

TO: BOARD OF COMMISSIONERS
FROM: WHITNEY PARRISH/LEGAL DEPARTMENT
DATE: SEPTEMBER 13, 2021
RE: REDISTRICTING 2020

County staff has been requested to redraw district lines based on criteria not previously adopted by Strategic Services. It seemed appropriate to discuss some of the statutory and case law surrounding this request. NC General Statute 153A-22 governs whether a board, if divided into electoral districts, must redistrict. The statute states “(b) if a board finds that there is substantial inequality of **population** among the districts, it may by resolution redefine the electoral districts. (c) Redefined electoral districts shall be so drawn that the quotients obtained by dividing the **population** of each district by the number of commissioners appropriated to the district are as nearly equal as practicable, and each district shall be composed of territory within a continuous boundary.” Based on the plain language of the statute, when establishing the population of the districts to determine whether the population meets the plus or minus 5% deviation rule, the Board should look only at census population numbers, it should not be based on the number of registered voters. North Carolina Supreme Court utilized the plus or minus 5% deviation rule in *Stephenson v. Bartlett*, 355 N.C. 354 (2002).

Further, in *Daly v. Hunt*, 93 F.3d. 1212 (1996), the US Court of Appeals for the Fourth Circuit determined the use of voting age population was not in compliance with North Carolina’s use of total population for the base of determining population districts. In that case, the Mecklenburg County Board of Commissioners and Board of Education lines were drawn and the deviations of the districts were reviewed based on voting age population by the district court. The plaintiff’s argued “that the district court was correct in using voting-age population because that figure more accurately represents actual voting strength in the districts” (1216). However,

the Court, examining the one person, one vote, equal protection guarantee stated that this principle “ensures that every person receives equal representation by his or her elected officials” (1216). The Court did not agree one person, one vote suggests electoral equality is “superior to the principle of representational equality” and determined the district court erred in using voting age population as opposed to total population in reviewing the deviation of the population of the districts. It is also important to note, the resolutions adopted by the Lee County Board of Commissioners in 1993, 2001 and 2011 redrawing district lines, all acknowledge this decision was made after receiving census data and determining a substantial inequality of population existed among the districts. Since North Carolina statute adopts population as the defining factor in redistricting, only total population reported by the census should be used when determining whether districts must be redrawn.

Another request has been to provide the “political profile” of the voters in each district. In response to this request, I have reviewed the Wake County Superior Court Judgment of the case, *Common Cause, et al. v. Representative David R. Lewis, in his official capacity as Senior Chairman of the House Select Committee on Redistricting, et al.* The three-judge panel reviewed the factors the General Assembly utilized in drawing legislative maps of North Carolina. The Redistricting Committee adopted the criteria including: equal population (using the 2010 federal decennial census data as the sole basis of population), contiguity, county groupings and traversals, compactness, fewer split precincts, municipal boundaries, incumbency protection, election data, and no consideration of racial data. The issue before the panel was whether the constitutional rights of NC citizens are infringed when the General Assembly, for the purpose of retaining power, draws district maps with a predominate intent to favor voters aligned with one political party at the expense of other voters, and in fact achieves results that manifest this intent

and cannot be explained by other non-partisan considerations. Both parties presented expert testimony and one expert provided testimony that party registration is not necessarily a reliable indicator of how someone may actually vote and the panel determined based on the expert testimony, party registration is not a reliable indicator of the competitiveness of any individual district or of the enacted plans as a whole. The panel concluded the adopted plans violated the free elections clause of North Carolina's Constitution, stating "partisan gerrymandering operates through vote dilution—the devaluation of one citizen's vote as compared to others...extreme partisan gerrymandering does not fairly and truthfully ascertain the will of the people. Voters are not freely choosing their representatives. Rather, representatives are choosing their voters. It is not the will of the people that is fairly ascertained through extreme partisan gerrymandering. Rather it is the will of the map drawers that prevails" (302). The panel acknowledged political data or partisan consideration may be used to avoid pairing incumbents within districts, or if it is used "to create a districting plan that would achieve a rough approximation of statewide political strengths of the democratic or republican parties" (quoting *Gaffney v. Cummings*, 412 U.S 735, 752, 93 S. Ct. 2321, 2331 (1973)), or to respect municipal boundaries or maintain community of interest. The panel ruled the maps should be redrawn and adopted the following as criteria: equal population (the mapmakers shall use the 2010 federal decennial census data as the sole basis of population for drawing the legislative districts in the remedial maps), contiguity, county groupings and traversals, compactness, fewer split precincts, municipal boundaries, incumbency protection, election data (partisan considerations and elections results data shall not be used in the drawing of the maps), and must comply with the Voting Rights Act. Based on my research, I would not recommend the Board using voter registration or political data when redrawing the

commissioner district, as it seems likely a court would determine these factors unlawful and unconstitutional under North Carolina Constitution.