Four key factors affected the initial phase of 1990 congressional and legislative redistricting: (1) the continued insistence by federal courts on strict standards of population equality (especially for congressional districts) that frequently forced state legislators to cross city and county lines for the purpose of population equalization (Ghofman and Handley 1991); (2) the Supreme Court's upholding in 1986 of the constitutionality of the "effects test" language added to Section 2 of the Voting Rights Act of 1965 when the Act was renewed in 1982, and the way in which the Court interpreted the new language of Section 2 to create a dramatically simplified three-tiered test of minority vote dilution (Ghofman, Handley, and Niemi 1993); (3) vigorous enforcement by the Civil Rights Division of the Department of Justice of Section 5 of the Voting Rights Act (preclearance provisions that apply to 16 states in whole or part); and (4) the computer revolution, which has made it easy to rapidly draw alternative districting plans whose partisan and racial characteristics can be immediately assessed. The combination of Section 2 and Section 5 has made the Voting Rights Act "a brooding omnipresence" in the decision calculus of legislators anticipating voting rights challenges to the plans they draw (Ghofman 1993, 1263). Fear of voting rights litigation that would delay implementation of new plans and/or leave open the possibility that a plan would be totally redrawn by a court (with unforeseeable consequences for incumbents), as well as the greater black presence in legislative halls due to earlier redistrictings, has led legislators to draw many more black majority seats in the 1990s than ever before, especially in the South. As a consequence, 1992 saw dramatic gains in black legislative representation in the South, especially at the congressional level. For example, in the South the number of black members of Congress went from 4 to 17. Hispanics, also under special Voting Rights protection, have made legislative gains as well. Handley, Ghofman, and Arden (1994) show that black and Hispanic gains in representation in the 1990s, like minority legislative gains in the 1970s and 1980s (Ghofman and Handley 1991, 1992), can be attributed almost entirely to the creation of black and Hispanic majority districts.

Computer-drawn districts, built from units as small as census blocks and sometimes even splitting blocks, have raised the potential for gerrymandering to a new level, and given rise to some remarkably creative cartography. Many of the new minority seat gains have occurred in tortuously shaped districts. These districts were carefully crafted to agglomerate enough minority population to assure a seat that a minority member might have a realistic chance to win given patterns of polarized voting. Arguably, standard redistricting criteria such as preservation of city and county boundaries, compactness, and even contiguity, have been given less weight in the 1990s, especially in areas where there was potential for drawing minority districts, than at any time in the past (Pildes and Niemi 1993). While black and Hispanic seats are certainly not the only strange-looking ones, they constitute a disproportionate share of the most egregiously irregular shapes—at least for Congress (Pildes and Niemi 1993). Also, some of the irregularities in non-majority-minority districts can be attributed to borders they share with minority districts.

Shaw v. Reno and the Voting Rights Backlash

The peculiar shapes of a number of majority-minority (especially some of the majority-black congressional districts that were drawn in the South; see examples from Georgia, Louisiana and North Carolina in Figures 1–3) have helped trigger a public, scholarly, and legal backlash against the creation of convoluted majority-minority districts and against the judicial and administrative implementation of the Voting Rights Act more generally.

Some critics object to districts like those pictured in the figures above on the grounds that a substantial disregarding of geographic criteria—whether in the interest of creating seats with black or Hispanic majorities or for any other purpose—harms a geographic-based notion of representation. For example, Ehrenhalt (1993, 20) asserts that the "main casualty . . . is the erosion of the geographical community-of-place as the basis for political representation. . . . If a district is nothing more than two pockets of separate white voters strung together. . . . then it is fair to ask whether the notion of a "district" is gradually ceasing to have any geographical meaning at all." However, it is not district shapes, per se, that are at the root of the concerns expressed by many other critics. These critics would not be mollified even if the shapes of majority-minority districts were less irregular. They would object to any use of racial criteria as improper, on the grounds that racially motivated districting inexorably moves us away from a color-blind society to one of separate groups each asking its own claim for a proportional part of the pie.

White Democratic legislators in the South have been unhappy with the emphasis on creating black majority seats for yet a different reason. They fear for their own political safety if black voters loyal to the Democratic party are stripped away into heavily black seats (see Grace, Grofman, and Handley
test for an equal protection violation. The majority noted that the North Carolina redistricting scheme did not violate white voter’s rights because it did not lead to unfairly diluting or canceling out the votes of white voters because white voters were not being underrepresented (ten of the twelve districts had clear white majorities, slightly more than the white proportion of the state population), and avowed that lack of compactness, per se, was not a constitutional violation.

Nonetheless, they asserted that equal protection can be violated if redistricting legislation "is so extremely irregular on its face that itrationally can be viewed only as an effort to segregate the races for purposes of voting, without regard for traditional districting principles and without sufficiently compelling state justification." The Court then remanded Shaw back to the district court for a rearing on the merits based on this new legal test (see Shaw v. Reno).

The Shaw Decision

The Supreme Court’s somewhat muddled 1993 majority opinion in Shaw v. Reno was written by Justice O’Connor, joined by Justices Rehnquist, Scalia, Kennedy, and Thomas, and strongly suggests compromises among the views of these justices in foraging a majority. There were four separate dissenters, one by Justice White joined by Justices Blackmun and Stevens), one by Justice Souter, one by Justice Blackmun, and one by Justice Stevens.

Shaw directly raised what Justice O’Connor refers to as “two of the most complex and sensitive issues this Court has faced in recent years: the meaning of the “right” to vote and the propriety of race-based state legislation designed to benefit members of historically disadvantaged racial minority groups.”

Reacting to the contorted shape of North Carolina’s Twelfth Congressional District (See Figure 3) Justice O’Connor wrote:

We believe that reapportionment is one area in which appearances do matter. A reapportionment plan that includes in one district individuals who belong to the same race, but who are otherwise widely separated by geographical and political boundaries, and who may have little in common with one another but the color of their skin, bears an uncomfortable resemblance to political apartheid... For these reasons, we conclude that a plaintiff may challenge a reapportionment statute under the Equal Protection Clause and may state a claim by alleging that the legislation, though race-neutral on its face, cannot be understood as anything other than an effort to separate voters into different districts on the basis of race, and that the separation lacks sufficient justification.

While Justice O’Connor’s opinion is hostile to race-based classifications, it does not make the use of race-conscious districting per se unconstitutional. Indeed, Justice O’Connor is careful to say that “this Court has never held that race-conscious decision making is impermissible in all circumstances.” Rather, her opinion draws on earlier cases making race a suspect classification such that allocations that make use of racial categories will be subject to strict scrutiny and must pass a test of being “narrowly tailored to further a compelling governmental interest.”

Classifications of citizens solely on the basis of race are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality. They threaten to stigmatize individuals by reason of their membership in a racial group and to incite racial hostility.

“Even in the pursuit of remedial objectives, an explicit policy of assignment by race may serve to stimulate our society’s latent race-consciousness, suggesting the utility and propriety of basing decisions on a factor that ideally bears no relationship to an individual’s worth or needs.” (O’Connor opinion in Shaw v. Reno, internal cites to other cases omitted). The four justices who dissented from the majority opinion in Shaw did so for a number of reasons, and did so with vehemence.

The main arguments raised by the dissenters were based on the vagueness of the new equal protection test laid down in Shaw, and
the lack of grounding of that test in criteria related to equal protection.

Given two districts drawn on similar, race-based grounds, the one does not become more injurious than the other simply by virtue of being snake-like, at least so far as the Constitution is concerned and absent any evidence of differential racial impact. (Justice White in dissent, joined by Justices Blackmun and Stevens.)

Justice Souter, similarly, could not understand how a plan could be a violation of equal protection when there was no group whose rights had been violated.

The Court offers no adequate justification for treating the narrow category of bizarrely shaped districts differently from other districts. Justice O'Connor would not respond to the seeming greggouness of the redistricting now before us by summoning the concept of racial gerrymandering in such a case from the concept of harm exemplified by dilution. (Justice Souter in dissent.)

One other important argument raised by the dissenters was the claim that the peculiarities of the North Carolina congressional plan could, in fact, be accounted for, at least in part, in nonracial terms. Justice White in dissent (joined by Justices Blackmun and Stevens) approvingly quoted the views of one political scientist (myself) that “Understanding why the [North Carolina] configurations are shaped as they are requires us to know at least as much about the interests of incumbent Democratic politicians, as it does knowledge of the Voting Rights Act” (Gromoff 1993, 1258).

However, we cannot really understand the reasons for the vehemence of the dissenters without understanding both the possible stakes (an end to black gains in representation) and the context of historical injustices against blacks and other minorities.

Misinterpretations of Shaw

Three common misinterpretations of Shaw are found with some frequency in the press, and even offered by some academic commentators who ought to know better.

The first misconception is that Shaw is a reverse discrimination case, which upheld the rights of white voters not to have their voting strength diluted by the creation of majority-minority districts. To the contrary, Justice O'Connor made it explicit that there was no claim being made by the Shaw plaintiffs that white voting strength had been diluted. Plaintiffs, in effect, conceded that the North Carolina plan was fair in racial outcome terms.

The second misconception is that Shaw held race-conscious districting to be prima facie unconstitutional. Thornburg v. Gingles (1986) laid out minimal requirements for what a jurisdiction with geographically concentrated pockets of minority voters must do in the way of race-conscious districting if voting was polarized along racial lines to the point that minority candidates usually lose; i.e., it provides a fact-contingent standard for race-conscious remedies. Shaw v. Reno, in contrast, addresses the question of what a jurisdiction may do, i.e., whether a concern for racial fairness can be carried too far in advance of any need shown for a race-conscious remedy. Shaw does not overturn Thornburg. And, as mentioned earlier, the O'Connor opinion specifically reserves that there may be circumstances where race-conscious remedies are constitutionally permissible. Moreover, several previous 1990s redistricting cases that were heard by the Supreme Court reaffirmed the Court's longstanding view that redistricting is primarily a legislative activity in which deference will be given to a legislature's balancing of competing considerations."

The third common error found in discussions of Shaw is the claim that North Carolina was compelled to configure the Twelfth District by the Department of Justice, which would otherwise have failed to preclear any plan. It is hard to see how the Justice Department's view that a second majority-minority district be drawn in the southeastern portion of the state compelled the North Carolina legislature to have created a snakelike majority-minority district in the northern and central part of the state. Similarly, the Justice Department cannot be blamed for all of the amoeba-like pseudopodia of North Carolina's other black majority district. Moreover, it should be even more obvious that the U.S. Department of Justice's Section 5 enforcement cannot be blamed for the tortuous construction of districts outside the majority areas, such as the virtual nonconformity of the Sixth District.

Important Questions Raised by Shaw v. Reno

1. How do we operationalize the Shaw test?

(a) Compactness versus Contiguity and (Re)recognizability. How do you prove that a district is too bizarre? Is this just a matter of visual inspection? When Shaw-related issues have been raised in recent voting rights cases, testimony about district lines by plaintiffs' social science expert witnesses have tended to focus on geometric measures of compactness. While something can be learned from such measures, little weight can be placed on compactness, per se, as the test for a Shaw violation. Compactness tests can be used to help pick out districts whose peculiar features seem to require explanation. On the one hand, compactness is a criterion that should be subordinate to the protection of voting rights. On the other hand, some districts may appear ill-compact because they follow natural geographic boundaries (such as coastlines), or use as building blocks whole cities (or whole units of census geography) that are themselves not especially compact, and yet still be readily recognizable to their voters and to their legislators (see Cain, 1984; Butler and Cain, 1991).

Instead of compactness, the criteria of contiguity and of (re)recognizability refers (Gromoff 1992, 1993) to the ability of a legislator to define, in commonsense terms, based on geographical references, the characteristics of his or her
geographic constituency. The appropriate test of \textit{recognizability} is not whether voters know the boundaries of the district in which they reside, but whether those boundaries could, in principle, be explained to them in simple common terms. \textit{Recognizability}, per se, has not been the subject of previous case law, but egregious violations of the recognizability principle can be identified by making use of standard criteria of districting such as violation of natural geographic boundaries, grossly unnecessary splitting of local subunit boundaries (such as city and county lines), and sardanings of proximate and contiguous natural communities of interests (see Groffman 1985).

Pildes and Niezen (1993) find the North Carolina 12th the most ill-compact congressional district whether we look at perimeter-based or area-based measures of compactness. With respect to contingency, satisfaction of that standard must be more than \textit{pro forma} (see Groffman declaration in \textit{Pepe v. Blue} 2002).

(b) Narrowly Tailored to Fulfill a Compelling State Interest. Certainly, in any redistricting, race is not the only consideration taken into account by line-drawers. In North Carolina, concern for the fate of Democratic white incumbents in neighboring districts was a key role in shaping the way the Twelfth District was finally drawn, as did concern for population equality across districts. If a violation of \textit{Shaw} requires that race be the sole motivating factor, then no plan would ever fail the \textit{Shaw} test. More plausibly, do plaintiffs have to demonstrate that race is the predominant factor affecting line-drawing before a district configuration can be overturned as unconstitutional under \textit{Shaw}? Or, is the appropriate standard weaker still? The answer to these questions remains to be seen.

In the first post-\textit{Shaw} case to be decided on the merits, \textit{Hays v. Louisiana}, No 92-CV-1522 (W.D. La., Shreveport Division), the court did not decide the exact evidentiary test, because it held that

\textit{"(if everyone—or nearly everyone—involved in the design and passage of a redistricting plan asserts or concedes that design of the plan was driven by race, then racial gerrymandering may be found without resorting to the inferential approach approved by the court in \textit{Shaw"} (slip op. at p. 13, with internal cites omitted). Moreover, the \textit{Hays} court held that both the shape and the size of the minority population may be no more than what is narrowly required to address voting rights concerns.

On the other hand, in its amicus brief in the remand of \textit{Shaw}, the Justice Department is now taking the position that North Carolina had good reason to believe that any plan without a second black district would not be precleared, and it is arguing that the most peculiar features of the North Carolina plan owe more to incumbency preservation considerations than to consideration of black voters. A similar position has been taken by the department in other pending \textit{Shaw}-based challenges. For example, in its amicus brief before the Supreme Court in \textit{Hays}, the Justice Department argues that the original Louisi ana congressional plan should not be held to be unconstitutional because it was not motivated solely by race and because it was drawn primarily to serve a compelling state purpose, namely satisfying the Voting Rights Act. If the Justice Department position were to be adopted by the court, it would make \textit{Shaw} largely a dead letter, since it is a rare plan in which no factors other than race are involved or where a Voting Rights defense might not plausibly be raised. But the position taken by the majority in \textit{Hays} would dramatically limit what a legislature might choose to do to remedy previous racial inequities. There can be an appropriate middle ground between these two positions that reconciles \textit{Shaw} and \textit{Thom- burg}, while still permitting line-drawers greater latitude in addressing concerns for racial fairness than what might be required of them under the Voting Rights Act.

The majority opinion written by Judge Phillips in the remand of

(2) Can \textit{Shaw} be Reconciled with \textit{Thornburg} and Subsequent Voting Rights Act Enforcement? In 1986, in \textit{Thornburg v. Gingles}, in upholding the constitutionality of the new Section 2 language of the Voting Rights Act, the Supreme Court sanctioned Congress's right to enact laws to prohibit electoral districts where racial minorities have been subjected to voting discrimination. In its decision, the Court held that the enforcement language of Section 2 of the Voting Rights Act required that the "individuals adversely affected or about to be adversely affected by the execution of the judgment" must show a "clear and convincing case of discrimination." The Court held that the only remedy that can be considered is a "remedial voting measure" such as the creation of a minority-majority district or the creation of a minority-majority district. This decision was a significant departure from the precedents set by the \textit{Shaw} case, as it allowed for the creation of majority-minority districts without a showing of discriminatory intent. The decision in \textit{Gingles} also allowed for the creation of districts with a "predictive value" that could be used to ensure that minorities would have a fair chance at representation. The decision in \textit{Gingles} has been widely criticized for its lack of clarity and for the potential for judicial discretion.

In the meantime, the case of \textit{Shaw} v. Reno, now \textit{Shaw v. Hunt}, takes yet a different tack. There, Judge Phillips takes the view that district shape is but an indicator of potential unconstitutionality, and not unconstitutional per se. He argues that, once it can be shown the District of North Carolina had adequate grounds to believe that the Voting Rights Act required it to draw two black-majority congressional districts, the State had discretion on how to balance off competing considerations in drawing such districts as long as no group had its voting strength diluted in the process.
division and the minority is a majority in the context of the population. This is often not the case in the United States, where the majority is a minority in many districts. The concept of a redistricting plan that is majority minority in some districts and majority majority in others is not uncommon. The Court in the Shaw case held that a redistricting plan that creates majority minority districts is constitutional if it is not based on race. In the Orange County case, the Court held that a redistricting plan that creates majority minority districts is unconstitutional if it is based on race.

4. In the Orange County case, the Court held that a redistricting plan that creates majority minority districts is unconstitutional if it is based on race. In the Orange County case, the Court held that a redistricting plan that creates majority minority districts is unconstitutional if it is based on race.

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10. In the Orange County case, the Court held that a redistricting plan that creates majority minority districts is unconstitutional if it is based on race. In the Orange County case, the Court held that a redistricting plan that creates majority minority districts is unconstitutional if it is based on race.
round, and a lot can happen on the Supreme Court between now and then.

(4) Is the Department of Justice Out of Control?

It has been claimed that the Republican-run Department of Justice in the early 1990s was enforcing Section 5 of the Voting Rights Act in a harsh and unreasonable manner in which "maximizing" the electoral success of black and Hispanic candidates had replaced "equal opportunity" as the prerequisite for a plan's preclearance. I find this characterization of Voting Rights enforcement to be almost entirely mistaken, but space limits do not permit me to deal with that controversy here (see Grofman and Davidson 1992; Grofman 1993; Davidson and Grofman 1994). But it is easy to see that the claim that Department of Justice voting rights enforcement under Bush had been a Republican plot to "whiten" districts by pulling off minority population into heavily minority districts for purposes of Republican advantage is undercut by the simple fact that voting rights enforcement policies under Clinton have been virtually indistinguishable from those under Bush.

(5) Do We Really Still Need to Draw Majority-Minority Districts?

Justice O'Connor's opinion in Shaw seeks a moral high ground by attacking districts for whites and districts for blacks as tantamount to apartheid. However, if voting is polarized along racial lines and minority candidates usually lose—the preconditions for the Voting Rights Act to apply—then failure to draw a district plan that is fair to both groups perpetuates situations where, for all practical purposes, the districts are only districts for whites, i.e., districts that only whites can be expected to win. Abigail Thernstrom (1987, 1991) and other revisionist scholars (e.g., Swain 1990) argue that whites (even southern whites) now accept qualified black candidates. Virginia is often cited as an example of where the Voting Rights Act has been misapplied. According to Thernstrom (1991), "Virginia's voters have proved beyond a shadow of a doubt that blacks can win in majority-white jurisdictions, . . . L. Douglas Wilder being the proof of that particular pudding." Taking nothing away from Governor Wilder, to regard his election as indicative of a general ability of blacks to get elected to state legislative offices from majority-white areas in the Deep South, or even in Virginia, itself, is to completely disregard the evidence. The number of black state legislators who are elected from majority-white districts in the South can still be counted on one's fingers. Lisa Hanley and Grofman and Handley 1991; Handley and Grofman 1994) found that, in the 1980s, in every southern state, the percentage of majority-white state legislative districts that elected a black was either zero (in most Deep South states) or near zero. This near complete absence of black electoral success in white-majority districts occurred despite the fact that, even in the Deep South, most blacks lived in white-majority districts. Virginia is 19% black. It had no black members of Congress, and in 1990, no black legislators elected from majority-white districts. In Virginia, the only black ever elected to the state legislature from a white-majority district was Douglas Wilder—and his election (with a plurality) was made possible only because a half dozen white candidates in the Democratic primary split the white vote and Virginia does not have a majority vote requirement.

Handley, Grofman, and Arden (1994) updated earlier findings on the link between non-Hispanic white population proportion and electoral success of black candidates using data from the 1990s districting round. For the 23 states with greatest black and Hispanic population whose 1992 legislative and congressional elections they reviewed, they find that most of the black and Hispanic gains (especially those in Congress) came from new majority-minority districts. They also find that the probability that a black-majority seat would elect a black legislator had gone up slightly; while in the South the likelihood that a minority candidate would be elected from a legislative or congressional district a majority of whose voters were white had not increased from the minuscule probability found in previous decades.

But what about Carol Swain's well-known finding that, as of 1990, 40% of all black members of Congress were elected from non-majority-black districts (Swain 1993)? According to Swain, this shows that blacks can be elected from districts where blacks are in the majority.

A closer look at the cases where blacks are elected to Congress from non-majority-black districts gives us a much more pessimistic picture of the likelihood of black success in white districts than Swain would have one believe. While the 40% figure given by Swain is technically correct, it is also fundamentally misleading.

Twenty-five blacks were elected to Congress in 1990. Of the 10 elected from districts that are not majority black, six are elected from districts that are majority minority, blacks and Hispanics (Grofman and Handley 1992b). That leaves only four black congressmen elected from districts in which non-Hispanic whites are in the majority. Of the four black members of Congress who are elected from such districts, one, Rep. Franks (CT) was a Republican conservative who almost certainly was elected over the opposition of the black members of his district; one, Rep. Jefferson (LA) is in a district that was 64.5% black and 4% minority using 1980 population figures but is now 66% black according to 1990 population figures—and he wasn't elected until 1990; one, Rep. Wheat (MO) runs with the advantage of incumbency in a district where he won the Democratic primary which first selected him as the Democratic nominee with only 32% of the vote—a primary where he received almost no white support and which he won only because whites had divided their vote among seven white candidates; and the last, Rep. DelBene (CA) was elected.
from perhaps the most liberal district in the nation, combining blacks in Oakland with the ultra-liberal city of Berkeley. In short, one of the four exceptions really isn’t one using 1990 population figures; one is a black Republican who doesn’t enjoy that much black support, and the other two exceptions to the rule that blacks win only in majority-minority districts are unusual cases that cannot be taken as the basis for reasonable expectations for the success of black-endorsed black candidates in majority (non-Hispanic) white districts. Moreover, in 1990 no black member of Congress from the South was elected from a non-black-majority district, and the Mississippi Fourth District—45% black according to 1980 population figures—failed to elect a black candidate.

Referring to the work on the political geography of minority electoral success that Lisa Handley and I have done jointly (Grofman and Handley 1989), Swain (1993) observes that creating additional black-majority districts can have only limited payoffs for gains in the number of blacks elected to Congress because geographical constraints limit the number of such districts that can be drawn. Black Faces, Black Interests was written before the results of the 1990 round of districting were known. If Swain were right in her expectations, then we should have seen black congressional gains primarily in non-black-majority districts and we should have seen few black gains in the South. Yet, in the 1992 round of districting there were 13 new black members of Congress, the largest gain in any single redistricting period. All of the 13 new black members were elected from black majority districts. Moreover, all were elected from the South. Thus, no new black members of Congress came from non-black-majority districts.

(6) Is Shaw Good Law?
Shaw reflects an activist conservative judiciary that, when confronted with a relatively minor problem—some bizarrely shaped districts generated by a zeal for racial fairness and partisan lust—proceeded to carve out a new “right” that had no clear standard for its enforcement and that opens a can of worms via its potential threat to recent black (and Hispanic) electoral gains in descriptive representation. Here, the “cure” may be far worse than the disease. What could the Court have done? It could have decided the case on nonracial grounds, holding that the penalties of geographic-based representation required districts that were (a) contiguous in more than just a pro forma way, and (b) linked to some meaningful sense of place, i.e., (c) not forming a crazy quilt lacking rational state purpose. Thus, rather than the exclusion focus on the evils of race-conscious districting found in Shaw, the facts in North Carolina would have permitted its congressional plan to have been rejected on any one (or all) of the three tests above. In so doing, since the case facts in Shaw are so egregious as to be near unique, especially with respect to contiguity, the Court could have crafted a narrow standard that would protect against excesses without really threatening minority gains in representation. Such a holding would have raised no potential inconsistencies with Thornburg and would have permitted Shaw to be disposed of in a way that did not raise a racial red flag.

In many parts of the country it is very hard for a black to be elected to major public office from a white majority district. The implementation of the Voting Rights Act is the “realistic politics of the second best” (Grofman and Davidson 1992). Its recipes for color-conscious remedies are necessary as long as there are jurisdictions where race is intricately bound up in voting decisions and strongly linked to housing patterns. In a world of race-conscious voting, race-conscious remedies are needed. But that does not mean we have to like the world in which such remedies are necessary, or fail to appreciate the limitations of such remedies.

We need to steer a course between a premature optimism that will lead to the elimination of safeguards vital to the continuing integration of minorities into American political life, and an unrealistic pessimism that insists we will never get beyond judging people by the color of their skin. The case-specific and fact-contingent approach embodied in pre-Shaw voting rights case law has generally steered such a course.

Notes
1. I am indebted to Dorothy Germond and Chase Tran for library assistance.
2. For example, a 1992 editorial in the Wall Street Journal (February 4, 1992) refers to North Carolina’s congressional plan as “political pornography.” An editorial in the Charlotte News and Observer (January 13, 1992) said that it “plays hell with common sense and community.” An editorial in the Raleigh News and Observer (January 21, 1992) says: “If a psychiatrist substituted North Carolina’s proposed congressional redistricting maps for Rorschach inkblot tests, diagnoses of wackiness would jump dramatically. The maps . . . don’t make any sense to people who have any sense.”

4. See discussion of Shaw v. Reno below.

5. Pope v. Blue was a challenge to the North Carolina congressional plan that was dismissed by a federal court. The plaintiffs in that case are new intervenors in the remand of Shaw v. Reno, now being heard as Shaw v. Hunt (see below).

6. For a preliminary evaluation of the merits of such claims see Grofman (1993).

7. An earlier challenge to the North Carolina congressional plan, Pope v. Blue, in which I was to have served as an expert witness (Grofman 1992), had been dismissed by a three-judge court for want of a federal question.

8. A completeness requirement for congressional districts was dropped from the congressional apportionment legislation early in this century. Some states have completeness provisions for legislative districts written into their state constitutions (Grofman 1983, Table 2).

9. The case is being heard under the name Shaw v. Hunt. At the time of this writing (November 1990) the case had been heard on remand, and the lower court had by a 2-1 vote decided that the plan was constitutional. Almost certainly that decision will be appealed.

10. In my view, the best attempt to provide a clear jurisprudential underpinning to Justice O’Connor’s views in Shaw is found in Nollie and Nollie (1991), who offer a notion of “expressive harm” that they trace back to Brown v. Board of Education. Also see Aizikoff and teachor (1993).

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the district has even inspired poetry: 'Ask not for whom the line is drawn, it is drawn to avoid thee.' (A Waffle (personal communication, 1999, with apologies to John Donne), quoted in Grofman 1995, 125.)

There are at least two elements of this gesture that deserve attention. Most importantly, it is very likely that this is the first justiciability (is it) by a political scientist who has been quoted by the Supreme Court. (Stonewall, probably because it is found is a citation internal to my work, Professor professor). His statement is from a Supreme Court. (Note: it) is also, rather rare to have to run an article by a social scientist quoted in a Su-

dome Court case in both the majority opin-

ion and a dissenting opinion. 11. See case discussion in Pildes and Niemi (1993).

12. "(The proposed configuration of the district boundary lines in the small central to southeastern parts of the state appear to maximize minority vote strength given the significant minority population in this area of the state. In general, it appears that the state chose not to give effect to black and Native American voting strength in this area, even though it seems that boundary lines that were more similar to those found elsewhere in the proposed plan could have been drawn to recognize such minority concentration in this area of the state." (Danne letter of December 18, 1991, p.5, emphasis added).

13. The Section 5 preclearance denial letter of December 18, 1991 from Assistant Attorney General John Danne indicated that the configuration of Congressional District 2 (the only black-majority district in the initial congressional submission from North Carolina) was subsequently revised somewhat in shape and renamed District 1 was not required to have been necessary to create a ma-

jority black district and instead, at least one alternative configuration was available that would have been more compact" (Danne letter at p. 4, emphasis added).

14. See further discussion in Grofman (1989), Grofman and Handley (1990b), Ni-

emi, Grofman, Holler, and Carlucci (1990), and Grofman (1999). 15. My characterization of the Congress-

ional Districts 12 as a black with unidenti-

fiablest and still similar to the way the plan was characterized by North Carolina politi-

cal observers. My own personal favorite is the description of the district by political columnist Mark Baret (January 12, 1992, reprinted in Appendix to Wright et al, 1994, p. 40). Apparantly the inital map showing the plan colored District 12 yellow, leading Baret to say that "the district re-

sembles the stain that might be left if a giant with yellow blood were stabbed in Chano-

ville, staggered across the Piedmont and fell to the ground and bled to death on the Vir-

ginia line." Of course, as I emphasize below it is not the visual exiblence of the plan, as such, that is at issue, but rather whether:

(1) the plan as a whole does not satisfy con-

gruity requirements, and/or (2) contains dis-

tricts at least one of which fails any reason-

able origination test, and/or (3) can be charac-

terized as a crazy quilt lowering rational pur-

pose.

16. For an extensive discussion of the differ-

type of compactness measures see Niemi, Grofman, Holler, and Carlucci (1990).

17. The idea of such a district was "bor-

rowed" by Democrats from a plan drawn by 28. A Republican staff. The likely overall con-

sequences of the Republicans-drawn plan were quite different from the plan in-

cluding the 145 district that was adopted by

the North Carolina legislature.

18. DOI also makes the pragmatic argu-

ment in its amicus brief in State of Louisi-

ana v. Ratliff (No 93-1339, April 25, 1994, p. 18) that the standards laid down in Ratliff would be counterproductive because "state and local governments may well opt for litiga-

tion if these efforts are so narrowly con-

ceptualized," thus "the ultimate effect could be a serious disincentive to settlements and voluntary compliance with the law." 19. Here we are simplifying the complex legal issues in Thornburg. For discussion of how the Thornburg three-pronged test for vote dilution under Section 2 of the VRA: (a) cohesive black vote, (b) usual defat of black-sponsored candidates as a result of majority black voting, and (c) a potential for remedy based on the drawing of a single-member district plan has been interpreted by federal courts since 1985 and of how it relates to the standards for vote dilution in earlier case law see Grofman, Handley, and Niemi (1992).

20. I see the term "slightly" because I share the view of Karlan that this "is a

function approaches to origination's geographic compactness requirement is best hailed to the inclusive spirit of Section 2 of this case summary of Karlan's central argument is found in Maryland v. Fair Representa-

tion (1982), 115, ap. p.74, where it is quoted appropriately." (see discussion of Schaefer above).

21. That would determine what a jurisdic-


tion must do in the event of a finding of a

voting rights violation. It would still leave open the question of whether a jurisdiction could choose to go beyond what the Voting Rights Act requires in the way of color-co-

ordinated districting, or go as far as what the

VRA would require even in the absence of a

violation.

22. The situation is somewhat different for Hispanics, who are not as residentially segregated as blacks, but space does not permit a full elaboration.

23. Of course, my crystal ball has been known to have some cracks in it. I thought

shar would go 5-4 or 6-3 the other way.

24. Moreover, just as the DOJ nailed both

charged some plans that created

Republican advantage (e.g., that for the Los

Angeles County Board of Supervisors), so has the DOJ under Clinton precleared plans that arguably help Republicans (e.g., in

South Carolina). For further discussion, see Grofman (1995).

25. In all of these districts blacks make up the plurality of the minority electorate, and in all but one of these districts blacks make up the plurality of the minority popu-

lation. 26. The state has no reapportionment requirement.

27. The facts I refer to above are all ones found in Swann (1993), but she fails to draw the proper inferences from them about how special are the circumstances under which blacks are elected to Congress from non-

black-majority districts, and how unlikely those circumstances are to be applicable to future black contests in white-majority dis-

tricts. Swann does provide data on Hispanic population and does discuss these majority-

minority districts as a separate category from the other districts where blacks consis-

tently lose half of the population, but her concluding chapter, is in my view, not suffi-

ciently sensitive to the implications of this distinction as a limitation on what we can expect in the way of further black gains in districts where blacks do not constitute the majority. For example, we are unlikely to see many new congressional districts with a black plurality and a combined black plus

Hispanic majority in the South.

28. Of course, with blacks a declining share of total U.S. population, virtually all of the black-majority congressional seats that might be drawn have already been cre-

ated in the 1990s round of districting. Thus, in the long run, the election of substantial numbers of new black members of Congress in succeeding decades can come only from black success in white-majority districts.

29. The pattern repeats in 1994 in the

South, although a black Republican is elected elsewhere in the country.

30. Of course, taking this legal tactic might have lost Justice Scalia and Thomas and resulted in no majority opinion.

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Shaw v. Reno and the Hunt for Double Cross-Overs

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North Carolina's current congressional map is as shocking to the conscience and as antithetical to the Constitution as Tennessee's 1901 apportionment plan, the "crazy quilt" that led to Baker v. Carr (1962). Even though the districts vary in population by only a single person, the North Carolina plan is a frontal assault on the letter and spirit of three decades of redistricting case law. In drawing bizarrely shaped districts that frequently breach political subdivision boundaries and even violate contiguity, the North Carolina legislature elevated the pursuit of electoral results, racial and partisan, over the achievement of fair and functional representative districts. In holding that the North Carolina plan could be attacked as a racial gerrymander, Shaw v. Reno (1993) reaffirmed the reapportionment revolution's fundamental principles—at the core of which is the right of individual voters to equality of political access within the context of geographic districting. Furthermore, while Shaw v. Reno is salutary in itself, it must be extended and amplified in order to preserve the central values of "one person, one vote."

History of the North Carolina Plan

In July 1991, the North Carolina General Assembly enacted a congressional redistricting plan taking into account the results of the 1990 census, which gave the state an additional, 12th seat. The plan provided for one majority-black district, located primarily in the rural, northeastern portion of the state.

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