislative Plan would have no ripple effect upon districts beyond the borders of Montgomery County, unless such substitution was induced by the Court's acceptance of the Wiser theorem that the Legislative Plan was invalid by reason of the compactness requirements of Article III, Section 4 of the Constitution of Maryland, supra.

12. The only change suggested in Sub-District 14B (a 2-delegate district) is the removal of Montgomery County split precincts ED9-20 and 21 (population 1391), the effect of which would decrease the total sub-district population from 63,175 to 61,784.

In the latter event the legislative plan would stand in jeopardy in Baltimore City, Baltimore, Howard, Anne Arundel, Calvert St. Mary's, Charles, and all counties of the Eastern Shore, where similar attacks grounded upon alleged lack of compactness have been made.

Unconstitutional Gerrymandering
Under the Fourteenth Amendment

The sole evidential basis for the Wiser contention on the above ground is the fact that under the Legislative Plan the districts within Montgomery County have been constructed so that no more than one incumbent senator and three incumbent delegates have been placed in any single district.

The objectivity of Wiser on this ground is somewhat tarnished by the circumstances that (a) his own residence, under his own plan, is in a district with no incumbent senator; and (b) incumbents are forced into life and death election contests against each other by it.¹³

A serious question exists whether challenge to a legislative districting plan upon the mere ground that it tends to minimize contests among present incumbents is justiciable.¹⁴

13. Petitioner Wiser is a former State Senator, defeated in the 1978 election, who concedes that he would like to be a senatorial candidate in the forthcoming election.

14. See *WMCA, Inc. v. Lomenzo*, 238 F. Supp. 916 (S.D. N.Y. 1965), *aff'd*, *per curiam*, 382 U.S. 4, 86 S.Ct. 25, 15 L.Ed.2d 2 (1966) (holding that allegations of political gerrymandering do not present a justiciable issue); *Russo v. Vacin*, 582 P.2d 27 (7th Cir. 1976) (noting that force is added to the District Court decision in *WMCA, Inc.*, *supra*, since it subsequently had become clear that lower federal courts are bound by summary actions of the Supreme Court, citing *Hicks v. Miranda*, 422 U.S. 334, 95 S.Ct. 2281, 45 L.Ed.2d 223 (1975); *Farrell v. State of Oklahoma ex rel. Hall*, 339 F. Supp. 73 (W.C. Okla. 1972), *aff'd*, 406 U.S. 939 (1972) (holding that the issue of political gerrymandering at least in single member districting is nonjusticiable).

In any case, it seems clear that "districting for incumbents" does not per se establish invidious discrimination.¹⁵

Manifestly, formation of districts, otherwise constitutionally valid, wherein the electorate may choose between an incumbent and his challengers after full debate upon the political philosophy, competence and effectiveness of an incumbent thereby providing opportunity to the voters to re-elect or to reject, arguably serves a finer public purpose than the formation of districts, perhaps also otherwise constitutionally valid, wherein the electorate is given the Hobson's choice of being compelled to reject the services of one of two incumbents, both of whom the voter may believe to be exceptionally able public servants.

No evidence is to be found in the record that "districting for incumbents" was the product of any plot, plan or scheme to diminish, dilute or cancel out the voting strength of any racial or political group. Neither is there any evidence that such is its effect.

There is no record evidence that the Legislative Plan conferred any special handicap or special benefit to any incumbent other than may have been earned in the performance of duty during his term of office.

Arguably, an incumbent properly should be permitted to receive

15, Burns v. Richardson, 384 U.S. 86, 86 S.Ct. 1286 (1966), at 89, footnote 16 ("The fact that district boundaries may have been drawn in a way that minimizes the number of contests between present incumbents does not in and of itself establish invidiousness."); White v. Weiser, 412 U.S. 783, 791, 93 S.Ct. 2348, 2352, 37 L.Ed.2d 335 (1973) (recognition of incumbency concerns is not in itself unconstitutional); Davenport v. Apportionment Commission, 319 A.2d 718, 65 N.J. 125, (1973) (citing White v. Weiser, supra). Contra, In Re Legislative Districting of General Assembly, 193 N.W.2d 784 (Iowa).

the benefits stemming from his performance in office, or to suffer the handicaps occasioned by poor performance. His constituents properly should be permitted the opportunity, when possible, to make a judgment on the basis of that performance without constraints imposed by districts proposing unnecessary contests between incumbents.

In the course of his final argument before the master, Petitioner Wiser (Misc. Petitioner 2) produced bi-color flash cards, allegedly depicting the effect upon his own and the legislative planned districts of the application of the several suggested "tests" for the determination of whether a district is "compact" in the constitutional sense. His apparent intention was to demonstrate that his plan was "better" than the legislative plan.

His flash cards, however, proved too much. Some showed that one or more of his own districts failed one or more of the very "tests" he urges the Court of Appeals to adopt for its determination of the meaning of "compact" in the constitutional sense.

Moreover, computer calculation of Wiser District 18 shows it fails the suggested Reock test.¹⁶ The computer calculation of Wiser District 17 shows it fails the suggested Schwartzberg test.

In addition, Wiser District 14 also fails the Schwartzberg test (See Exhibit 3A). This Petition should be dismissed.

16. See Appendix A Response to Special Master's request for "Reapportionment Litigation - Information" paragraph 3 and its accompanying attachment C. Appendix in original only.

Miscellaneous Petition 3

Carville L. Collins, et al., Petitioners

Howard County District 13 (Sub-districts 13A & 13B) and 14
(Sub-districts 14A & 14B)

The population of Howard County, 118,572, divided by the Ideal State District Population, 89,723, shows entitlement to one senatorial district plus excess population of 28,849.

Accordingly, any plan for redistricting Howard County compels deviation from the boundaries of the county in greater or lesser degree. The legislative plan chose to maintain more fully intact the boundary lines of the larger and more populous Prince George's, and Montgomery Counties, and the geographically larger Carroll County by placing the population of Howard County into three districts (a) with Prince George's County in District 13, (b) with Montgomery County in District 14; and (c) with Carroll County in District 4.¹⁷

District 13 was sub-districted with 31,261 of Howard County's population placed in single delegate district 13A with zero Prince George's population; and with 25,473 of Howard's population placed in two delegate sub-district 13B with 35,178 of Prince George's population. The total population of Senatorial District 13 was 91,912 of which 56,734 resided in Howard and 35,180 resided in Prince George's. Thus the legislative plan gave the population of Howard County a majority opportunity to elect one Senator (District 13) and one Delegate (Sub-district 13A).

17. The Howard County population in District 4 is only 6596.

District 14 was sub-districted with 55,242 of Howard County's population placed in two delegate sub-district 14B with 7,933 Montgomery population; and with 30,860 of Montgomery's population placed in one delegate sub-district 14A with zero Howard population. The total population of Senatorial District 14 was 94,035 of which 55,242 resided in Howard and 38,793 resided in Montgomery. Thus, the legislative plan gave the population of Howard County a majority opportunity to elect one Senator (District 14) and two Delegates (Sub-district 14B).

In sum, the Howard County population of 118,572 was given a majority opportunity to elect two Senators and three Delegates.

This legislative plan for Howard County altered the Advisory Committee's plan under which the Howard County population had been given the even greater majority opportunity to elect two Senators and four Delegates.

The subject petition seeks a return to the Advisory Committee plan. The ripple effect of such a course would compel redistricting of all Prince George's County's districts and District 14 of Montgomery County.

The Advisory Committee's recommended redistricting of Howard County excited the lone expression of gubernatorial displeasure respecting his Committee's Report.¹⁸

The affidavit of Governor Hughes¹⁹ is found to be dispositive of every contention of these petitioners save one. That remaining allegation is that the legislative plan minimizes, dilutes

18. See Exhibit 9C (Sub-exhibit B), Maryland Register, Vol. 8, Issue 25, dated December 11, 1981

19. See affidavit of Governor Hughes, Exhibit 1D attached hereto as

and cancels out the voting strength of a racial minority. There is no evidence to support the charge. On the contrary, the affidavit of Karl Aro, (Exhibit D6), Legislative Research Analyst of the State Department of Legislative Reference, demonstrates that the percentage of blacks under the Legislative Plan is higher than the percentage of blacks under the Petitioner's plan in all districts and sub-districts in which the population of Howard County is included.

It is recommended that Miscellaneous Petition 3 be dismissed.

MISCELLANEOUS PETITION 4

PETITIONER, RICHARD L. ANDREWS

BALTIMORE CITY

Petitioner Andrews presents three specific challenges to HJR 32 (the Plan), Legislative Districts 39 through 47. His petition alleges that 1) proposed Legislative Districts 42 and 44 do not meet the requirement of "compactness" under Article III, Sec. 4, Constitution of Maryland; 2) that the Plan, by establishing multimember at-large legislative districts, diminishes the proportion of representation of Blacks; and 3) that the Plan was "intentionally designed to eliminate any representation of Republicans" through the use of multimember at-large legislative districts.

A. Compactness

The compactness challenge was answered, *supra*, and will not be discussed separately here, beyond noting that the Master agrees that proposed Legislative District 44 does not satisfy the requirement for compactness found in Article III, Sec. 4, Constitution of Maryland. (See discussion under Miscellaneous Petition 9, *infra*.)

B. Dilution of Minority Voting Strength

Petitioner alleges that the establishment of multimember at-large legislative districts under the Governor's Plan would "effectively guarantee that 15 of the 27 Delegates elected from Baltimore

City would be White, as 4 of the 9 districts are overwhelmingly White in population, and one other is balanced in population, but has an effective large White voting majority. Miscellaneous Petition 4, Paragraph 3.

However, in its most recent pronouncement on the issue of dilution of minority voting strength in at-large electoral systems, the Supreme Court said in City of Mobile, Ala. v. Bolden, 446 U.S. 55, 100 S.Ct. 1490, 1499 (1980):

We have recognized that such legislative apportionments could violate the Fourteenth Amendment if their purpose were invidiously to minimize or cancel out the voting potential of racial or ethnic minorities. See White v. Regester, supra; Whitcomb v. Chavis, supra; Burns v. Richardson, supra, Fortson v. Dorsey, supra. To prove such a purpose it is not enough to show that the group allegedly discriminated against has not elected representatives in proportion to its numbers. White v. Regester, supra, 412 U.S., at 765-766, 93 S.Ct. at 2339. Whitcomb v. Chavis, supra, 403 U.S. at 149-150, 91 S.Ct. at 1872. A plaintiff must prove that the disputed plan was "conceived or operated as (a) purposeful device(s) to further racial discrimination". *id.*, at 149, 91 S.Ct. at 1872.

The Petitioner has not met this burden.

C. Political Gerrymandering

Petitioner's final contention is that the Governor's Plan violates the Equal Protection Clause of the Fourteenth Amendment by "designedly" discriminating against members of the Republican Party.

On the issue of partisan gerrymandering, the Supreme Court has stated that:

It might well be that, designedly or otherwise a multimember constituency apportionment scheme, under the circumstances of a particular case, would operate to minimize or cancel out the voting strength of racial or political elements of the voting population. When this is demonstrated it will be time enough to consider whether the system still passes constitutional muster. *Fortson v. Dorsey*, 379, U.S. 433, 439, 85 S.Ct. 498, 501 (1965)

I think it has not been demonstrated here. Dismissal of Miscellaneous Petition 4 is recommended.

Miscellaneous Petition 5

Petition of Bruce A. Goldensohn

Montgomery County Districts Generally, District 17 Specifically

This Petitioner's attack supports generally the contentions made in Miscellaneous Petition 2 filed by C. Lawrence Wiser previously discussed supra, but particularly attacks District 17 upon the ground that it "fail(s) the Constitutional test of compactness", and "does not give due regard to natural boundaries...in that the City of Gaithersburg is separated from its surrounding neighbors...which have a close community of interest with (Gaithersburg);" and is placed in the same District as the City of Rockville...[with] different communities of interest, as well as competitive interests."

The petition avers that by "combining the two largest municipalities within Montgomery County...into a single legislative district, the votes of citizens are debased and diluted in the election of a representative number of members of the Legislature, who will represent their interests as residents of a municipality as opposed to residents of a separate political subdivision of the State, i.e. a charter county." (Emphasis added.)

The petition concluded by asserting that the plan "was drafted and created by the incumbent senators and delegates of Montgomery County;" and that "accommodation of the incumbent...delegation violate[d]...Article 76A, Section 7-15." ²⁰

This petitioner's contentions concerning constitutional deficits under Maryland Constitution Article III, Section 4 have been fully discussed supra.

His contention relating to "community of interest" is without merit. Assuming for the moment that there may be circumstances under which a failure to recognize

²⁰ Incumbent Senators and Delegates of Montgomery County do not fall within the cited sections.

"communities of interest" may reach constitutional dimensions, it is plain that this is not such a case.

Four claims to "community of interest" are alleged: (a) Wiser's "community of interest" between Rockville and the rural community of District 15; (b) Rockville's rejection of such an idea and assertion of a community of interest only with less affluent sections of District ~~18~~¹⁵ and with two communities north of the City; (c) the Legislative plan asserting a community of interest between the two incorporated municipalities of Rockville and Gaithersburg ²¹; and (d) Gaithersburg's rejection of all of these and its assertion of a community of interest with Montgomery Village.

Cutting through the facade of petitioner's "community of interest" arguments in the attack upon District 17 by the two largest incorporated municipalities, Rockville and Gaithersburg, one stark fact emerges - the question is one of disputed fact. The resolution of this disputed fact is a legislative function that does not give rise to a constitutional issue.

The real thrust of the Rockville-Gaithersburg attack upon their joint placement within District 17 is that each believes that if placed within separate districts, it would be able to exercise greater political influence upon members of the General Assembly in spite of its minority population in such divided districts. Such desires conflict with the spirit if not the letter of the overriding principle of "one person - one vote."

It is recommended that Miscellaneous Petition 5 be dismissed.

²¹ Supported by affidavit of Helen Koss, Exhibit 3B

Miscellaneous Petition 6

Petitioner William Rush

Baltimore County Districts 5B, 6, 7, 8, 9, 10, 11 and 12

The population of Baltimore County, 655,615 divided by the Ideal State District Population 89,723 shows entitlement to seven senatorial districts plus excess population of 27,554. Under the legislative plan it was decided to place 21,493 of that population in sub-district 5B with Carroll County and to absorb the balance of that excess in the seven districts entirely within Baltimore County (Districts 6, 7, 8, 9, 10, 11 and 12).

Petitioner Rush attacks the entire legislative plan as it applies to Baltimore County, alleging the legislative plan "disregarded compactness of the local communities dividing Parkville, Perry Hall, Essex and Edgemere in a way that appears to be germanned (sic) to protect some legislatures (sic)... and complete disregard for natural political and geographical boundaries." His petition added that the plan violates Maryland Constitution Article III, Section 4, "in that the boundaries cut through recognized neighborhoods and communities and cut across election district and even precinct lines; that disparities in population ... offend the requirements of the Constitution (s) of ... Maryland and ... the United States."

The affidavit of William S. James, Chairman of the Advisory Committee (Ex. 1F) stated that his committee held six regional meetings within Baltimore County; that petitioner (Delegate) William Rush appeared, testified and offered a plan for reapportionment "with enormously unequal populations."

Under the Legislative Plan all districts are well within the standards approved in Mahan v. Howell, *supra*.

The affidavit of Thomas L. Bromwell (Exhibit 2F) offered evidence in conflict with the Rush allegations.

The affidavit of Governor Hughes (Exhibit 3F) declared that he "adopted the recommendations of the Advisory Committee . . . in Baltimore County . . . and continue(s) to believe . . . that the . . . plan . . . comp(lies) with all constitutional requirements" adding: "My plan with certain minor, technical amendments was adopted and approved by the General Assembly."

It is the finding of the Master that all Baltimore County Districts meet the standards declared in Mahan v. Howell, supra; and that natural and district boundaries were utilized in the redistricting plan within limitations compelled by population and other compelled adjustments. There are no political subdivisions within Baltimore County. The boundaries of the county were utilized to the fullest extent possible in view of the necessity under the holdings of Baker v. Carr, Reynolds v. Sims and Mahan v. Howell, all supra to place excess population beyond those boundaries.

The Districts of Baltimore County do not violate the "compact in form" requirements. (See general section on "Compactness," supra).

Dismissal of Miscellaneous Petition 6 is recommended.

Miscellaneous Petition 7
Legislative Districts 28 & 29
Petitioners Sarah Fenner Miles Boyd
and
George M. Nutwell

District 28 is subdistricted. District 28-A (a two delegate district) lies wholly within Charles County. Subdistrict 28-B is a one delegate district lying wholly within St. Mary's County. Accordingly, in District 28 it is likely that Charles County will elect a senator and two delegates and that St. Mary's County will elect a delegate. District 29 is subdistricted. Subdistrict 29-A comprises parts of Anne Arundel and Calvert Counties, with the latter representing a substantial majority of that subdistrict's population. Subdistrict 29-B comprises parts of Calvert and St. Mary's Counties with a population almost evenly divided between the two. Subdistrict 29-C lies entirely within St. Mary's County. The likelihood, therefore, in District 29 is that St. Mary's will elect a senator, and one delegate with reasonable certainty, with a possibility for a second delegate; and Calvert County will elect one delegate.

Both Petitioners suggest the same corrective plan, i.e. (1) Combine Calvert and St. Mary's Counties in a new district 28 (with 2 subdistricts); (2) Move the Anne Arundel population in legislative plan subdistrict 28-A back into that county for absorption into the four Anne Arundel County Districts; (3) Form a new

District 29 starting at the southern boundary of Charles County with adjustments of Prince George's County population to produce reasonable equality.

The ripple effect of the proposed changes would compel redistricting all of the four districts of Anne Arundel County and all of seven districts of Prince George's County.

Acknowledging that the legislative plan districting of Districts 28 and 29 did not in many respects follow natural boundaries and the boundaries of political subdivisions, the State maintains that the failure to do so was directly and inevitably compelled to meet the imperative of one person - one vote once the decision had been made that districting of the Southern Maryland area of the State should begin at the northern boundaries of Anne Arundel and Prince George's County.

Both Petitioners offer the same contentions of unconstitutionality, namely that the legislative plan imposed districting for incumbents; created districts that were not compact and failed to give due regard to natural boundaries and the boundaries of political subdivisions.

What has been said concerning compactness and incumbency, supra compels rejection of those contentions.

The mandate of Baker v. Carr, supra compels rejection of the third. It is recommended that Miscellaneous Petition 7 be dismissed.

MISCELLANEOUS PETITION 8

PETITIONERS, MORRIS et als
BALTIMORE CITY DISTRICTS 41 and 47

These Petitioners, residents of District 41 under the Legislative Plan, seek transfer of precincts 13, 14, 15, 18 and 21 of the 20th Ward from ^{District 41 to} District 47. They contend that there was a failure to give due regard for a natural boundary- Frederick Road - that properly should have continued as the division line of the two Districts.

The south border of District 47 is the Patapsco River. Accordingly, the essential adjustment of its population growth necessarily had to take the form of bringing its northern border to the south to a point below Frederick Road. No Constitutional deficit has been shown in this case. Dismissal of Miscellaneous Petition 8 is recommended.

MISCELLANEOUS PETITION 9

PETITIONER, JOSEPH T. LANDERS, III et als
DISTRICTS 43 and 44

Under the Legislative Plan for Baltimore City has been divided into 9 Districts of substantially equal population. This Petition is directed against Districts 43 and 44.

It is uncontradicted in the record that the Legislative Plan intentionally districted Baltimore City in a manner that reasonably assures 4 White and 4 Black majority districts - with District 44 being the "swing district" of about equal population, the control of which probably would produce control of the Baltimore City Delegations in the Senate and House.

I believe that District 44 is unconstitutional under the provisions of Article III, Section 4 of the Constitution of Maryland.

In District 44, precincts 39 and 40 of the 27th Ward were excluded from "swing district" 44 and placed in District 43 (80% White - 20% Black). The exclusion of those two precincts did two things: (1) It excluded Morgan State University and its environs, the center of the Black cultural community, from the "swing" district and placed it in a White district; (2) It excluded an incumbent from the area wherein a majority of his present constituency reside and placed him in a district containing a substantially new constituency (District 43).

That the term "compact" as used in the Constitution has reference to a principle, rather than a definition and, thus, the manner of its application is for legislative - not judicial - decision clearly applies when a constructed district is not discriminatory. This is not to say that the principle is beyond judicial reach when a district is constructed in discriminatory fashion.

It is one thing to say that incumbency considerations do not per se constitute discrimination and quite another to say that incumbency considerations, coupled with discriminatory factors, will survive scrutiny as to the form of a district.

The exclusions recited above from District 44 were accomplished by cutting a wide swath from the northern outline of the District and by adding a boot-like appendage to its southeast corner.

The impropriety of the separation of the environs of Morgan State University from the "swing district" of Baltimore City was clearly made known to the districting authorities. (See Minutes, Exhibits 1-D-Band 1-D-C.

A quite simple alteration of Districts 43 and 44 corrects the Constitutional deficit of District 44, by moving precincts 36, 37 and 46 of the ^{26th} ~~27th~~ Ward from District 44 to District 43, and

compensating for the loss of that population by adding precincts 39, 40, 58, 63 and 64 of the 27th Ward from District 43 to District 44.

The recommended change eliminates the discrimination; produces improved configuration of both Districts; and promotes a better racial equality in the "swing district" demonstrated by the computer printout of "before and "after" population figures of Districts 43 and 44 and by computer drawn "before" and "after" plats, all attached hereto marked appendix ²²

22. : Computer printout of population figures before and after change and computer drawn plats before and after change, all attached hereto marked Appendix C. Appendix is in original only.

MISCELLANEOUS PETITION 10
PETITION OF THOMAS R. FALCINELLI
ALL MULTI-MEMBER DISTRICTS

This petitioner argues that H.J.R. 32 (the Governor's Plan) violates the Fourteenth Amendment to the United States Constitution because it establishes some delegate districts which are not single member districts. Specifically, the petition states: "Any plan that allocates representation in the House of Delegates on a basis other than single-member subdistricts within a legislative district denies voter equality in the political process and constitutes invidious discrimination as between voters and is contrary to the 14th Amendment to the U. S. Constitution." Paragraph Number 6, Miscellaneous Petition 10.

This is so, the petition averred, because a citizen residing in a multi-member district is granted greater protection under the law than is granted to a citizen residing in a single-member district by virtue of the former being granted greater voting representation in the House of Delegates, specifically, three votes by three separate and distinct Delegates, voting on State matters--including those of taxation, budget and appropriations--instead of one vote on these same State matters by the one delegate, representing the citizen residing in the single-member district.

Although the petition recognizes that the use of multi-member districts is specifically authorized by Article III, § 3 of the Constitution of Maryland, he suggests that this Court must declare Article III, § 3 "null and void." He asks this Court to adopt its own plan creating single member sub-districts throughout the State.

The Supreme Court, in a long line of cases, has unequivocally

rejected such a challenge. In Burns v. Richardson, 384 U.S. 73, 88, 86 S.Ct. 1286, 1294 (1966), the Supreme Court declared:

"But the Equal Protection Clause does not require that at least one house of a bicameral state legislature consist of single-member legislative districts. See Fortson v. Dorsey, 379 U.S. 433, 85 S.Ct. 498, 13 L.Ed.2d 401. Where the requirements of Reynolds v. Sims are met, apportionment schemes including multi-member districts will constitute an invidious discrimination only if it can be shown that 'designedly or otherwise, a multi-member constituency apportionment scheme, under the circumstances of a particular case, would operate to minimize or cancel out the voting strength of racial or political elements of the voting population.' Id. at 439, 85 S.Ct. at 501."

See also Whitcomb v. Chavis, 403 U.S. 124, 91 S.Ct. 1858, 1871 (1971); City of Mobile v. Bolden, 446 U.S. 55, 100 S.Ct. 1490, 64 L.Ed.2d 47 (1980); White v. Regester, 412 U.S. 755, 93 S.Ct. 2332, 37 L.Ed.2d 314 (1973).

It is recommended that Miscellaneous Petition 10 be dismissed.

Miscellaneous Petition II

Petitioners Victor H. Laws, et als.

Districts 36, 37, 38 (Queen Anne's, Kent, Talbot, Caroline,
Dorchester, Wicomico, Worcester and Somerset Counties)

The petitioners seek to create a new District 38 comprising Wicomico and Worcester Counties. The population of such a district would be 95,429, 6.3% above the ideal and thus beyond the planned maximum deviation under the legislative plan. The ripple effect of such a change would certainly compel changes in District 37 and 36 and possibly in 35.

It should be noted also that creation of such a new district 38 would leave Somerset and Dorchester Counties separated by the unbridged waters of the Nanticoke River. Movement by road between the two counties could be achieved only through Wicomico County.

The petitioners allege but do not prove that there is a diminution of the voting strength of the voters of Wicomico County. The record shows that Wicomico County has a substantial plurality in District 38 and thus may elect one Senator in that district and have the assurance of one delegate under the following provisions of H.J.R. 32 (at page 2 Exhibit 7P)

"In any legislative district which contains more than 2 counties or parts of more than 2 counties and where delegates are to be elected at large by the voters of the entire district, a county, or part of a county, may not have more than 1 delegate residing in that district."

Moreover, Wicomico County with a population of 20,775 may elect a second Senator and an additional Delegate in District 37.

The Petitioners allege but do not prove that there is a diminution of the voting strength of the black minority in Wicomico County. The affidavit of Karl Aro (Exhibit 3H)

demonstrates that the percentage of blacks in Districts 38 and 37 is equal to or greater than their percentage of the total population of Wicomico County.

Petitioners' alternative suggestion that single member subdistricts be created within Districts 37 and 38 is available only upon proof that a multiple district produces invidious discrimination. There is no such proof.

It is recommended that Petition II be dismissed.

Summary

I am persuaded that the Legislative Plan for the Redistricting of the State viewed as an entirety represents a good faith effort on the part of the State to meet all constitutional demands.

Some of the petitioners are requesting the Court of Appeals to do that which no Court in the United States has done - to bind itself to a suggested numbers game, a game using numbers that admittedly are arbitrary and with not the slightest assurance that their use will produce fair representation, or freedom from invidious discrimination.

In the course of final argument, counsel for several petitioners spoke glibly about gerrymandering - waving cut-outs of allegedly gerrymandered districts, yet with one exception²³, none was able to point to a single instance of discriminatory districting in the legislative plan.

Perhaps the most objective of all discussants of the theory and practice of fair representation and reapportionment, following Baker v. Carr, the late Professor Robert G. Dixon, exposed the invalidity of exalting form over substance when he wrote:

"... all are familiar with the practice of devising odd-shaped districts for political advantage - which is the historically derived and common popular usage of the term gerrymandering. Cartoonists, especially, have a field day in making 'snakes,' 'turket foots,' 'frying pans,' and the like, emerge from sets of revised districts. 'Checker-board square' is the assumed ideal. Any significant deviations from such symmetry are deemed unclean and unjustifiable.

It may come as a surprise, therefore, to be told that this common understanding is highly unfortunate. It is unfortunate because it tends to preclude intelligent discussion of unfair partisan practices and results, in districting. It immediately casts attention in the wrong direction -

²³ District 44, discussed, *sup ra*.

toward superficialities of shape and size, rather than toward the political realities of district composition. These realities, as Robert Luce has so aptly observed, turn on the 'accident of sleeping place.' It is the particular nature of this 'accident of sleeping place' for a party's supporters which determines whether a set of symmetrical districts is fair, or is a clean-sweep gerrymander for that party. Not to perceive this is to confuse form with function, and even to prevent the asymmetrical designs dictated by considerations of political balance and minority representation, and dictated as well by normal preferences for giving some recognition to natural boundaries and political subdivisions." ²⁴

He added:

"Gerrymandering is discriminatory districting. It equally covers squiggles, multimember districting, or simple inaction, when the result is racial or political malrepresentation." ²⁵

The legislative plan plainly is within the constitutional limits of population equality imposed by Baker v. Carr and its progeny; with a single exception is free of any invidious discrimination either political or racial; and is composed of districts meeting all requirements of the Maryland Constitution when they are viewed in the light of (a) the geographical irregularities of the State and its political subdivisions; (b) the uneven population distribution in the State, and (c) the necessity to balance the sometime conflicting, competing or incompatible equities arising under Sections 1, 2 and 3 of Article III of the Constitution of Maryland.

Accordingly, it is recommended that the legislative plan be approved in all respects save District 44 (and by necessity 43) as to which the changes indicated by Appendix ^C ~~A~~ are recommended.

I believe that any other course would prove chaotic.

Respectfully submitted,

W. Albert Menchine
W. Albert Menchine
Special Master

APPENDIX A

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April 28, 1982

The Honorable W. Albert Menchine
Special Master
Court of Appeals of Maryland
Courts of Appeals Building
Rowe Boulevard
Annapolis, Maryland 21401

RE: Reapportionment Litigation - Information Request

Dear Judge Menchine:

By your request of April 26, you asked that the State provide you with certain information concerning the Maryland Reapportionment Information System. Some of the information requested is contained not in the Maryland Information Reapportionment Information System, but in the program prepared for this litigation. The following is a list of your requests and the information which we are providing:

1. A statement of the statistical formulas which were used in computing the Reock and Schwartzberg measures in the Maryland Reapportionment Information System.

Enclosed as Attachment A is a statement of those formulas used in preparing the most up-to-date measures.

2. A copy of that part of the program written to instruct the computer to calculate the Reock and Schwartzberg measures and a description of the computer process as programed, step-by-step.

The Honorable W. Albert Menchine
April 28, 1982
Page 2

Enclosed as Attachment B is the program as now available. We will attempt to obtain a more detailed description for you.

3. A list of the values of the Reock and Schwartzberg measures for legislative districts 15 through 19 as computed by the Maryland Reapportionment Information System (and for any other districts challenged on the basis of compactness).

Enclosed as Attachment C is this information.

4. The following measures from the System for legislative districts 15 through 19 should be provided:
 - a. the estimated area of each legislative district;
 - b. the perimeter of each legislative district;
 - c. the circumference of the smallest sized circle which could contain the legislative district within it.
 - d. the scale of measurement used in making the computations.

Enclosed as Attachment D is this information. However, the only available scale of measurement is the scale of the precinct maps which were digitized.

5. The State should be provided with a statement of the nature of the maps where were used as input into the computer for the purpose of reapportioning. Included should be a statement as to the coordinates which were used as the basis for mapping population onto territory, or some similar statement of how the matching process was done.

Enclosed as Attachment E is an explanation of this process. Essentially, the Maryland Reapportionment Information System and the subsequent program prepared for this litigation contain individual precinct maps for every precinct in the State. The data collected by the Department of Commerce, Bureau of the Census, in census blocks and enumeration districts was converted to precincts by comparison of the areas.

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Page 3

Because of the Court's apparent interest in statistical measures as applied to the 1982 plan, also enclosed is a copy of the values of the measures as applied to the districts created by the Court of Appeals in 1974.

Finally, should the Court desire additional explanation of the programs, Dr. P.H. Young, the State's expert is available at the Court's convenience through May 7, 1982.

Sincerely,



Mary N. Humphries
Assistant Attorney General

vcf

cc: C. Lawrence Wiser, Esq.
Richard L. Andrews, Esq.
Stanley D. Abrams, Esq.
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W. Shepherdson Abell, Esq.
M. Albert Figinski, Esq.

Attachment C

INSTRUCTIONS FOR READING COMPUTER MEASURES

1. Schwartzberg

The Schwartzberg measure is the second or "inverse" measure in the first vertical column.

2. Reock

The Reock measure is the top or "actual" measure in the third vertical column.

GOVERNOR'S PLAN
HOUSE JOINT RESOLUTION 32

Districts Challenged on Compactness Grounds:
Districts 6-9, 15-19, 28-29, 42, 44, 47

Montgomery County
Proposed district: G15

	COMPACTNESS MEASURES						
	Schwartz- berg	Boyce- Clark	Reock	NSEW Rectangle	Minimum Wid/Len	Average Wid/Len	Average Len/Wid
Actual:	0.5968	0.2840	0.4401	0.8200	0.8173	0.9074	1.1046
Inverse:	1.6755	1.1312	2.2722	1.2195	1.2236	1.1021	0.9053

Proposed district: G16

	COMPACTNESS MEASURES						
	Schwartz- berg	Boyce- Clark	Reock	NSEW Rectangle	Minimum Wid/Len	Average Wid/Len	Average Len/Wid
Actual:	0.5797	0.7921	0.4692	0.9832	0.9035	0.9548	1.0479
Inverse:	1.7251	1.2625	2.1315	1.0171	1.1068	1.0473	0.9543

Proposed district: G17

	COMPACTNESS MEASURES						
	Schwartz- berg	Boyce- Clark	Reock	NSEW Rectangle	Minimum Wid/Len	Average Wid/Len	Average Len/Wid
Actual:	0.5376	0.7712	0.2650	0.9233	0.4127	0.6225	1.7363
Inverse:	1.8600	1.2967	3.7736	1.0830	2.4230	1.6064	0.5759

Proposed district: G18

	COMPACTNESS MEASURES						
	Schwartz- berg	Boyce- Clark	Reock	NSEW Rectangle	Minimum Wid/Len	Average Wid/Len	Average Len/Wid
Actual:	0.6088	0.8681	0.3651	0.6143	0.5346	0.7578	1.3672
Inverse:	1.6427	1.1520	2.7388	1.6279	1.8704	1.3197	0.7314

Proposed district: G19

	Schwartz- berg	Boyce- Clark	COMPACTNESS MEASURES		Minimum Wid/Len	Average Wid/Len	Average Len/Wid
			Reock	NSEW Rectangle			
Actual:	0.5153	0.8401	0.3564	0.8424	0.4846	0.6791	1.5386
Inverse:	1.9405	1.1904	3.2637	1.1871	2.0635	1.4726	0.6500

Southern Maryland

Proposed district: G28

	Schwartz- berg	Boyce- Clark	COMPACTNESS MEASURES		Minimum Wid/Len	Average Wid/Len	Average Len/Wid
			Reock	NSEW Rectangle			
Actual:	0.7409	0.9066	0.5974	0.9730	0.8017	0.8816	1.1384
Inverse:	1.3457	1.1030	1.6740	1.0278	1.2473	1.1343	0.8784

Proposed district: G28A

	Schwartz- berg	Boyce- Clark	COMPACTNESS MEASURES		Minimum Wid/Len	Average Wid/Len	Average Len/Wid
			Reock	NSEW Rectangle			
Actual:	0.7281	0.8868	0.4963	0.8947	0.5294	0.7898	1.2520
Inverse:	1.3735	1.1276	2.0067	1.1177	1.5887	1.2661	0.7740

Proposed district: G28B

	Schwartz- berg	Boyce- Clark	COMPACTNESS MEASURES		Minimum Wid/Len	Average Wid/Len	Average Len/Wid
			Reock	NSEW Rectangle			
Actual:	0.6559	0.9063	0.4133	0.6285	0.6232	0.7383	1.3798
Inverse:	1.5247	1.1034	2.4194	1.5912	1.6046	1.3545	0.7247

Proposed district: G29

	Schwartz- berg	Boyce- Clark	COMPACTNESS MEASURES		Minimum Wid/Len	Average Wid/Len	Average Len/Wid
			Reock	NSEW Rectangle			
Actual:	0.6685	0.8144	0.2652	0.4579	0.3848	0.6073	1.7824
Inverse:	1.4956	1.2279	3.7712	2.1837	2.5989	1.6466	0.5610

Proposed district: G29A

	COMPACTNESS MEASURES						
	Schwartz- berg	Boyce- Clark	Reock	NSEW Rectangle	Minimum Wid/Len	Average Wid/Len	Average Len/Wid
Actual:	0.7510	0.9195	0.5123	0.7040	0.6248	0.7893	1.2883
Inverse:	1.3316	1.0875	1.9518	1.4204	1.6005	1.2669	0.7762

Proposed district: G29B

	COMPACTNESS MEASURES						
	Schwartz- berg	Boyce- Clark	Reock	NSEW Rectangle	Minimum Wid/Len	Average Wid/Len	Average Len/Wid
Actual:	0.6697	0.8653	0.4249	0.6991	0.5737	0.8010	1.2603
Inverse:	1.5135	1.1557	2.3534	1.4305	1.4843	1.2485	0.7935

Proposed district: G29C

	COMPACTNESS MEASURES						
	Schwartz- berg	Boyce- Clark	Reock	NSEW Rectangle	Minimum Wid/Len	Average Wid/Len	Average Len/Wid
Actual:	0.8312	0.9211	0.4640	0.6974	0.5884	0.7240	1.4125
Inverse:	1.2030	1.0857	2.1553	1.4338	1.6996	1.3811	0.7079

Baltimore City

Proposed district: G42

	COMPACTNESS MEASURES						
	Schwartz- berg	Boyce- Clark	Reock	NSEW Rectangle	Minimum Wid/Len	Average Wid/Len	Average Len/Wid
Actual:	0.4772	0.8149	0.2971	0.7474	0.7142	0.7829	1.2900
Inverse:	2.0957	1.2241	3.3662	1.3379	1.4002	1.2774	0.7752

Proposed district: G43 *This district is not challenged on compactness grounds, but is directly affected by the Andrews and Landers Challenges to District 44.

	COMPACTNESS MEASURES						
	Schwartz- berg	Boyce- Clark	Reock	NSEW Rectangle	Minimum Wid/Len	Average Wid/Len	Average Len/Wid
Actual:	0.5493	0.7938	0.3991	0.6793	0.6260	0.7954	1.2853
Inverse:	1.8206	1.2596	2.5059	1.4720	1.5975	1.2572	0.7780

Proposed district: G44

	Schwartz- berg	Boyce- Clark	Reock	NSEW Rectangle	Minimum Wid/Len	Average Wid/Len	Average Len/Wid
Actual:	0.4101	0.7492	0.3315	0.8191	0.7441	0.8646	1.1631
Inverse:	2.4386	1.3347	3.0164	1.2208	1.3439	1.1566	0.8598

Proposed district: G47

	Schwartz- berg	Boyce- Clark	Reock	NSEW Rectangle	Minimum Wid/Len	Average Wid/Len	Average Len/Wid
Actual:	0.6574	0.8134	0.2550	0.6560	0.3631	0.5938	1.8426
Inverse:	1.5210	1.2295	3.9216	1.5245	2.7540	1.6840	0.5427

WISER CHALLENGE MISC. NO. 2

Districts 15-19

Proposed district: WISER15

	COMPACTNESS MEASURES				Minimum	Average	Average
	Schwartz- berg	Boyce- Clark	Reock	NSEW Rectangle	Wid/Len	Wid/Len	Len/Wid
Actual:	0.6493	0.8377	0.4616	0.9464	0.6087	0.7786	1.3130
Inverse:	1.5400	1.1938	2.1663	1.0566	1.6428	1.2843	0.7616

Proposed district: WISER16

	COMPACTNESS MEASURES				Minimum	Average	Average
	Schwartz- berg	Boyce- Clark	Reock	NSEW Rectangle	Wid/Len	Wid/Len	Len/Wid
Actual:	0.6518	0.8720	0.4726	0.9952	0.8801	0.9522	1.0513
Inverse:	1.5343	1.1468	2.1160	1.0048	1.1362	1.0502	0.9512

Proposed district: WISER17

	COMPACTNESS MEASURES				Minimum	Average	Average
	Schwartz- berg	Boyce- Clark	Reock	NSEW Rectangle	Wid/Len	Wid/Len	Len/Wid
Actual:	0.5836	0.8555	0.4019	0.9172	0.6727	0.8103	1.2548
Inverse:	1.7136	1.1690	2.4882	1.0903	1.4866	1.2341	0.7969

Proposed district: WISER18

	COMPACTNESS MEASURES				Minimum	Average	Average
	Schwartz- berg	Boyce- Clark	Reock	NSEW Rectangle	Wid/Len	Wid/Len	Len/Wid
Actual:	0.6237	0.9143	0.3960	0.6325	0.5643	0.7729	1.3350
Inverse:	1.6034	1.0937	2.5251	1.5801	1.7721	1.2939	0.7491

Proposed district: WISER19

	COMPACTNESS MEASURES				Minimum	Average	Average
	Schwartz- berg	Boyce- Clark	Reock	NSEW Rectangle	Wid/Len	Wid/Len	Len/Wid
Actual:	0.7338	0.8970	0.5310	0.8831	0.6354	0.7987	1.2757
Inverse:	1.3628	1.1148	1.8832	1.1324	1.5738	1.2520	0.7839

BOYD CHALLENGE MISC. NO. 7

Districts 28, 29

Proposed district: BOYD28

	COMPACTNESS MEASURES						
	Schwartz- berg	Boyce- Clark	Reock	NSEW Rectangle	Minimum Wid/Len	Average Wid/Len	Average Len/Wid
Actual:	0.6824	0.8979	0.5110	0.8865	0.7472	0.8364	1.2039
Inverse:	1.4654	1.1137	1.9569	1.1280	1.3383	1.1956	0.8307

Proposed district: BOYD29

	COMPACTNESS MEASURES						
	Schwartz- berg	Boyce- Clark	Reock	NSEW Rectangle	Minimum Wid/Len	Average Wid/Len	Average Len/Wid
Actual:	0.7003	0.8802	0.3568	0.6168	0.5442	0.7075	1.4537
Inverse:	1.4281	1.1361	2.8024	1.6214	1.8376	1.4134	0.6879

ANDREWS CHALLENGE MISC. NO. 4

Districts 2(42), 3(43 or 44), 7(43 or 44)

Proposed district: ANDREWS2

	Schwartz- berg	Boyce- Clark	COMPACTNESS MEASURES		Minimum Wid/Len	Average Wid/Len	Average Len/Wid
			Reock	NSEW Rectangle			
Actual:	0.4429	0.8229	0.2904	0.7446	0.7146	0.7866	1.2848
Inverse:	2.2580	1.2153	3.4433	1.3430	1.3993	1.2714	0.7783

Proposed district: ANDREWS2A

	Schwartz- berg	Boyce- Clark	COMPACTNESS MEASURES		Minimum Wid/Len	Average Wid/Len	Average Len/Wid
			Reock	NSEW Rectangle			
Actual:	0.6342	0.9011	0.3900	0.8671	0.6289	0.7666	1.3280
Inverse:	1.5769	1.1097	2.5640	1.1532	1.5901	1.3044	0.7530

Proposed district: ANDREWS2B2C

	Schwartz- berg	Boyce- Clark	COMPACTNESS MEASURES		Minimum Wid/Len	Average Wid/Len	Average Len/Wid
			Reock	NSEW Rectangle			
Actual:	0.4796	0.6951	0.2282	0.4066	0.4058	0.6468	1.6751
Inverse:	2.0851	1.4324	4.3816	2.4592	2.4644	1.5460	0.5970

Proposed district: ANDREWS3

	Schwartz- berg	Boyce- Clark	COMPACTNESS MEASURES		Minimum Wid/Len	Average Wid/Len	Average Len/Wid
			Reock	NSEW Rectangle			
Actual:	0.5510	0.7462	0.3309	0.7795	0.6269	0.7554	1.3418
Inverse:	1.8148	1.3402	3.0220	1.2828	1.5951	1.3238	0.7453

Proposed district: ANDREWS3A

	Schwartz- berg	Boyce- Clark	COMPACTNESS MEASURES		Minimum	Average	Average
			Reock	NSEW Rectangle	Wid/Len	Wid/Len	Len/Wid
Actual:	0.5570	0.7014	0.2615	0.5357	0.4030	0.6702	1.5849
Inverse:	1.7552	1.4257	3.8235	1.8667	2.4611	1.4920	0.6310

Proposed district: ANDREWS3B

	Schwartz- berg	Boyce- Clark	COMPACTNESS MEASURES		Minimum	Average	Average
			Reock	NSEW Rectangle	Wid/Len	Wid/Len	Len/Wid
Actual:	0.6001	0.7036	0.2296	0.2712	0.2609	0.5856	1.9871
Inverse:	1.6663	1.4213	4.3555	3.6879	3.8334	1.7076	0.5033

Proposed district: ANDREWS3C

	Schwartz- berg	Boyce- Clark	COMPACTNESS MEASURES		Minimum	Average	Average
			Reock	NSEW Rectangle	Wid/Len	Wid/Len	Len/Wid
Actual:	0.5839	0.8130	0.2577	0.4746	0.4512	0.6550	1.6189
Inverse:	1.7126	1.2300	3.3588	2.1059	2.2164	1.5266	0.6177

Proposed district: ANDREWS7

	Schwartz- berg	Boyce- Clark	COMPACTNESS MEASURES		Minimum	Average	Average
			Reock	NSEW Rectangle	Wid/Len	Wid/Len	Len/Wid
Actual:	0.6954	0.9288	0.5696	0.9811	0.7348	0.8605	1.1675
Inverse:	1.4380	1.0766	1.7555	1.0192	1.2582	1.1621	0.8565

Proposed district: ANDREWS7A

	Schwartz- berg	Boyce- Clark	Reock	NSEW Rectangle	Minimum Wid/Len	Average Wid/Len	Average Len/Wid
Actual:	0.6584	0.9030	0.4635	0.7611	0.6582	0.8029	1.2631
Inverse:	1.5188	1.1074	2.1577	1.3139	1.5193	1.2455	0.7917

Proposed district: ANDREWS7B

	Schwartz- berg	Boyce- Clark	Reock	NSEW Rectangle	Minimum Wid/Len	Average Wid/Len	Average Len/Wid
Actual:	0.6549	0.9077	0.5145	0.9003	0.7642	0.8634	1.1678
Inverse:	1.5269	1.1016	1.9435	1.1108	1.3085	1.1583	0.8563

Proposed district: ANDREWS7C

	Schwartz- berg	Boyce- Clark	Reock	NSEW Rectangle	Minimum Wid/Len	Average Wid/Len	Average Len/Wid
Actual:	0.5450	0.9219	0.3791	0.7482	0.6594	0.7579	1.3369
Inverse:	1.8349	1.0847	2.6377	1.3365	1.5164	1.3194	0.7480

MORRIS CHALLENGE MISC. NO. 8
March 31, 1982 Plan

Districts 42, 47

Proposed district: MORRIS42

	COMPACTNESS MEASURES						
	Schwartz- berg	Boyce- Clark	Reock	NSEW Rectangle	Minimum Wid/Len	Average Wid/Len	Average Len/Wid
Actual:	0.4442	0.7679	0.2779	0.7463	0.7117	0.7803	1.2947
Inverse:	2.2511	1.3023	3.5981	1.3399	1.4051	1.2815	0.7724

Proposed district: MORRIS47

	COMPACTNESS MEASURES						
	Schwartz- berg	Boyce- Clark	Reock	NSEW Rectangle	Minimum Wid/Len	Average Wid/Len	Average Len/Wid
Actual:	0.5711	0.8077	0.2609	0.6467	0.3646	0.5940	1.8397
Inverse:	1.4901	1.2381	3.8322	1.5463	2.7427	1.6835	0.5436

LANDERS CHALLENGE MISC. NO. 9

SEG COMPACT

Districts 43, 44

Enter the name of a file containing district nodes ((CR) to stop):

LANDERS43-2
Cannot OPEN LANDERS43-2
Status = 15

Enter the name of a file containing district nodes ((CR) to stop):

LANDERS43-2

Proposed district: LANDERS43-2

	Schwertz- burg	Boyer- Clark	Rebeck	COMPACTNESS MEASURED HSEU Rectangle	Minimum Uld/Lon	Average Uld/Lon	Average Lon/Uld
Actual:	0.4629	0.6485	0.3085	0.6730	0.6102	0.7855	1.3032
Inverse:	2.1604	1.5431	3.2417	1.4846	1.6140	1.2730	0.7673

Enter the name of a file containing district nodes ((CR) to stop):

LANDERS44-2

Proposed district: LANDERS44-2

	Schwertz- burg	Boyer- Clark	Rebeck	COMPACTNESS MEASURED HSEU Rectangle	Minimum Uld/Lon	Average Uld/Lon	Average Lon/Uld
Actual:	0.6286	0.8402	0.4433	0.7417	0.5717	0.7432	1.3003
Inverse:	1.5908	1.1790	2.2557	1.3447	1.7491	1.3450	0.7103

Enter the name of a file containing district nodes ((CR) to stop):

STOP

OK,

OK, SEG COMPACT

Enter the name of a file containing district nodes (<CR> to stop):

G6

Proposed district: G6

	Schwartz- berg	Boyce- Clark	Reock	Compactness Measures NSEW Rectangle	Minimum Wid/Len	Average Wid/Len	Average Len/Wid
Actual:	0.5573	0.6499	0.3183	0.6019	0.4735	0.6611	1.5517
Inverse:	1.7609	1.1762	3.1714	1.6617	2.1116	1.5126	0.6615

Enter the name of a file containing district nodes (<CR> to stop):

G7

Proposed district: G7

	Schwartz- berg	Boyce- Clark	Reock	Compactness Measures NSEW Rectangle	Minimum Wid/Len	Average Wid/Len	Average Len/Wid
Actual:	0.6610	0.6243	0.3851	0.8473	0.6053	0.7587	1.3424
Inverse:	1.5128	1.2124	2.5968	1.1803	1.6521	1.3181	0.7449

Enter the name of a file containing district nodes (<CR> to stop):

GE

Proposed district: 38

	Schwartz- berg	Boyce- Clark	Reock	COMPACTNESS MEASURES INSEW Rectangle	Minimum Wid/Len	Average Wid/Len	Average Len/Wid
Actual:	0.6596	0.7433	0.3430	0.6691	0.5514	0.7460	1.3387
Inverse:	1.7871	1.3450	2.9132	1.6691	1.8070	1.3391	0.7201

Enter the name of a file containing district nodes (<CR> to stop):

OK, SEG COMPACT

GG

Proposed district: 39

	Schwartz- berg	Boyce- Clark	Reock	COMPACTNESS MEASURES INSEW Rectangle	Minimum Wid/Len	Average Wid/Len	Average Len/Wid
Actual:	0.6271	0.6191	0.4536	0.7573	0.6023	0.6121	1.6311
Inverse:	1.6427	1.7880	2.2041	1.3201	1.6444	1.6311	0.6121

APPENDIX B

IN THE)	IN THE
LEGISLATIVE REDISTRICTING)	COURT OF APPEALS
OF THE STATE)	OF MARYLAND
CARIVILLE L. COLLINS, et al.)	
(Howard County Voters))	
Petitioner)	
v.)	Misc. No. 3
GOVERNOR OF MARYLAND, et al.)	September Term, 1982
Respondents.)	

AFFIDAVIT OF HARRY R. HUGHES

I, Harry R. Hughes, being duly sworn, depose and say that I have knowledge of the facts hereinafter set forth and that I am competent to testify as follows:

1. My name is Harry Hughes and I was elected Governor of the State of Maryland in the General Election of 1978 and have served in that capacity since January, 1979.

2. Article III, Sec. 5 of the Constitution of Maryland requires the Governor, following each decennial census of the United States and after public hearings, to prepare "a plan setting forth the boundaries of the legislative districts for electing members of the Senate and the House of Delegates" and to submit that plan to the General Assembly.

3. On January 1, 1981 the Census Bureau submitted to the President and the Congress the population figures for the purpose of allocating Congressional seats among the states; on April 1, 1981 the Bureau submitted more detailed population figures for legislative reapportionment purposes.

4. After consultation with the leaders of the General Assembly, on April 13, 1981, I appointed an Advisory Committee to assist me in developing a redistricting plan. I structured that

committee so that it consisted of: State Treasurer William S. James who served as Chairman; two representatives of the legislative branch (because the General Assembly had its own constitutional responsibilities with regard to any redistricting plans); the President of the Senate, James Clark Jr, and the Speaker of the House, Benjamin L. Cardin; and two members of the General Public: Dr. Vernon Gray, a Democrat from Howard County and Ms. Barbara Fetterhoff, a Republican from Washington County.

5. The Advisory Committee was "charged with receiving public comment, recommending a "plan" to me and "advising" me on "all aspects, of the reappointment process." I also asked the Advisory Committee to make provision for "continuous consultation with the General Assembly and the county delegations and for receiving the opinions of interested members of the general public." See Attachment A (April 13, 1981 letter to Members of the General Assembly).

6. After holding many public hearings and considering hours of testimony, the Advisory Committee recommended a redistricting plan to me on December 8, 1981.

7. Upon receiving the recommendations of the Advisory Committee I held two additional, lengthy public hearings on December 21, 1981 and December 23, 1981 in accordance with Article III, Sec. 5 of the Constitution. See Attachment B (Transcript of Hearings of December 21, 1981) and Attachment C (Transcript of Hearings on December 23, 1981). Notice of these hearings was published in the Maryland Register, (Vol 6, Issue 25, 12/11/81) and at least once in 103 newspapers published or widely circulated in the State of Maryland.

8. After carefully studying the recommendations of the Advisory Committee and the public comment, both written and oral, on its recommendations, I prepared and approved a redistricting

plan which I submitted to the General Assembly on January 13, 1982.

9. In my plan I adopted most of the recommendations of the Advisory Committee because I believed that in most instances the Committee did a very conscientious and careful job in very difficult circumstances. However, I did conclude that several recommendations of the Advisory Committee did not embody the best possible redistricting plan for certain legislative districts. Accordingly I did not adopt the Committee's recommendation in these instances.

10. I understand that only one of these gubernatorial changes is being challenged by court suit, the districting of Howard County in legislative districts 13 and 14 and their sub-districts 13A, 13B, 14A and 14B.

11. During the Advisory Committee's deliberations various allegations were raised in the public press, i.e., that the Committee or some of its members (two of whom, James Clark and Vernon Gray, residents of Howard County) were for various reasons attempting to benefit Howard County at the expense of its neighboring counties and/or to fashion Howard County into legislative districts which would accomodate certain personal political ambitions (See Attachments D-F). These allegations continued at the public hearings which I conducted on December 21, 1981 and December 23, 1981. (See Attachment B, p. 30-31 and Attachment C, p. 15-16) Accordingly, I determined to give particularly careful study to the districting of Howard County contained in the Committee's Plan for Legislative Districts 13 and 14 and their sub-districts.

12. After careful consideration, I decided to submit to the General Assembly my own Plan for districting Howard County in Legislative Districts 13 and 14. I think this Plan is in the

best interests of the State for many reasons; the most important of which are:

A. Population equality: Legislative districts 13 and 14 and subdistricts 13A, 13B, 14A and 14B under my plan are all apportioned so they are as nearly as equal in population as possible. Subdistrict 14B deviates the most from mathematical equality and it deviates only +5.6%, a deviation which I believe is justified in order to prevent a small portion of Howard County, a county which was already split into three legislative districts under both the Committee's recommendation and my plan, from being split into still another legislative district. The Committee, on the other hand, recommended an arrangement which would have created a subdistrict 13B whose population deviated significantly from equality, i.e. +10% and the Committee offered no justification for this significant population deviation.

B. Compactness: I believe the shapes of Districts 13 and 14 and their subdistricts are more visually compact under my Plan than under the Committee's recommendation. The Advisory Committee suggested an arrangement in which the boundaries of Subdistrict 14B formed an extremely peculiar shape - with a "toilet seat" or "horseshoe" around District 13; and Subdistrict 13A had a peculiar hitch at its top so that it might include the home of one of the Committee members. These particular shapes suggested by the Advisory Committee were neither caused nor justified by population factors, voter identification, natural boundaries or the boundaries of political subdivisions; the only justification for these particular shapes appeared to be to ensure that no portion of an unincorporated area, Columbia, be in a legislative district with any portion of the rest of Howard County.

C. Due Regard to Political Subdivisions: According to the most recent United States census, the total population of the State of Maryland is 4,216,975, the population of Howard County is 118,572 and the population of Prince George's County is 665,071. If the population of the State were divided equally among its 47 Legislative Districts, the population of each district would be 89,723. Thus, Howard County's population, if it were possible to keep it entirely together, would elect 1.3 State Senators (118,572 divided by 89,723), and Prince George's County's population, would elect 7.4 State Senators (665,071 divided by 89,723). Due regard should be given both of these counties without giving an unfair advantage to either. I believe my plan does this while the Advisory Committee's recommendation did not.

The Advisory Committee had structured Legislative Districts 13 and 14 so that each district contained a 2/3 majority of Howard County residents and, therefore, Howard County residents who, if they were in a single district would only control the election of one State Senator, were in a position to control the election of two State Senators. Moreover, the Advisory Committee divided Legislative Districts 13 and 14 so that both 13A and 14B were multimember subdistricts heavily dominated by Howard County residents (13A is exclusively Howard County residents; in 14B they are an 87% majority) and thus assured that Howard County residents would elect 4 delegates who resided in Howard County. Under the Committee's plan, Prince George's County residents, whose population would permit them to elect 7.4 State Senators, are limited to seven Senators and 21 Delegates plus one only additional Delegate in single member subdistrict 13B. Moreover, the Committee's single member district 13B limited the population of the Greater Laurel area (approximately 50,000 people), to

representation by 1 resident delegate in that subdistrict and a very small minority voice in two other districts - 13A and 21. Thus, Howard County was given appreciably more representation than its population would justify (which apparently even the sponsors of the Committee's Plan recognized - See Attachment G) and Prince George's County and particularly the Greater Laurel area was given less than its population would justify.

Under my plan, Howard County retains precisely the same 2/3 control in one district (14) and only slightly less than that in the other (13), thus still controlling the election of 2 State Senators. Howard County residents are, under my plan, only assured that 3 of the delegates they elect will be residents of Howard County (one from single member district 13A and two from multimember district 14B). But one, or even two, additional delegates who reside in Howard County may be elected under my plan, since in multimember district 13B, two delegates will be elected jointly by 25,473 Howard County residents and 31,261 Prince George's County residents. I believe my Plan gives the Howard County population fair representation: control of 2 Senators, assurance of 3 resident delegates and representation by 2 additional delegates, one or both of whom may be Howard County residents. At the same time, my Plan treats the Prince George's County population, particularly the Greater Laurel area, more fairly, giving Greater Laurel's 50,000 population a chance to elect two resident delegates in 13B rather than confining that population to no more than one delegate.

D. Political Fairness: While certain areas are not political subdivisions, I did try to treat them as fairly and equally as possible consistent with the constitutional requirements. For example, under my plan, the villages of "Columbia" while not kept in a single legislative district are an integral

political factor in two legislative districts. Moreover, each of the villages which is part of the development of "Columbia" is kept intact. The newest villages, located in East Columbia, exclusively occupy single member Subdistrict 13A. The older villages of West Columbia that are more assimilated into Howard County, are grouped with other portions of Howard County in Subdistrict 14B. The Laurel metropolitan area is kept together in Subdistrict 13B, and the entire Ellicott City area is kept together in Subdistrict 14B. The Advisory Committee's recommendation purportedly kept all the villages in the development of Columbia together in one Subdistrict 13A (but see Attachment C - Hearings of December 23, 1981, p. 17-18), but did this at the expense of: (1) population equality, (2) compactness, (3) due regard to the political subdivision of Prince George's County, and the incorporated City of Laurel, which under the Committee's recommendation was separated from the Greater Laurel area including West Laurel, North Laurel, Hammond Park and Savage (the City was put into a single member subdistrict 13B, and the rest of the Greater Laurel area was split into 2 different districts - 13A and 21); and (4) fairness to Ellicott City, the county seat of Howard County, which under the Committee's recommendation was split between the two Legislative Districts, a small portion in Subdistrict 13A and the rest in 14B.

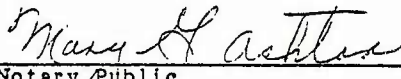
13. My plan with certain minor, mostly technical, amendments was adopted and approved by the General Assembly as Joint Resolution 32. The vote in the Senate was 33 in favor to 10 against

with 4 members not voting; the vote in the House of Delegates was 112 in favor to 19 against the Plan with 10 members not voting.


Harry R. Hughes

STATE OF MARYLAND)
) TO WIT:
COUNTY OF ANNE ARUNDEL)

I HEREBY CERTIFY that on this 12th day of April, 1982, personally appeared before me, a Notary Public in and for the County and State Aforesaid, Harry R. Hughes, and made oath in due form of law that of his knowledge, the facts set forth in the foregoing Affidavit are true to the best of his knowledge, information and belief.


Notary Public

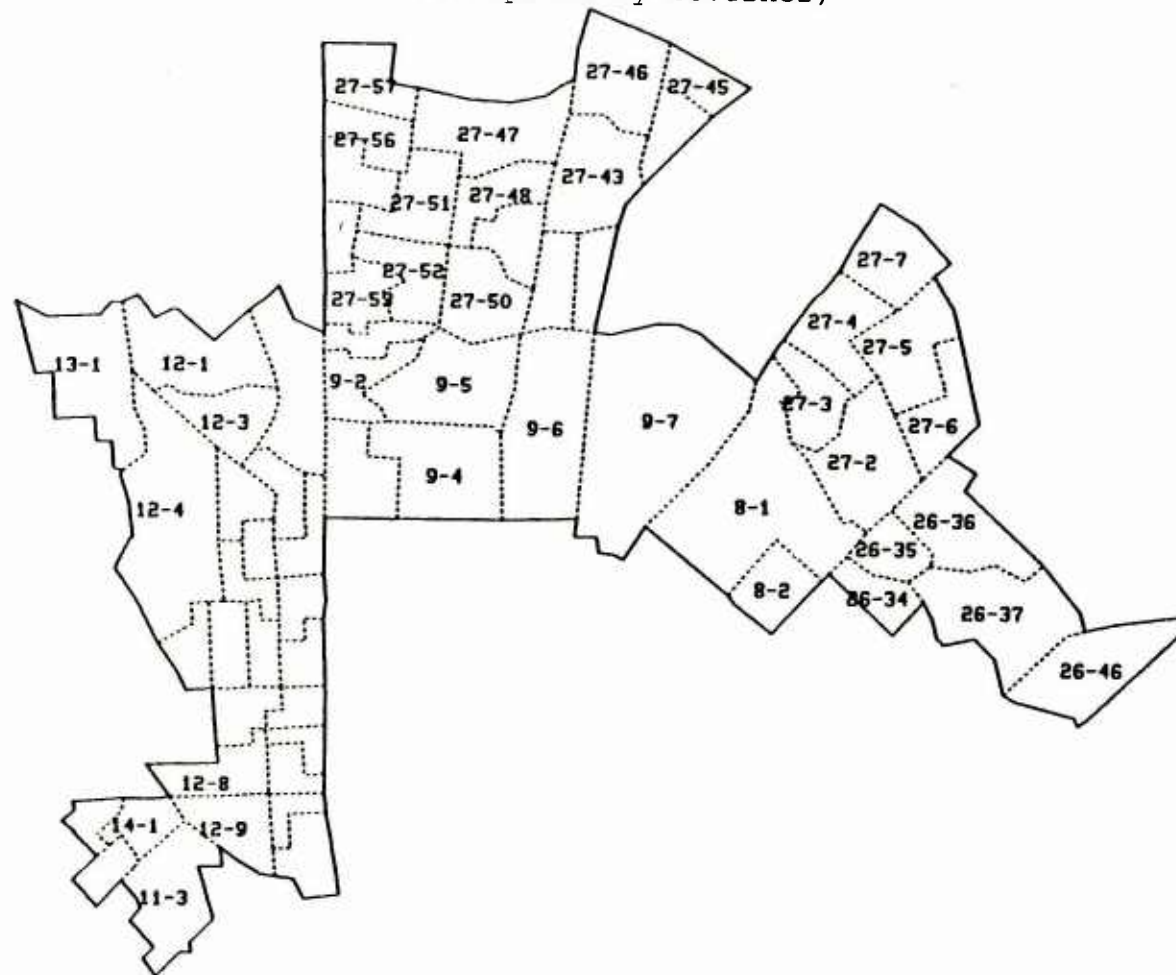
My Commission expires July 1, 1982.

APPENDIX C

Legislative District 44

Precincts

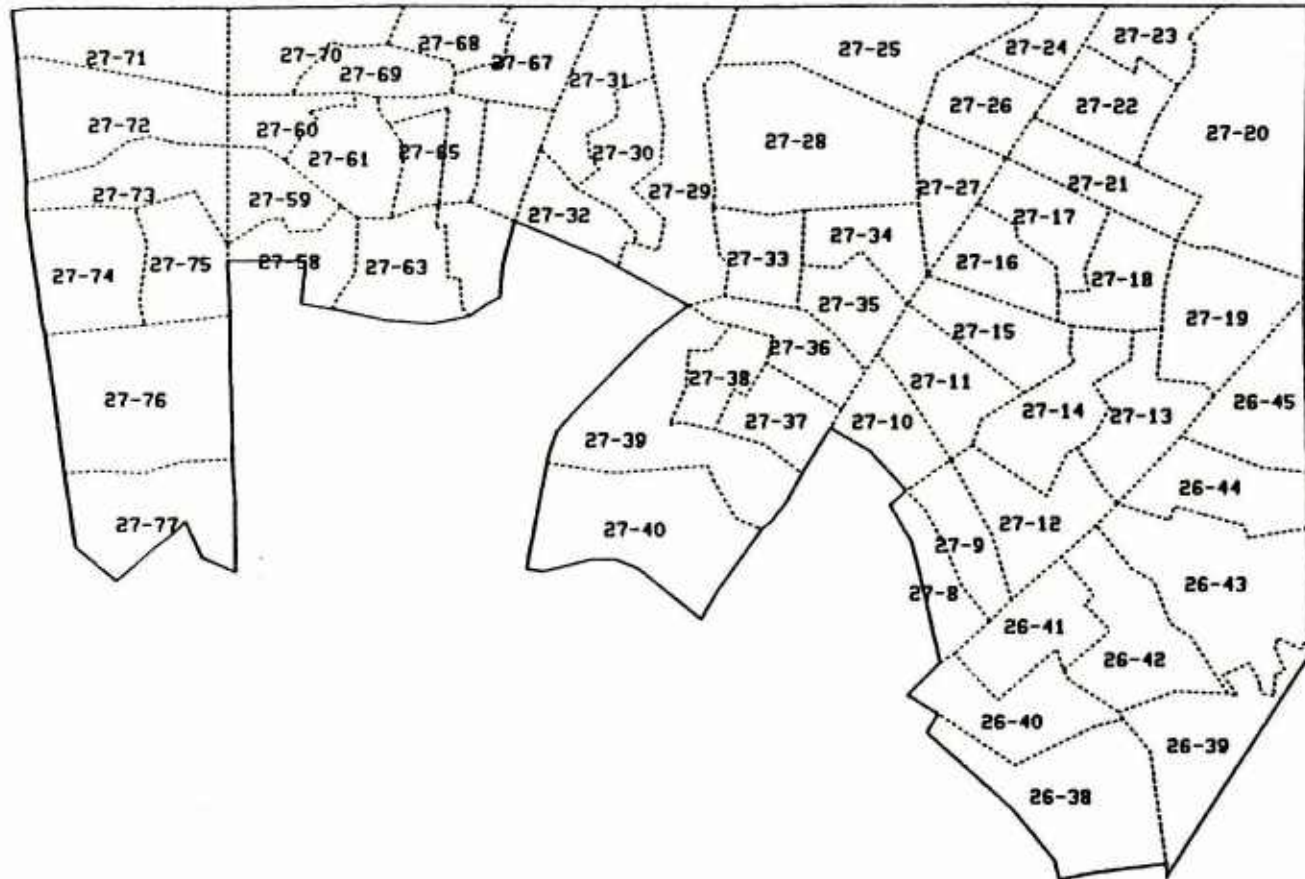
(Proposed by Governor)



Legislative District 43

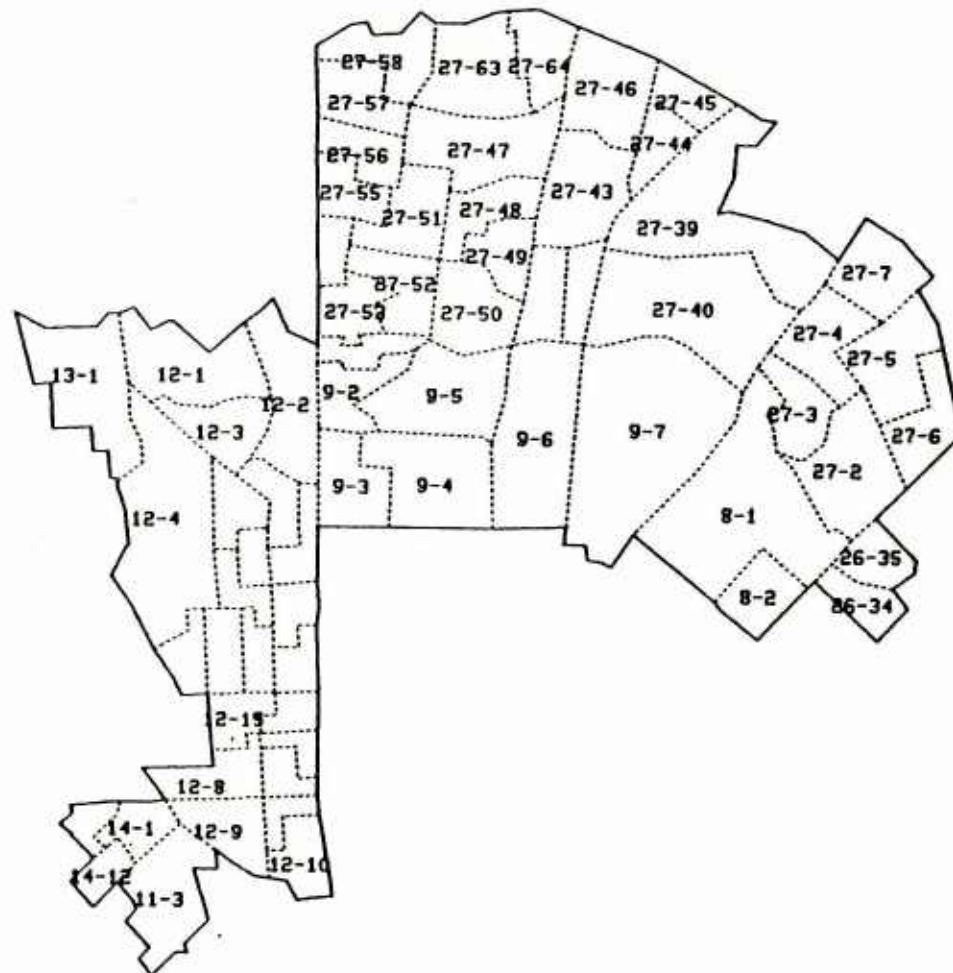
Precincts

(Proposed by Governor)



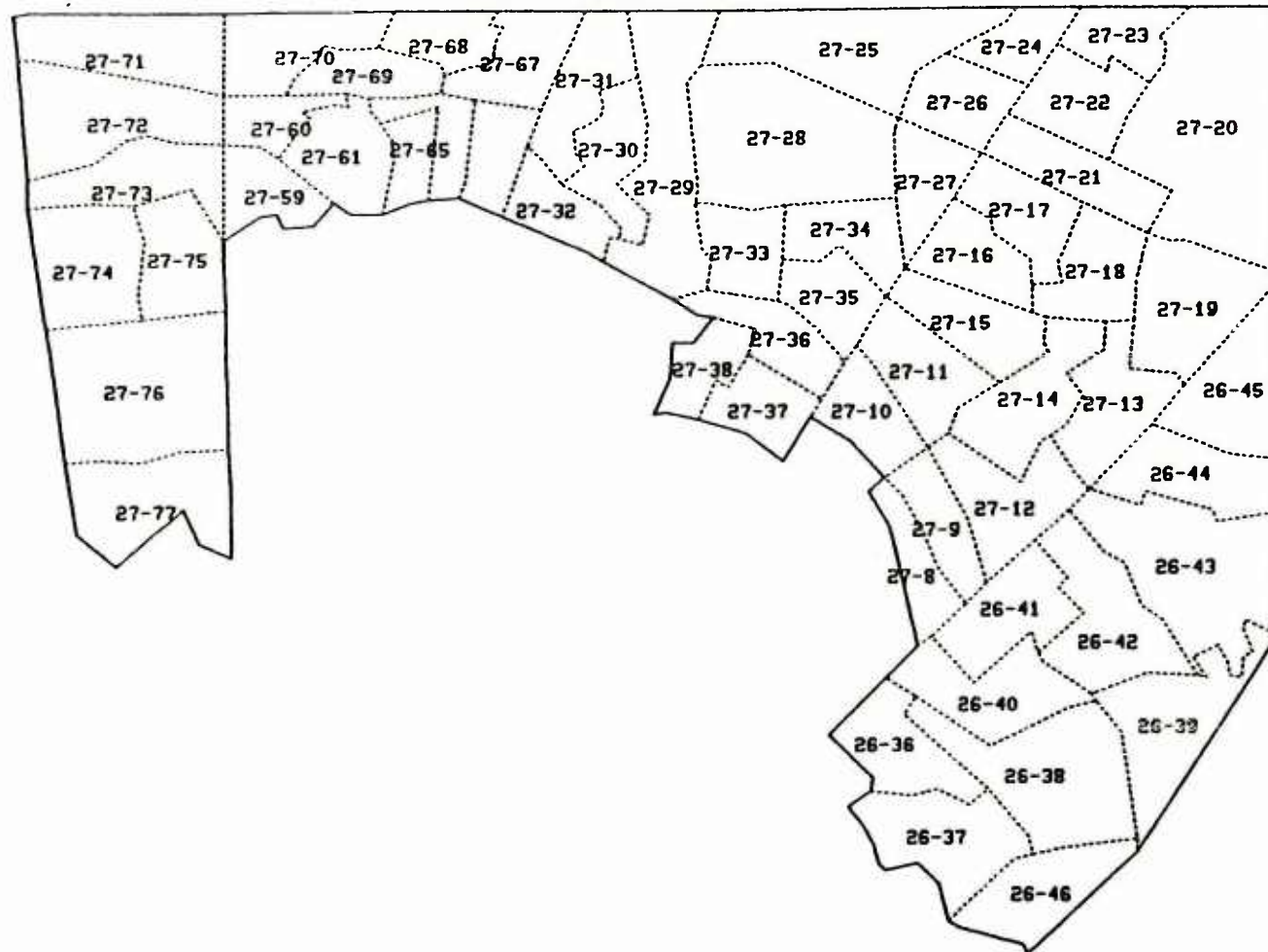
(PROPOSED BY MASTER)

Legislative District 44
Precincts



(PROPOSED BY MASTER)

Legislative District 43
Precincts



Districts: 47
 Substates per district: 3

TASK FORCE PLAN: GOVERNOR'S 39		47	90%	17%	IND	ASIAN	OTHER	SPAN
REGION	TOTAL	WHITE	BLACK					
District 43	89,348	71,990	15,813	73	22	18	1,011	
Baltimore City P26-36	1,883	1,032	338	1	5	7	12	
Baltimore City P26-37	3,617	2,113	1,472	3	18	8	33	
Baltimore City P26-38	2,795	688	2,053	5	13	36	26	
Baltimore City P26-39	2,792	2,488	285	1	15	5	23	
Baltimore City P26-40	1,476	1,471	4	1	0	0	4	
Baltimore City P26-41	1,199	1,157	11	0	8	13	18	
Baltimore City P26-42	2,025	1,835	25	0	13	2	19	
Baltimore City P26-43	3,423	3,133	457	4	14	15	26	
Baltimore City P26-44	1,510	1,488	21	0	1	0	5	
Baltimore City P26-45	1,326	1,306	0	0	0	0	20	
Baltimore City P26-46	2,181	509	1,643	0	15	14	25	
Baltimore City P27-8	1,137	1,111	12	0	14	0	3	
Baltimore City P27-9	1,094	1,045	30	2	3	14	8	
Baltimore City P27-10	1,057	1,039	6	1	6	5	12	
Baltimore City P27-11	1,082	1,067	6	7	2	0	11	
Baltimore City P27-12	1,487	1,320	138	1	22	6	8	
Baltimore City P27-13	2,086	2,007	32	1	33	13	21	
Baltimore City P27-14	1,803	1,770	15	2	10	6	20	
Baltimore City P27-15	1,302	1,281	14	0	1	6	4	
Baltimore City P27-16	1,023	1,004	3	1	8	7	9	
Baltimore City P27-17	1,000	988	3	1	4	4	1	
Baltimore City P27-18	1,355	1,333	11	0	7	4	12	
Baltimore City P27-19	1,550	1,513	20	0	9	8	16	
Baltimore City P27-20	1,517	1,409	103	0	5	1	15	
Baltimore City P27-21	1,322	1,310	6	0	1	5	3	
Baltimore City P27-22	1,170	1,164	0	1	5	0	5	
Baltimore City P27-23	724	711	7	0	0	6	2	
Baltimore City P27-24	967	956	0	1	6	4	9	
Baltimore City P27-25	3,704	1,480	2,092	13	59	58	68	
Baltimore City P27-26	1,054	1,049	5	0	0	0	10	
Baltimore City P27-27	1,049	1,019	4	0	19	7	10	
Baltimore City P27-28	3,322	2,107	1,066	2	101	46	66	
Baltimore City P27-29	964	705	230	1	18	10	17	
Baltimore City P27-30	1,349	1,120	208	0	13	8	11	
Baltimore City P27-31	1,521	1,350	149	0	20	2	21	
Baltimore City P27-32	1,319	962	308	4	27	18	14	
Baltimore City P27-33	981	917	52	1	6	5	8	
Baltimore City P27-34	1,108	1,093	4	1	2	8	4	
Baltimore City P27-35	1,009	993	6	0	6	4	13	
Baltimore City P27-36	1,149	1,039	74	1	32	3	10	
Baltimore City P27-37	961	892	45	0	10	14	22	
Baltimore City P27-38	896	367	520	0	5	4	18	
Baltimore City P27-59	1,097	635	445	2	15	0	15	
Baltimore City P27-60	668	528	109	3	17	11	4	
Baltimore City P27-61	1,752	642	1,101	2	3	4	22	
Baltimore City P27-62	1,023	759	202	1	45	6	16	
Baltimore City P27-63	1,264	805	424	2	27	6	9	
Baltimore City P27-64	1,154	945	172	0	23	14	26	
Baltimore City P27-67	1,806	1,489	262	3	40	6	24	
Baltimore City P27-68	1,691	1,447	165	0	72	7	38	
Baltimore City P27-69	1,431	1,160	237	1	24	2	30	
Baltimore City P27-70	1,735	1,581	109	0	42	3	28	
Baltimore City P27-71	1,065	1,033	27	0	2	3	7	
Baltimore City P27-72	1,362	1,233	119	0	6	4	8	
Baltimore City P27-73	939	916	22	0	1	0	3	
Baltimore City P27-74	1,074	1,069	3	0	2	0	1	
Baltimore City P27-75	1,086	1,062	3	1	18	1	1	
Baltimore City P27-76	2,429	2,009	344	2	46	28	35	
Baltimore City P27-77	971	533	121	0	10	7	15	

Baltimore City P27-34	1,108	1,093	4	1	2	3	1
Baltimore City P27-35	1,009	993	6	0	6	4	10
Baltimore City P27-36	1,149	1,039	74	1	32	3	10
Baltimore City P27-37	941	892	45	0	10	14	12
Baltimore City P27-38	396	367	520	0	5	4	14
Baltimore City P27-39	1,097	635	445	2	15	0	10
Baltimore City P27-40	668	528	109	3	17	11	1
Baltimore City P27-61	1,752	642	1,101	2	3	4	20
Baltimore City P27-62	1,023	749	202	1	45	6	16
Baltimore City P27-65	1,264	805	424	2	27	6	9
Baltimore City P27-66	1,154	945	172	0	23	14	26
Baltimore City P27-67	1,806	1,489	262	3	46	6	24
Baltimore City P27-68	1,691	1,447	165	0	72	7	38
Baltimore City P27-69	1,431	1,160	237	1	24	9	30
Baltimore City P27-70	1,735	1,581	109	0	42	3	28
Baltimore City P27-71	1,065	1,033	27	0	2	3	7
Baltimore City P27-72	1,362	1,233	119	0	6	4	8
Baltimore City P27-73	939	916	32	0	1	0	5
Baltimore City P27-74	1,074	1,089	3	0	2	0	1
Baltimore City P27-75	1,086	1,060	3	1	18	2	7
Baltimore City P27-76	2,429	2,009	344	2	46	28	66
Baltimore City P27-77	971	833	121	0	10	7	18

Note: Spanish population not included in total because may be any race.

District statistics:

District	Population	Ideal	Absolute Deviation	Relative Deviation	Compact-ness I	Compact-ness II
43	89,348	89,711.62	-363.62	-0.406%	0.57403	0.69203

Report options are:

- 1 - Population reports
- 2 - Incumbent reports
- 3 - Comparison reports
- 4 - END

Enter option: 1

Do you want:

- 1 - All districts
- 2 - A single district
- 3 - END

Enter option: 2

Enter a district code (<CR> to END): 44

Do you want subdistricts included? (Y/N): N

Do you want a racial breakdown? (Y/N): Y

Do you want a breakdown by area? (Y/N): Y

Do you want statistics? (Y/N): Y

Proposed Legislative Plan 100

TASK FORCE PLAN, GOVERNOR'S 39 47

04/21/82

Districts: 47

Delegates per district: 3

REGION	TOTAL	WHITE	BLACK	IND	ASIAN	OTHER	SPAN
District 44	90,468	45,180	43,405	170	1,105	608	1,090
Baltimore City P8-1	1,633	1,612	10	0	2	9	15
Baltimore City P8-2	1,837	1,809	12	0	15	1	24
Baltimore City P9-1	1,496	167	1,322	0	3	4	7
Baltimore City P9-2	2,046	620	1,353	16	26	31	30
Baltimore City P9-3	2,322	1,247	967	11	58	39	40
Baltimore City P9-4	2,265	1,207	978	6	5	16	26
Baltimore City P9-5	1,171	661	511	1	5	27	11

TASK FORCE PLAN, GOVERNOR'S 39 - 47		49.94%	47.97%						
REGION		TOTAL	WHITE	BLACK	IND	ASIAN	OTHER	SPAN	
District 44		90,468	45,180	43,405	170	1,105	608	1,070	
Baltimore City P8-1		1,633	1,612	10	0	2	9	15	
Baltimore City P8-2		1,837	1,809	12	0	15	1	24	
Baltimore City P9-1		1,496	167	1,322	0	3	4	7	
Baltimore City P9-2		2,046	620	1,353	16	26	31	32	
Baltimore City P9-3		2,322	1,247	967	11	58	39	40	
Baltimore City P9-4		2,265	1,207	978	4	56	18	29	
Baltimore City P9-5		2,457	984	1,441	1	6	27	32	
Baltimore City P9-6		2,723	1,107	1,584	5	15	12	35	
Baltimore City P9-7		939	531	395	2	3	8	9	
Baltimore City P11-3		1,533	968	539	3	12	11	11	
Baltimore City P12-1		2,262	2,173	49	1	27	7	45	
Baltimore City P12-2		966	874	47	0	28	17	15	
Baltimore City P12-3		1,264	1,235	17	0	13	9	11	
Baltimore City P12-4		1,616	1,314	204	4	56	12	27	
Baltimore City P12-6		1,229	866	263	6	41	17	20	
Baltimore City P12-8		1,266	440	807	3	7	9	24	
Baltimore City P12-9		683	219	452	7	1	4	4	
Baltimore City P12-10		1,034	7	1,009	12	5	1	6	
Baltimore City P12-11		754	51	692	2	9	0	2	
Baltimore City P12-12		676	17	657	0	2	19	3	
Baltimore City P12-13		1,005	4	1,000	0	1	0	3	
Baltimore City P12-14		1,190	65	1,112	4	0	9	10	
Baltimore City P12-15		958	489	343	1	12	13	14	
Baltimore City P12-16		738	669	91	0	26	0	7	
Baltimore City P12-17		1,125	842	196	3	50	9	20	
Baltimore City P12-18		1,483	149	1,323	1	1	9	9	
Baltimore City P12-19		1,316	325	982	2	7	0	7	
Baltimore City P12-20		1,273	1,114	49	4	80	24	61	
Baltimore City P12-21		855	683	150	2	14	4	11	
Baltimore City P12-22		1,227	1,127	58	3	37	2	22	
Baltimore City P12-23		2,249	1,983	96	3	140	27	58	
Baltimore City P12-24		1,048	948	67	2	27	7	17	
Baltimore City P13-1		2,047	1,975	46	2	18	6	19	
Baltimore City P14-1		1,125	719	393	1	11	1	7	
Baltimore City P14-2		648	490	143	1	1	13	4	
Baltimore City P14-12		1,315	743	558	2	5	5	12	
Baltimore City P26-34		1,011	993	12	4	0	2	4	
Baltimore City P26-35		969	959	4	1	3	2	3	
Baltimore City P27-2		914	889	9	5	2	9	6	
Baltimore City P27-3		830	826	8	0	0	3	16	
Baltimore City P27-4		891	882	6	0	2	1	7	
Baltimore City P27-5		1,239	1,277	8	1	3	0	11	
Baltimore City P27-6		951	914	24	0	13	0	2	
Baltimore City P27-7		933	892	26	1	4	10	9	
Baltimore City P27-39		1,789	777	935	15	20	22	22	
Baltimore City P27-40		1,403	1,016	363	4	8	10	32	
Baltimore City P27-41		927	122	786	0	9	10	0	
Baltimore City P27-42		1,210	255	938	1	6	10	9	
Baltimore City P27-43		1,403	353	1,041	5	0	2	1	
Baltimore City P27-44		1,509	554	931	0	13	11	12	
Baltimore City P27-45		1,202	552	635	0	9	6	24	
Baltimore City P27-46		1,557	625	908	0	21	3	22	
Baltimore City P27-47		2,708	259	2,435	0	8	6	30	
Baltimore City P27-48		2,196	79	2,102	2	4	9	24	
Baltimore City P27-49		1,212	235	957	1	13	6	10	
Baltimore City P27-50		1,084	655	410	1	10	8	16	
Baltimore City P27-51		1,327	9	1,313	0	3	2	10	
Baltimore City P27-52		1,784	49	1,723	1	1	10	12	
Baltimore City P27-53		1,063	76	963	1	4	19	24	
Baltimore City P27-54		946	23	895	1	8	19	6	
Baltimore City P27-55		1,217	74	1,140	0	3	0	16	
Baltimore City P27-56		1,526	84	1,422	3	2	15	4	
Baltimore City P27-57		1,275	295	937	1	38	4	6	
Baltimore City P27-58		1,657	479	1,125	1	37	15	20	
Baltimore City P27-63		1,887	409	1,457	3	13	5	20	
Baltimore City P27-64		1,227	731	456	3	33	4	18	

NOTE: Spanish population not included in total because may be any race.

District statistics:

District	Population	Ideal	Absolute Deviation	Relative Compactness I	Relative Compactness II
44	90,468	89,711.52	756.48	40.843%	0.53122
					0.77603