

Redistricting Reform: An Action Program



About the Authors



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Dr. Hardy's lifelong interest has been redistricting. He served on the research staff of the 1951 Republican Committee. He was consultant to the Democratic Committee in 1961. From 1965 through December 1982 he served as a consultant to the California congressional delegation in several redistrictings (1965, 1967, 1971-1973 and 1979-1981).

Dr. Hardy has written extensively about California politics and redistricting, including four editions of California Government, Politics of California (with Robert Morlan) and many law journal articles and professional papers. In 1981 he edited (with Heslop and Anderson) Reapportionment Politics.

Currently, he is a Senior Research Associate at Claremont McKenna College's Rose Institute and as a co-recipient of the Haynes Foundation grant he is co-director of the 1981-1991 Monograph series on redistricting and A.C.T.I.O.N. Guidelines.



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Born in England and educated at Oxford, Dr. Heslop came to this country after service in the Royal Air Force. A political scientist, he taught at the University of Texas and Texas A&M, as well as Claremont McKenna College. He is author and editor of books and articles on a variety of subjects, mainly in the area of electoral politics. In 1974 he was named the Don and Edessa Rose Professor of Politics at Claremont McKenna College.

Dr. Heslop also has extensive experience in practical politics. A former Congressional Fellow and legislative aide in the U.S. House and Senate, he was Executive Director of the California Republican Party and Executive Director of the Cal Plan. He has also served as the senior consultant to the Republican leadership in the California Legislature and as a consultant to Presidential, Statewide, Congressional and State Legislative campaigns.

In 1985, President Ronald Reagan named Dr. Heslop to the National Council on Education Research and Improvement and, after confirmation by the U.S. Senate, he was appointed Chairman of this body.

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PREFACE

The authors — believers in representative institutions, sceptical of most “reforms” of politics — have come reluctantly to the conclusion that detailed, binding rules must be enforced on redistrictings.

For both of us, the California gerrymanders of 1982, conducted in the wake of referenda of 1981 gerrymanders, were appalling: the districts provide conclusive evidence of how far today’s politicians will go in pursuit of advantage and of the weakness of democratic checks to hold legislators responsible. The elections that have followed those gerrymanders — little more than biennial proofs of their efficiency — have added to our conviction that “enough is enough.”

We doubt that the lessons of the California gerrymanders of the 1980s have been lost on politicians elsewhere. And we fear that California-style redistrictings and non-competitive California-style elections now will become commonplace, undermining the representative character of the U.S. House of Representatives, of state legislatures, and of local governments across the land.

The A.C.T.I.O.N. Guidelines, which we present in this monograph, are rules to bind redistricting authorities, whether it be legislatures, commissions, or courts. They can be adapted to use in any jurisdiction, down to the level of city councils and special districts. We believe that A.C.T.I.O.N. Guidelines can replace the jungle politics of the current process with the rule of law; that they will provide a stable, community basis for our representative institutions; and that they will subject our representatives to more effective electoral competition. Above all, we believe that they will restore legitimacy to the outcomes of our elections.

We recognize that our proposals are different and unusual. Indeed, we set ourselves to develop a wholly new approach to redistricting reform, in the hope of promoting new lines of discussion in a debate that threatens to become little more than an argument of the “haves” against the “have nots,” the in-party vs. the out. We willingly admit, too, that our proposals may be capable of improvement: we urge our readers to focus on the weak points and to suggest changes.

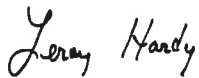
This volume, which is as free from professional jargon as we can make it, is written for everyone who is ready to recognize the perils of rule-free redistricting in an age of technological politics and a rising “new class” of professional politicians. We think its arguments will be found persuasive by key groups in our society: by the challengers in both parties who have knocked their heads against the brick walls of gerrymandered districts; by women and ethnic and other minorities who are virtually locked out of today’s almost impenetrable legislatures; by young people who can never hope (except by joining incumbent staffs) to amass the resources to compete in million dollar campaigns; and by all those with new ideas who see the threat that the politics and the politicians of the 1960s and 1970s will dominate the 1990s.

A.C.T.I.O.N. Guidelines, of course, are not the sole approach to redistricting reform. We have designed them, however, so that they are consistent with several of the other major approaches. We hope, too, that some of the arguments and information that we present will be found useful by other reformers: after all, the case against the status quo is the fundamental starting point for all of us.

We owe much — more than we think they will wish us to acknowledge — to the advice of colleagues in both political parties. Some former colleagues may think they see themselves in our caricatures of the “Gerrycrat” and the “Datagogue;” but we would remind them that both of us once filled such roles, and that our attack is on a corrupt process, not on the individuals who manipulate it. In the same spirit, we would say to incumbents that we do not seek to cast them in the role of villains: it is too easy to blame them for reaching aggressively for advantage, when others might do much the same in a process that is free from the effective constraint of law.

Our obligations to the Philip McKenna Foundation, to The John Randolph Haynes and Dora Haynes Foundation, and to the Earhart Foundation must be publicly acknowledged: their trustees had what we believe to be the courage, and what we trust will prove to have been the foresight, to fund our research. We are grateful, also, to the Board of Governors and the faculty and staff of the Rose Institute: their support of our endeavors has been unfailing. It must be emphasized, of course, that none of these organizations or individuals should be held accountable for our views.

The authors — a lifelong Democrat who supported Jesse Jackson in 1988, and a Republican who supported George Bush — believe that redistricting reform is now more fundamental and pressing than any issue of partisan politics. We hope that this volume will serve its cause.



Leroy Hardy



Alan Heslop

1. There are two other monographs in this series: *Gerrymanders: Origins, Conception and Re-emergence*; and *The Westside Story: A Murder in Four Acts*.

INTRODUCTION

Representatives and other legislators (at all levels of government) are elected to represent constituents. They are given the title, “Honorable,” not because they are a privileged class, an aristocracy, but because they hold their power from the American people. Thus, we expect incumbents to be responsive to the opinions of the people. If their campaign commitments and consciences prevent them from agreeing with public opinion, they are expected either to change that opinion, to lose to challengers in free, competitive elections, or to resign.

Unfortunately, representative government no longer works in that manner in America. Legislators today are more like bureaucrats or federal judges or college professors. They have effective tenure in their jobs, no matter how unresponsive they may be to the public that they are elected to serve. Year after year, more than 98 percent of all incumbents of both parties are returned to the U.S. House of Representatives; and state legislators in many areas of the country are enjoying the same levels of security.

The plain fact is that the political game has been rigged: the electoral playing field has become the private preserve of incumbents. Assisted by irresponsible technicians — unseen but increasingly powerful staffers and consulting computer experts — legislators draw safe districts in their self-interest.

Today’s congressional and legislative districts are stacked to frustrate challengers, packed to protect incumbents. Ludicrous in shape, wandering across the map regardless of communities, cutting cities and counties, the districts are tailor-made for the big-money, direct mail campaigns of incumbents.

More and more thinking people of both political parties are convinced that incumbents’ stranglehold over congressional, legislative, and local elections must be broken. The authors believe that the time has come to challenge and check the abuse of power, the fundamental conflict of interest, involved in incumbent gerrymanders of our electoral districts.

New groups must be brought onto the public playing field — women, minorities, and all the others whose ideas about our government and society are now excluded. But they can only win in new, honestly competitive districts.

Congressional and legislative redistricting is a process crying out for new rules of the game. The fiefdoms drawn to their own advantage by our entrenched political barons, can be dismantled through use of the A.C.T.I.O.N. redistricting procedures described in the following pages. Electoral districts drawn under these procedures will serve the needs of a new, more open and competitive politics. The game will once again be worth playing for everyone.

A.C.T.I.O.N. Guidelines are rules for redistricting that sharply limit politicians’ discretion in line-drawing. As a result of many empirical tests (using the Rose Institute’s computerized REDIS system to work with California’s complex political geography), the authors are convinced that they will work in any jurisdiction. That is, they will restore community-based districts and promote honest competition among candidates and between parties.

Although A.C.T.I.O.N. Guidelines are a composite of many individual reforms, they depend upon three key concepts:-

- Establishment of binding units of redistricting (URs) to limit manipulation of districts. URs, originating with counties, and also partially defined by major freeways and arterial highways, help to guarantee city and community unification.
- Systematic sequencing of the compact, contiguous, community-oriented URs to limit discretion in the creation of districts. Districts are built up using the URs, one by one in prescribed sequence, until the required population is reached.
- Neutralization of political motivation by chance selection of a variable beginning point and of alternative directions for the sequencing of URs. District composition depends on which UR is used as the initial building block in a plan and in which direction the sequencing proceeds.

It will be clear, then, that what we are advocating are neutral procedures for preventing both the partisan gerrymander and the bipartisan (or “sweetheart”) incumbent gerrymander.

We choose procedures, as opposed to tests and measures of gerrymandering, because we believe that prevention is preferable to cure in a matter as important as the health of our representative institutions. (We are concerned, too, that the tendency of some measures of partisanship may be toward systems of proportional representation and away from the district system of our constitutional tradition.)

Thus, our approach is free from complex mathematical formulae to measure compactness; nor do we propose sophisticated political indices to assess partisan bias or minority group representation. We do not doubt that these approaches may have value in some circumstances; and they offer a clear prospect of improvement over status quo redistricting. Yet, we think that they lack the self-enforcing characteristic that we deem crucial to an effective program of prevention. We are concerned, too, by questions of timeliness and controversy. One doubt about retrospective measures of gerrymandering, for example, is that by the time they swing into action, the horse may have bolted: often, the courts will hear arguments and decide on the application of such measures only after elections have been fought in the gerrymandered districts. Similarly, a doubt about prospective measures is that they are necessarily so complex (involving multiple factors and political effects measures) that they will provide occasion for lengthy disputes and litigation.

By contrast, A.C.T.I.O.N. Guidelines provide detailed procedures for composing districts of clearly identified geographic building blocks (URs). These procedures must be followed, and the districts must be properly composed of the appropriate building blocks, for redistricting to occur. Little controversy can develop over the meaning of A.C.T.I.O.N.’s simple procedures or the location of the URs.

The A.C.T.I.O.N. Guidelines will establish a principle of the rule of law for redistricting. The Guidelines will:

- Guarantee unification of counties and cities (when procedurally possible within the one-person, one-vote principle.)
- Create compact, contiguous, community-oriented districts that will restore grassroots and volunteer-style politics.
- Lessen the role of money as the determinant of campaign success.
- Put competition back into the political system by creating more marginal districts.
- Provide for a major re-shuffling of representation every ten years, while permitting the best representatives to continue in office.
- Create opportunities for new groups and their candidates to enter the political process.
- Reflect and represent the ongoing changes in our society — for example, demographic change and multi-cultural development — as well as new tides of public opinion.

Not everyone who favors redistricting reform will be persuaded by our arguments for A.C.T.I.O.N. Guidelines, and other reformers may criticize our proposals:

To those who say that A.C.T.I.O.N. Guidelines are “too complex,” we note that they are no more complex than the rules of baseball (and the game of politics is surely not less important than that national sport).

To those who are especially concerned by problems of minority representation, we can show that our Guidelines provide opportunities for more affirmative action districting than any other reform proposal that has been advanced.

To those who insist that redistricting must be left in the hands of legislatures, or to those who want commissions or courts to redistrict, we note that A.C.T.I.O.N. Guidelines can be employed by any of these bodies.

Our harshest critics, of course, are likely to be incumbent politicians and their surrogates, for many oppose any kind of redistricting reform, or hope to blunt the drive for reform with cosmetic change. To clear the way for fuller discussion of A.C.T.I.O.N. Guidelines, we will deal with their arguments early in our presentation.

Our first task, however, must be to suggest the terms and definitions to be used in discussing redistricting and its problems.

DEFINITIONS

Crucial to any investigation, definitions are especially important in the controverted field of redistricting. Let us define a “gerrymander” as simply as possible, as an electoral arrangement that degrades the influence of a particular group or groups of voters. The next step is to recognize that “reapportionment” (and its abuse, “malapportionment”) is no longer the problem. Until quite recently, gerrymanders were indeed mostly produced by malapportionment — “silent” or “passive” gerrymanders that came into existence by inaction or by the design of special constitutional provisions to protect rural interests. In the 1960s, however, the United States Supreme Court exterminated this particular species of gerrymander in the so-called “trilogy cases,” Baker v. Carr (1962), Reynolds v. Sims (1964), and Wesberry v. Sanders (1964).²

Thus, the courts put an end to abusive reapportionment practices twenty years ago: one-person, one-vote has been largely accepted as the basis for apportionment since the defeat of the Dirksen Amendment in 1968. Today, the problem has shifted to the implementation of apportionment, namely “redistricting.” Each decennial census now requires that districts be brought into population equality with one another. Such a requirement, of course, poses at once a threat and a temptation to incumbents, whose electoral advantage may be jeopardized or enhanced.

Increasingly, incumbents use the population findings of each new census as a cover for solidifying themselves in power. In this way, each adjustment becomes the decennial occasion for the proliferation of gerrymanders.

Current gerrymanders may be classified in terms of their composition, their forms, and their purposes. Gerrymanders may be composed of concentrated voters (“concentration gerrymanders”) or dispersed voters (“dispersal gerrymanders”). The character of the voter mix varies depending on the spawning grounds within which redistricting is conceived.

Gerrymanders can also be judged in terms of their form, either “elongated” or “shoestring,” with the implicit contrast to compact and contiguous. Such gerrymanders have “necks,” generally with sparse population in relationship to the density of the populated sections of the district.

If gerrymanders have the purpose to change the existing balance of power in the legislature or the system, the results will be “elimination” or “projection” gerrymanders.

In each case, the adjective describes the technique used to create a political gain or advantage. Any effort to control gerrymanders, or to eliminate them, therefore, must consider their nature, their characteristics and their purposes.

Clarification of the redistricting problem, however, is facilitated when the nature of the species (composition, form and purpose) is separated from the strategy to pass a bill. By doing so the problem comes into better focus. From a reform perspective, the characteristics that sustain the species [narrow necks] must be severed; the breeding grounds that encourage such anatomical growth, whether bipartisan or partisan must be controlled.

2. 369 U.S. 186 (1962), 377 U.S. 533 (1964), and 376 U.S. 1 (1964). Compare the definition of a gerrymander here with that of Justice White: Opinion for the Majority in Davis vs. Bandemer 106, S. Ct. 797 (1986).

In essence, our classification of gerrymanders may be outlined as follows:

I. Silent Gerrymanders: An Extinct Species

- A. By Constitutional Provisions
- B. By Inaction

II. Current species

- A. Composition
 - 1. Concentration
 - 2. Dispersal
- B. Form
 - 1. Elongation or Shoestring
 - 2. Compact and Contiguous
- C. Purpose
 - 1. Elimination/Isolation
 - 2. Projection

III. Breeding Grounds

- A. Bi-partisan environment
- B. Partisan environment
- C. Non-partisan environment

The reader will gain experience in applying this classification to the illustrations and maps in this volume and in the second monograph of this series.³

How the Redistricting Problem Emerged After 1964

Analysis of redistricting after Reynolds and Wesberry has often overlooked the connection to gerrymandering of the requirement of population equality (especially its effect on county divisions) and technological developments.

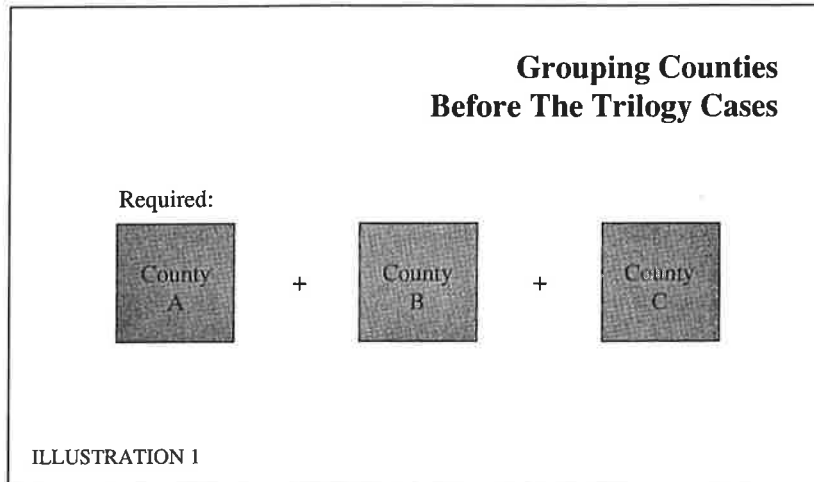
Prior to 1964, although the use of whole counties created major population inequalities, it served also to limit the reach for political advantage in redistricting. After the one-person, one-vote decisions, population equality frequently required the splitting of counties. Technological developments occurring at approximately the same time dovetailed with the political opportunities that demographic changes had unleashed. Not only could computers process population data quickly for population exactitude, the technology could process enormous amounts of political data as well. Thus, as the political aspects were given equal weight to the stipulated population criterion, the abuse of county splitting was compounded by the abuse of precision technology: their combination raised a new and deadly threat to democratic-republican redistricting.

In 1964, the courts entered the political thicket because the disparities between urban populations and rural control had become ever more threatening, and because legislators had

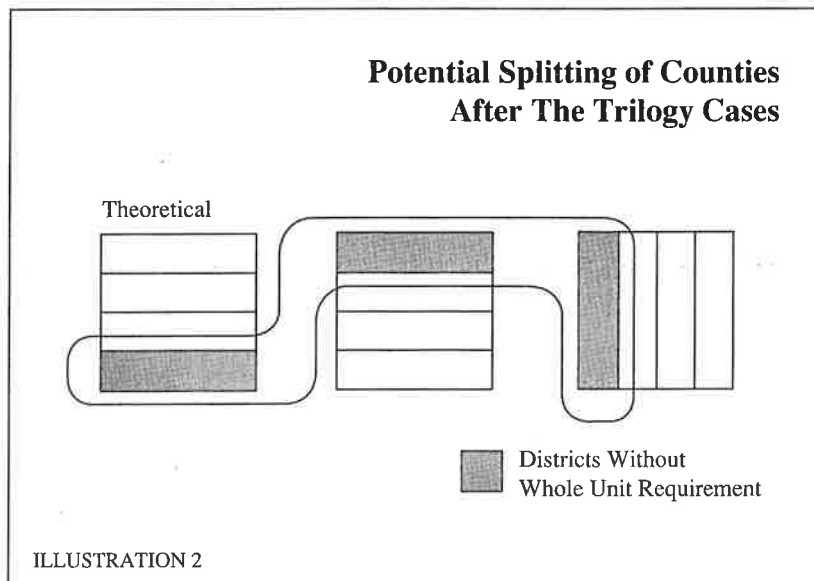
3. Gerrymanders are analyzed more completely in the second monograph in this series: Gerrymanders: Origins, Conception and Re-emergence.

refused to honor the premises upon which a democratic republic was based. After 1964, population equality required the breakup of counties, normally with no limitations on fragmentation or configuration. Again, legislators were given the opportunity to recognize the premises upon which the system was based — one person, one vote. But, again, rather than honor the spirit of the representative system, legislators proved themselves politicians first and seldom leaders.

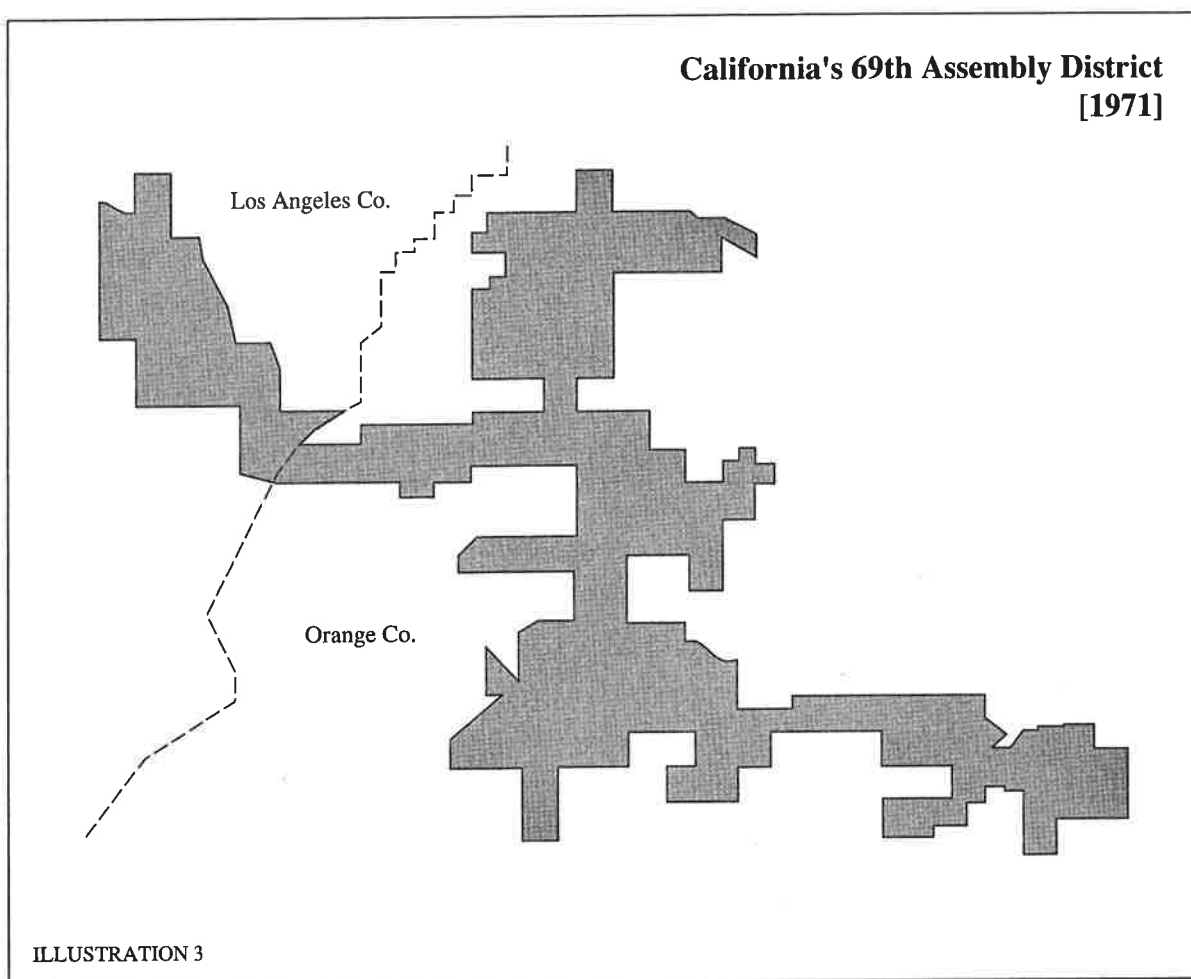
Before the 1964 decisions, counties generally had to be treated as whole units as shown in Illustration 1.



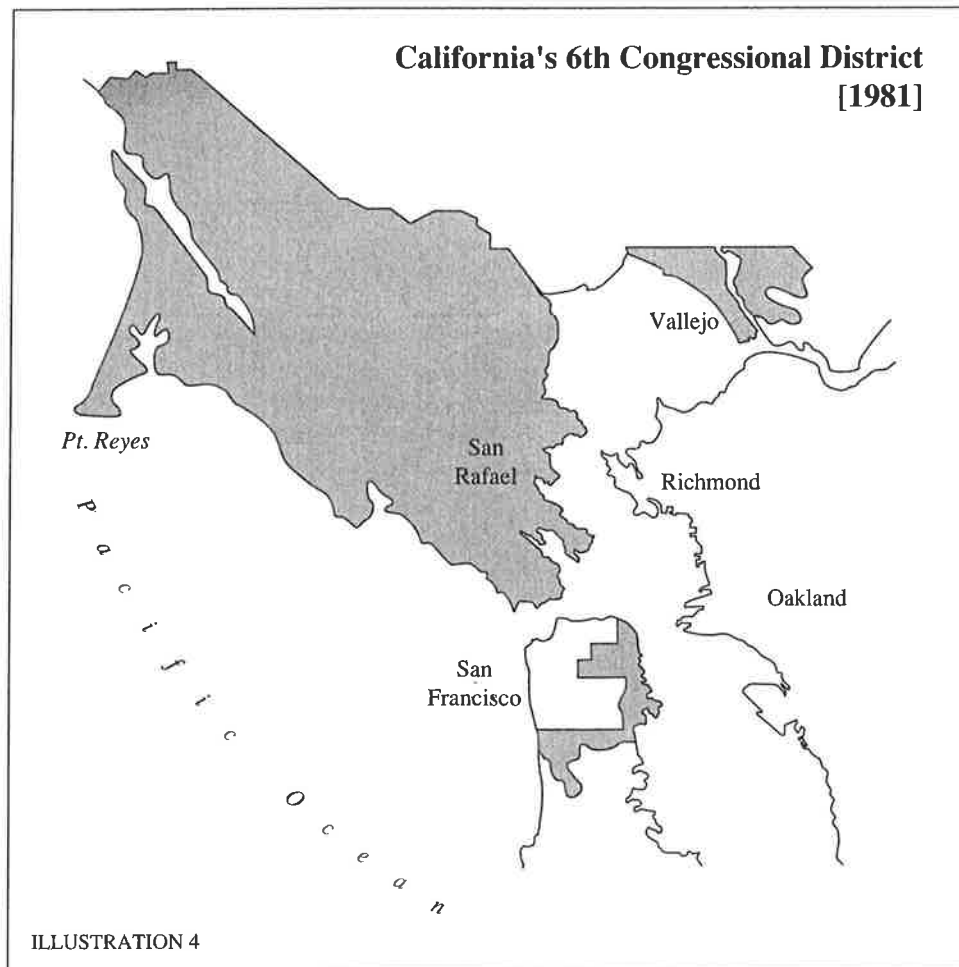
After *Reynolds v. Sims*, population equality required splitting of counties, generally without restrictions. Illustration 2 indicates the possibilities:



This was the CA69 AD, proposed in 1971, passed by the legislature, vetoed by the governor.



This was the CA 6TH CD passed by the legislature in 1981, approved by the governor and rejected by the people. A proclamation of a creation of modern art or a preference for Picasso could not hide the undermining of a representative system.⁴



These districts were designed by “Gerrycrats” and their minions — the “Datagogues” — using computers.⁵ Before computer technology came to have a major impact on politics, politicians and their staffs usually spread out maps on their office floors and, using adding machines to do their arithmetic, slowly built new districts.

4. The references are to statements made by the late Philip Burton and Speaker Willie Brown.

5. Gerrycrat was defined as a creature who has perfected the union of high technology and manipulative politics to gain control of the representative process in our Who Guards the Guardians: A Preview of A.C.T.I.O.N. Guidelines for Redistricting, p. 9. Datagogues are technicians who supervise advanced computerized geographical retrieval systems that operate vast political-demographic databases; *ibid*, p. 10.

Such a procedure was not only laborious, it also prevented full political advantage. Often the plans would be built on the basis of the most primitive political and demographic information. Politicians backed their hunches after “eye-balling” a few statistics, or simply guessed what the political impact might be of adding or subtracting territory from districts. As a result, because they often guessed wrong, gerrymanders were fairly quick to unravel, especially in areas of great demographic change.

When politicians could break counties and do so with precision by the use of computer technology, the days of old fashion redistricting were numbered.

In redistricting, most decisions must be made sequentially: one boundary change requires another and so forth. The computer speeded each decision, linking it with an infinite number of other factors, to accelerate the redistricting process; but the vast array of alternatives produced unlimited potential for manipulation and accelerated the whole process. More alternatives could be considered with an infinite variety of input information. The systems were made “user-oriented” — tailored to the specific needs and interests of legislative users. Extensive data bases, including those used in statewide election campaigns with large quantities of politically relevant information were made available within seconds.

The new conditions created common interests between politicians and bureaucratic technicians. In typical bureaucratic fashion, misleading explanations were developed to rationalize ever more bizarre districts.

HISTORICAL BACKGROUND TO REDISTRICTING IN CALIFORNIA

Most of the examples of gerrymandering in this monograph are drawn from California. To set them in perspective, a few comments are appropriate on California’s redistricting history.⁶

In California, as elsewhere, the reach for political advantage via districting has historical roots. California is no stranger to problems of representative government. Plagued by malapportionment in the first half of the Twentieth Century, it was in 1951 that California first experienced an aggressive partisan action to enhance the dominant party’s power. Republicans, who then controlled the State Legislature and the Governorship, seized the lion’s share of the seven new Congressional seats apportioned to California. In 1952, 19 Republicans were elected to the 30-member Congressional delegation. Similar results were initially achieved on the state legislative level. The grossly malapportioned State Senate, on the basis of constitutional provisions adopted by initiative, with the further advantages of cross-filing, continued to be overwhelmingly Republican. By 1958, however, the initially effective gerrymanders of 1951 were unravelling at the polls: in that year’s election, Republicans won only 14 of the 30 seats. Control shifted to the Democrats in both houses of the State Legislature.

6. The historical background of redistricting in the Los Angeles area is detailed in Monograph 3 of this series: The Westside Story: A Murder in Four Acts.

In 1961, California was apportioned eight new Congressional seats. This time the Democrats controlled the State Legislature and the Governorship. Playing a tit-for-tat game, Democrats used their power to assure that only 13 Republicans were elected to the 38-seat delegation in 1962. Similar Democratic gains were achieved in the State Assembly. By 1966, however, Democratic gerrymanders, too, could not prevent shifts in public opinion from having electoral consequences. Republicans won 17 seats to the Democrats' 21 in the congressional elections of that year. By 1968, Republicans took control of the State Legislature despite the interim juggling for incumbent (especially Democratic) advantages following the 1964 court rulings.

California's first congressional redistricting under "one-person-one-vote" occurred in 1967. Philip Burton, Democratic Congressman and San Francisco power broker, masterminded a bipartisan, or "sweetheart" strategy with a series of gerrymanders to the advantage of, and satisfaction of, most incumbents. The interchange of territory between incumbents of both parties produced some of the most extreme, but effective gerrymanders ever conceived. The districts orchestrated by Burton and his colleagues in 1967 protected all of California's 38 congressmen who ran for re-election in the next three elections.⁷

In 1971, when five new congressional seats were apportioned to California, redistricting became the focus of a furious partisan struggle, in which both sides relied heavily on the new computer technology. Slim Republican legislative majorities in 1968 had been replaced in 1971 by narrow Democratic legislative control. Only a Republican governor could protect Republicans against unified Democratic legislative majorities seeking to add to their advantage.

After Governor Ronald Reagan vetoed Democratic plans in 1971 and 1973, the Supreme Court entrusted the redistricting tasks to three court masters. Although borrowing some elements from the Democrats' legislation, the "Masters' Plan," unveiled in 1973, provided a fairly even playing field for the two parties, with almost a quarter of its districts proving competitive. In 1974, in the wake of Watergate, most of the competitive districts swung to the Democrats. Republicans elected only 15 of the 43 person delegation, five fewer than their 1972 totals. Later in the decade, however, following the triumph of Jarvis' Prop 13 and the setbacks of the Carter Presidency, the Masters' plan allowed a major Republican comeback: the 1980 election gave Republicans 21 seats to 22 for Democrats. Similar changes occurred in state legislative districts.

This to-and-fro history, in which gerrymanders yielded brief advantages to the redistricting party, came to an end with the California gerrymanders of 1981 and 1982. The 1981 congressional districts provided an extreme demonstration of the partisan advantages of "one-person-one-vote," and blatantly affronted any pretense to responsible action by representatives of the people. Cutting across city and county boundaries, breaking up communities of interest, jumping natural geographic boundaries, using the narrowest of corridors to link widely separated centers of population, the districts were nevertheless equal in population. Indeed, exact population equality became the rationale for what the late Philip Burton proclaimed as "my contribution to modern art."

7. Hardy, Leroy C, "Congressional Redistricting on California 1965-67: The Quilting Bee and Crazy Quilts," 10 San Diego Law Review 757-792 (1973).

Three plans (congressional, assembly, and state senate) embodying the redistricting legislation were signed into law by Governor Jerry Brown in September 1981. Shortly thereafter three referenda, pressed by the Republicans, qualified for the June, 1982 primary election ballot.

Before the voting, however, the issue entered the legal arena. Democrats sought counteraction to the referenda in the State Supreme Court, presided over by Rose Bird, in the case of Assembly v. Deukmejian. Burton and the Democratic leaders of the State Legislature challenged the referenda on grounds of alleged violations of petition circulation procedures. Governor Deukmejian and the Republican leaders asked for a stay in use of the districts that would be voided by the referenda. The Court, although rejecting the Democratic challenge to the referenda, refused to stay the use of the districts. The districts, however, were then rejected by popular vote.

Ironically, although the districts were overturned by the June referenda, the districts were used in the November elections. In that election, the gerrymanders achieved their goal: the party balance of 22 Democrats and 21 Republicans in the State's Congressional Delegation was replaced by 28 Democrats and 17 Republicans.

The State's legislative districts also were voided by the people in June, but the districts returned Democratic majorities in November. The newly elected Legislature, taking office in December of 1982, focused its energies on consolidating these gains. The voided districts rejected by popular vote in 1981, had to be redesigned. The legislators elected by the voided districts now had the opportunity to realign their own districts.

Time was of the essence. The Democratic governor who had approved the districts rejected by the public was leaving office in January 1983. Acting quickly to solidify their own districts, Democratic leaders left to the Republican minority the option of drawing their own districts from what was left. Recognizing the inevitability of their fate, Republican incumbents joined Democrats in carving districts which gave legislators of both parties districts of greater mutual security.

On the congressional level, Democratic technicians further fine-tuned the districts which had yielded the Democrats their huge electoral advantage. The new congressional districts, together with the "sweetheart" legislative districts, were signed into law by outgoing Governor, Jerry Brown, on January 2, 1983.

In June of 1983, an initiative sponsored by Assemblyman Don Sebastiani, qualified for the 1984 ballot. The proposal was unique for its comprehensive detail, which contained boundaries for 40 state senate, 80 assembly, and 45 congressional districts. The initiative-cum-maps constituted a unique challenge to traditional redistricting practices, as well as to the power structures of both parties. Many competitive districts would have been created. Again, the issue came before the California Supreme Court. Again, the Court acted to protect the existing districts. The initiative was declared unconstitutional because district lines would have been redrawn a second time in the same decade. The Court had removed from the ballot an initiative which had easily qualified. To the party faithful a joyful Speaker Willie Brown commented: "Sister Rose and the Supremes took care of that little matter [the Sebastiani initiative]."⁸

8. Sacramento Bee, February 9, 1984.

In June of 1984, a second redistricting initiative, under the direct sponsorship of Governor Deukmejian, was qualified for the November ballot. The proposal sought to reform the process by which district lines are drawn. Redistricting was to be taken out of the hands of the Legislature. A board would have been made up composed of retired appellate court judges, with power to create new districts in 1986. In November, it went down to defeat at the polls, the victim of a campaign against "politicizing the judiciary."

Although Republicans filed a suit (*Badham v. Eu*) in federal courts to challenge the congressional district lines, the Democratic gerrymanders continued to work their intended effects. Unlike many of their predecessors, their partisan advantages continued through the decade. Democrats maintained a huge majority of seats won in 1982, even when, as in 1984, they earned less than a majority of the votes; indeed, only one congressional district shifted in the four elections 1982-88. State legislative seats shifted, but by 1988 almost the same partisan division prevailed.

Incumbents of both parties take comfort from the continuing effectiveness of the congressional and state legislative districts. In 1986 and 1988, not only did all of California's House members secure re-election, but only two were returned with less than a 15 percent vote margin. A U.S. Supreme Court 1989 action with respect to *Badham v. Eu*⁹ virtually assures current districts will continue to work their incumbent magic in 1990.

Some of the districts we have illustrated in the introduction are comical. Yet, gerrymanders are not to be laughed at, for they can bring about great harm in any electoral system. Among the classic examples of gerrymandering, we might note, is the system of apartheid¹⁰ in South Africa where the black majority, 26 million strong, is effectively disenfranchised. That system, in turn, partly owes its implementation to the gerrymandered parliamentary districts in which the South African elections of 1948 were conducted. The pro-apartheid National Party, although it received approximately 40 percent of the vote to the opposition's sixty percent, won a 79-to-71 seat majority in those elections. It was that majority that allowed the Afrikaaner nationalists to organize the government (and to control the electoral systems ever after) and to enforce apartheid.¹¹

The first elections of America's third century under the Constitution will soon be held. They will occur in congressional and state legislative districts that are more extensively and expertly gerrymandered than any in our history. The fear that has prompted us to propose the A.C.T.I.O.N. reforms is that, without major change, the new districts that are drawn in 1991 and 1992 will be even worse. As a first step, therefore, we will now turn to examine the status quo, rehearse the arguments made for and against it, and then proceed to provide illustrations of today's abusive redistrictings.

9. *Badham V. Eu* 694 F. Supp. 664 (N.D. Cal. 1988).

10. Carter, Gwendolen M., *The Politics of Inequality: South Africa Census 1948*, (New York, NY: Frederick A. Praeger, 1958), pp. 36-37 and 149-153.

11. The facts concerning this gerrymander and the South African Elections of 1948 may be reviewed in Carter, *ibid.*, pp. 449-451.

I. The Status Quo: Defense and Critique

Let us begin by asserting that redistricting should be the process by which electoral districts are brought into line with the demographic changes reported in each decennial census. As we will show, however, redistricting today is a virtually lawless process, in which politicians, aided by computer consultants, shape districts almost at will.

In most of the states, redistricting is in the hands of incumbent legislators or their appointees. Not unnaturally, they wish to be re-elected and they use their monopoly power over redistricting to protect themselves from challenges.

Since the mid-1960s, the only effective rules of law constraining the redistricting process have been the requirements of population equality and the protection of minority group voting rights. And even these rules have been perverted. Politicians have learned to use “one-person-one-vote” to their own advantage, claiming that it requires their districts to cut through communities, to splinter counties and cities, and to ignore all other features of our civic geography; and minorities have been fobbed off with occasional rewards for “good behavior.”

The results of the redistricting process in this period have been splendid for incumbents. Routinely, nearly all of our Congressmen are safely re-elected, as also are increasing numbers of our state legislators.

The results have been disastrous for the rest of us:

- Challengers are condemned to defeat. Women, minorities, younger candidates and those with new ideas — few have better than a long-shot chance to defeat incumbents who are entrenched in carefully gerrymandered districts.
- Our electoral campaigns are dominated by commercial themes and mail-order techniques. The tortuously shaped districts of the contemporary gerrymander are resistant to grassroots or volunteer-style campaigns. Only computerized direct mail or T.V. advertising can cope with today’s bizarrely contorted and elongated constituencies.
- Our politics are stuck in a time warp. Society is changing all around us, but politicians of the ’60s and ’70s continue to rehearse the themes of that bygone era. Incumbents who never face serious challenge have no need to rethink their positions.
- Partisan and ideological tensions escalate. Incumbents, facing their only serious prospect of opposition in primaries, respond most sensitively to pressures from their own party’s activists and ideologues. Both parties thus tip to their extremes. Compromise and moderation give way to shrill partisan rhetoric.
- Negative campaigns and other kinds of dirty politics become common. Next to death and retirement, just about the only way an incumbent leaves office today is

in the wake of a scandal. No wonder, then, that both political parties are forever grubbing in the gutter for their issues.

- Invulnerable incumbents refuse to deal with pressing policy issues, and the people are forced to use initiatives or litigation to decide major public controversies.

In sum, abusive redistrictings are eroding the representative character of our legislatures. The legitimacy of governing majorities and their claim to rule come increasingly into question.

Of course, these points — and the conclusion that thoroughgoing redistricting reform is desperately needed in America today — are disputed by incumbents and other beneficiaries or supporters of current redistricting practices. As a first step, therefore, we must deal with the arguments that are made for the status quo.

ARGUMENT #1

Gerrymanders have always existed and always will, because redistricting is inherently “political.”

This argument, repeated mantra-like by politicians, is used to rationalize opposition to almost any reform of current redistricting practices. Yet, we need to deal seriously with it, as more than the self-serving rhetoric of politicians, for it is an argument that appears as well in editorial pages, even in those organs of opinion ordinarily associated with “reform.” For example, in an editorial titled “Getting Politics out of Politics?” of May 29, 1989, the Los Angeles Times summarily condemned a proposal, supported both by conservative Republicans and by the League of Women Voters, to establish a 12-member bipartisan commission for redistricting:

The results of the 1990 census still are more than two years away and that loathsome creature, the gerrymander, already has reared its ugly head and is peering around at the political landscape. The gerrymander is the symbol of legislative reapportionment, the redrawing of legislative district lines to reflect population changes, or more to the point, malapportionment, the creation of contorted election districts designed to assure control by one party or the other...California voters... would do well to maintain a healthy skepticism of anyone who offers a plan to get politics out of reapportionment.

Gerrymandering, the editorialist seems to believe, objectionable though it may be, is a traditional part of the American political scene, something that we must tolerate, because there is no “getting politics out of politics.” What would have happened in the times of Boss Tweed if that position had been taken?

(a) Defining Terms

The confusion in the quotation of the terms “reapportionment” and “malapportionment” with redistricting offers one clue to the faulty premises on which such arguments rest. The truth is that the role of politics in reapportionment has been dramatically reduced; and the political

abuse of the reapportionment process, through malapportionment, is today largely ended. By requiring that legislative and congressional districts be based on population, the court did, indeed, “get politics out of reapportionment.” By 1968, incumbents had lost the option to play politics via the silent gerrymander. It is in redistricting that politics is now running amuck.

This is no mere quibble over terminology. To confuse the terms “reapportionment” and “redistricting,” of course, is to gloss over or confuse the difference between the problems of the era of malapportionment and today’s abusive redistrictings.

(b) The Contemporary Gerrymander

When the court struck at malapportionment in Reynolds and Wesberry it put an end to the silent gerrymander; but the decisions left politicians freer than before to gerrymander via redistricting. Prior to 1964, the reach for political advantage through line-drawing was checked by state constitutional provisions requiring districts to be composed of whole counties: incumbents could not extend districts across county lines. After 1964, under the mandate of population equality, county lines lost their effectiveness as a check on gerrymandering. By requiring redistricting in previously untouchable areas, the opportunity to create gerrymanders expanded almost beyond belief.

In the same period, the computer speeded and sophisticated the redistricting process, permitting politicians to project the electoral consequences of district boundaries with great precision. Line-drawing based on computerized data runs, remote from the facts of county or city geography, became the norm.

The contemporary gerrymander, then, is the result of two developments dating back no more than a quarter-century. The gerrymanders illustrated in this volume are not part and parcel of America’s political heritage, time-honored concomitants of single-member districting. They go far beyond the simple gerrymanders of the past and result from a degree of deliberate redistricting abuse unprecedented in free governments.

(c) Rules for Redistricting

For all practical purposes, only two rules of law currently apply to redistricting: if the districts are equal in total numbers, and if minorities are not blatantly underrepresented, politicians are free to work their will in the line-drawing. Few aspects of our public life are so lightly regulated by law; and in no equally important governance process are so few checks imposed on powerholders.

Yet, nothing about the redistricting process renders it resistant to regulation. The silent gerrymander was brought to an end by a new rule of law. And there is no reason to suppose that contemporary gerrymandering is immune to legal reform. Admittedly, redistricting is a complex process and the new forms of abusive redistricting are ingenious: this is to say no more, however, than that effective redistricting rules cannot be simple. But the rules for parliamentary debate are not simple; nor, indeed, are the rules for baseball.

ARGUMENT #2

The importance of redistricting is exaggerated; and if there are problem gerrymanders, the people can always vote against the perpetrators.

A recent statement of this view appeared in an opinion piece in the Sacramento Bee (February 3, 1989). Daniel Hays Lowenstein, claiming that “the dangers of partisan redistricting are greatly exaggerated,” sees only a “limited effect on long-term political currents”:

The image of one party staying in power decade after decade solely by gerrymandering is a fantasy that survives only because most people do not have the time or the interest to learn of the severe limits, both technical and political, on what the most determined gerrymander can actually accomplish.

He urges that the minority party has “every right to fight for a piece of the redistricting action, but they should do it in the old-fashion way: earn it by winning the 1990 elections.”

(a) Unpersuaded Parties

Even as the piece in the Sacramento Bee was written, politicians were girding for redistricting as if for another Armageddon. But this is much ado about very little, according to Mr. Lowenstein, and involves only the careers of individual legislators and “a few seats” that may be won or lost by one party or the other “in the short run.”

Neither major party, however, takes such a sanguine view of the stakes in redistricting. The national parties are already spending huge sums on redistricting technology, grooming teams of top consultants, and readying their legal briefs; and many state parties are engaged in a similar frenzy of preparation. Are they, then, the victims of a delusion? Or is politicians’ actual behavior a better clue to political realities than the arguments of their academic consultants?

To query Mr. Lowenstein’s terms, how many seats are “a few,” and how brief is “the short run?” In California, there is almost no dispute that the 1981 redistricting secured six additional congressional districts for the majority party. This was common ground between the principal architect of the plan, Philip Burton, and his minority party opponents. As of 1989, after four congressional elections, all six districts remain in the hands of the majority party. In fact, since 1981, in all the elections in all California’s congressional districts (that is, out of 180 chances for defeating incumbents), only one incumbent has lost at the polls.

It might be interesting, although beyond the scope of this volume, to attempt an estimate of the policy effects of the California gerrymanders during the 1980’s: to calculate, for example, how many key votes in the State Assembly and Senate or in the U.S. House of Representatives, session after session, were won or lost by a margin of a “few seats.”

(b) Democracy as a Cure for Gerrymanders

No defense of the gerrymander is complete without a statement by its advocates that “if the people don’t like it, they can always vote us out!” Or, the minority party is told to correct its disadvantage “in the old-fashion way,” at the polls.

It is worth remembering, perhaps, that similar arguments were urged a quarter-century ago by the opponents of the Warren Court's decisions in Reynolds and Wesberry: the sovereign remedy for malapportionment was held, then as now, to be democratic action. One difficulty with this position is that fundamental problems of representation are often resistant to electoral solutions. If the representatives were elected from malapportioned districts that over-represented rural areas, how could urban voters prevail at the polls? And if urban voters failed in this, how could they prevent a repetition of the silent gerrymander, decade after decade?

Today, we must ask, if districts are efficiently drawn to elect incumbents, how can challengers defeat them? And, if they cannot, why should we expect that the outcomes of the next redistricting will be any different?

The argument that democracy is a cure for gerrymandering supposes, too, that the electorate can be interested in its details. According to Mr. Lowenstein himself, however, "...most people do not have the time or the interest to learn..." about gerrymanders. To this one should add that when constituencies are expressly devised to frustrate challengers, they also discourage voters from organizing and inhibit the education of opinion through the electoral process.

(c) Democracy and Redistricting: The Lesson of California

None of the foregoing is to deny that some abusive redistrictings have in fact been frustrated by democratic action.¹² There is even an occasional instance of a gerrymander that stirs public passions and leads an electorate to attempt retribution.

In 1982, California experienced the latter phenomenon when the official redistricting plans, which had become the subject of referenda, were overwhelmingly defeated at the polls. The result, however, was that the incumbent majority simply used the occasion to fine-tune the existing gerrymander.

This second round of gerrymandering is instructive. It shows how far today's professional politicians will go to ignore the public, even in the face of massive public disapproval expressed in terms of votes on referenda. It illustrates how they can make themselves almost totally invulnerable from electoral retribution. And it shows that those who benefit from a gerrymander are likely to change districts only to add further to their political advantage.

What, then, should we expect in states where a sophisticated gerrymander persists over the course of a decade? Today, this is the case in California, where the majority that drew the 1981 and 1982 gerrymanders remains intact, where even the majority leaders are the same. Why will the beneficiaries of the 1981-82 lines hesitate to gerrymander again? What means are available to the opponents to prevent a repetition? What can the electorate do to stop them? In 1982 the voters expressed their dissatisfaction by 60% majorities, but the public was ignored.¹³

12. Up until the last two decades, in fact, the typical fate of gerrymanders was to unravel in the course of a decade. Even today, in the era of technocratic redistrictings, there are examples of incompetent gerrymanders, in which incumbent majorities reach ham-handedly for advantage, only to see their districts swamp beneath the next electoral tide. The earlier unravelling in California is reviewed in number 3 of this series: The Westside Story: A Murder in Four Acts.

13. The only book-length study of the 1981 redistrictings fails to acknowledge the crucial and revealing 1982 sequel. See Cain, Bruce, The Reapportionment Puzzle (Berkeley, CA: University of California Press, 1984), hereinafter cited as Puzzle. A Rose Institute publication details the more complete story, see Quinn, T. Anthony, Carving up California (Claremont, CA: Claremont McKenna College, Rose Institute, 1984).

ARGUMENT #3

Loss of incumbent control over redistricting would result in radical discontinuities in representation, deter qualified people from seeking elective office, and undermine party organization.

An unusually clear statement of this position is to be found in Bruce Cain's, The Reapportionment Puzzle, an account of the 1981 California redistricting. Commenting on the threat of a "tabula rasa" approach to redistricting and the perils of "a radical change" in the electoral system, he writes:

A number of incumbents, for instance, could lose their seats if the new lines accidentally grouped their homes in the same district, or severed them from the voters and activists with whom each had developed ties over the years. Some might argue that this would be desirable, and that a redistricting process that protected incumbents would be pernicious per se. This view can be criticized on several grounds. First, it ignores the fact that the incumbents have been duly elected by the voters in their old districts, and that a commission or computer program that removed a large number of them from their seats would in effect be depriving those voters of their elected representatives. It is hardly consistent with democratic theory to argue that a government whose legitimacy depends on duly elected representatives should permit their unnecessary and arbitrary removal. It would seem more consistent with the principles of democracy if voters were allowed to the greatest extent possible to keep their elected representatives.¹⁴

(a) Duly Elected Representatives

To give perspective to this concern over "unnecessary and arbitrary removal" of incumbents, we may note that the leading Democratic candidate for Governor of California, Attorney General John Van de Kamp, recently unveiled a proposal to limit legislative incumbents to a maximum of twelve years in office. Without commenting on the merits of the proposal, it would surely produce a far more thorough-going removal of incumbents than any that would result from redistricting reform.¹⁵

At bottom, Mr. Van de Kamp's proposal speaks to the death of competition in California's legislative districts, which have been gerrymandered into virtual fiefdoms for incumbents. (Indeed, there is even evidence of the emergence of a kind of hereditary principle, for legislative staffers are now the presumptive heirs to incumbents in many districts.) Of course, by Mr. Cain's understanding of the principles of democracy (i.e. that voters should be "allowed to the greatest extent possible to keep their elected representatives"), there is nothing wrong with a legislature that is completely tenured in office — so long as the incumbents "have been duly elected by the voters."

14. Cain, Puzzle, p 12.

15. Although Mr. Van de Kamp's initiative, or proposal, is carefully crafted to protect current incumbents, the potential change in the future is worth considering. If it were not for his incumbent clause, the following legislators would be ineligible to run: all Assembly Leaders, majority and minority, including the Speaker, 10 of 24 Chairmen, including the Chairs of Rules and Ways and Means, and 26 of the 80 members; and in the Senate, all leaders, except the minority leader (with one year to spare) and the Republican Caucus Chairman, 12 of the 24 Chairmen, including the Chairs of Appropriations, Budget and Financial Review, Revenue & Taxation and Rules, and 19 of the 40 members. The point is, A.C.T.I.O.N. Guidelines might alter their districts but they would not be arbitrarily terminated. Qualified legislators, capable of demonstrating their value and integrity to the electorate, should be allowed to compete in the political game to the advantage of everyone.

“Duly elected” in the Anglo-American constitutional tradition, however, presumes the concept of competition if the system is to be democratic. Our elections (unlike the ritual, rubber-stamp elections of one-party regimes) are the means of assuring a responsive form of representation; they are vehicles for the active expression of the consent of the governed. Honestly competitive elections endow government with legitimacy, for they give popular authorization to its programs, enforce the accountability of representatives, and provide authoritative, current evidence of the people’s desires and interests.

“Due election” in a stacked district to California’s heavily gerrymandered legislature connotes few legitimizing elements of competition. Perhaps California’s incumbents deserve more respect than Mr. Van de Kamp’s proposal would accord them. But is there any reason why, at least once a decade, they should not be exposed to tough competition?

Mr. Cain seems to ignore the voters’ right to oust anyone in the next election. A defeated incumbent is hardly “arbitrarily” removed. He is ousted because he could not persuade his masters that he served them well or was in accord with their views.

(b) The Quality of Officeholders

Mr. Cain adds to his initial argument the view that such a decennial challenge might deter “good people” from seeking office:

Second, this anti-incumbent posture is inconsistent with the desire of reformers to see the quality of people entering politics improve. If there is a dearth of qualified people in public office in America today, then the threat of arbitrary removal every ten years hardly seems the best way to induce good people to run for office, especially in the elections immediately preceding a reapportionment. Good people will prefer jobs where quality work is rewarded, not where an arbitrary lottery determines the fate of one’s career.¹⁶

Again, Mr. Cain seems curiously blind to the advantages of competition. Today’s California Legislature locks out challengers, whether good or bad. To an even greater extent, the U.S. House of Representatives is impenetrable to challengers.¹⁷ It is the system of entrenched incumbency that is the true deterrent to “good people” winning office.

In our judgment (and we believe it to be quite widely shared), the quality of legislators has declined over the past two decades.¹⁸ The most worrying dearth of qualified and good people is in the legislature itself, where risk-free elections perpetuate far too many mediocrities in office. Honestly competitive elections are not “an arbitrary lottery,” but the best means of getting such mediocrities out of the legislature and giving good people better opportunity to enter the political system. Existing legislators (120 people) can hardly be judged to be the only qualified individuals in a state of 30 millions.

16. Cain, Puzzle, p. 12.

17. In the Lower House of Congress, more than 98 percent of incumbents are routinely returned, nearly seven out of eight of them with 60 percent or more of the vote.

18. Block, A.G., “The Puzzling Lack of Leadership,” 20 California Journal, p. 233 (June 1989). A brief review of recent investigations into Sacramento activities would seem to support that position.

(c) Grassroots Politics

Mr. Cain brings forward yet other arguments for protecting incumbents from “radical change”:

Further, radical change is likely to disrupt the organizational ties that have developed over the years among the activists in a given district. The experience of working together on various campaigns often creates an informal local party structure that would be weakened if districts were greatly altered, because the incentive for local activists to cooperate with one another often depends upon sharing common political campaigns. Given the well-documented fragility of the American party system, this blow to grass-roots organization could have serious consequences. It would mean that activists would have to establish new ties, and this would take some time. The failure to nurture stable grass-roots organizations would in turn facilitate the media-centered, direct mail orientation of American campaigns. Since parties on the left have traditionally depended on organization to offset the wealth and power of parties on the right, a weakening of the grass-roots party structure would also give an advantage to the wealthier, better-financed, and more media-oriented candidates of the right.

Finally, a major disruption of the political landscape might also increase the expense of running campaigns and profoundly affect the behavior of incumbents. Taking incumbents out of known areas would force them to spend more money and time on developing name recognition in the newly formed districts. Name recognition for most legislators comes with frequent visits to his (sic) district, going to every constituency function he can, doing a great deal of casework, getting out newsletters, grabbing headlines whenever possible, etc. None of these activities particularly improve the policymaking of the legislature. Unnecessarily removing incumbents from known areas would result in their diverting more staff resources to constituent matters at a time when many observers question whether too many resources are being channeled in that direction already.¹⁹

Professor Cain's analysis is written as if grassroots organizations exist in California. On the basis of his arguments, Mr. Cain cannot explain why grassroots volunteer organizations are, in fact, virtually extinct in California. They have died, we believe, because of the lack of electoral competition, and because the incumbent legislators who dominate the political landscape have little need of grass roots organization. Indeed, they fear it because it might threaten their incumbency.

Today's so-called grassroots politics in California involve minimal participation by people who live and vote in the district. What is claimed as grassroots campaigning currently consists of legislators vacating the Capitol every election cycle and utilizing their ready-made resource of “legislative staff,” or individuals normally on the state payroll who take vacation and leave time to campaign. Their positions in the state Capitol often depend upon their willingness to participate in campaign duties. Such persons become the organizational core for campaigns in the few targeted districts which are competitive. To carry out their grassroots activities, they are equipped with two-way radios, car phones, leased vans and expensive targeted computer printouts. Is this the grassroots activity Mr. Cain finds so desirable to preserve?

19. Cain, Puzzle, p. 12-13.

Safe incumbents are always best able to raise money: contributors know that they must be reckoned with, session after session, regardless of political tides and shifts in opinion. In California, such incumbents (many of them, in Mr. Cain's terms, politicians of parties on the left) amass multi-million dollar war chests. It is their money that funds many of the media-centered, direct mail campaigns for which California has become notorious. Such campaigns bypass the regular party organizations, from which safe incumbents have little to gain in any case. If safe incumbents bother to develop local structures, it is to build cadres of personal supporters, not to encourage party organizational development.

The fact is that California's bizarrely shaped districts are tailor-made for incumbents and for direct mail and media campaigns. Why does a district line split a county or a city? Perhaps to frustrate a potential challenge from a county supervisor or a mayor. Who, after all, can build a political base independent of civic geography? Only the legislative or congressional incumbent (with the power of the frank, a year-round political staff, and a heavily financed campaign) can raise funds needed to saturate unwieldy districts that frustrate grassroots politics.

Grassroots politics, if they are to survive, require community-based districting. The party system for which Mr. Cain grieves has actually been destroyed by the quality, experienced legislators to whom he would trust our fate.

(d) Burkeans or Bureaucrats?

The essence of Mr. Cain's argument seems to be that legislative representatives, once elected, whether against competition or not, should be sheltered from electoral pressures. Is this a modern-dress version of the classic "independence" theory of representation? Associated in the 18th century with Edmund Burke, it held (in contrast, to the "mandate" theory) that a legislator's first duty is to the public interest or the national interest, as he defined it, not to constituent opinion. In America, it was a variant of this theory that was used to justify the representative character of indirect elections to the U.S. Senate.

In fact, the defenders of today's incumbent gerrymanders have little claim to this honorable pedigree. Burke's Parliament, despite its rotten boroughs, and America's 19th century Senate, despite its indirect election, were both more competitive bodies than today's California-style state legislatures or our U.S. House of Representatives.²⁰ Indeed, no legislative body in the free world, not even the Soviet legislature (if recently sanctioned competition continues), is less affected in its personnel by elections than the lower house of America's contemporary Congress. America's representatives today are more likely to die in office than to be defeated at the polls.

What theory, then, justifies the claim that legislators, despite their invulnerability at the polls, are truly representative of the people? Freed from the sanctions of elections, the beneficiary of biennial rituals that grant them virtual tenure, how much more representative are they than bureaucrats?

20. Burke discovered the practical limitations of his independence when he was defeated for re-election in the constituency of Bristol. It is worth recalling, too, that the Founding Fathers applied indirect elections only to the U.S. Senate: the U.S. House of Representatives was intended to be a genuinely popular body. Indeed, even the independence of indirectly elected senators was often limited by 19th century state legislatures, which provided binding instructions on key matters.

ARGUMENT #4

All reforms are a cover for the self-interest of different groups; all districts advantage some groups over others; there are no “neutral” reforms of redistricting.

In one form or another, this argument is a staple in the case made against redistricting reform. Often, a quotation from the great reapportionment scholar, the late Robert Dixon, is invoked in its support. “All district lines drawn on an apportionment map,” Professor Dixon wrote, “are political lines in the sense that they group or separate partisans of one persuasion from fellow partisans in the same area.”²¹ Therefore, the argument continues, one man’s ideal district will be another’s gerrymander: “reform” is merely a question of whose ox is being gored.

(a) Reform and Self-Interest

Both rules of law that now apply to redistricting — the requirement of population equality and the protection of minority group voting rights — are the products of recent reform movements. Those movements (“one person, one-vote,” and the voting rights struggle) succeeded because courts recognized that incumbent practices were detrimental to a democratic system’s survival. The court actions were a necessary response to a growing hypocrisy between the values proclaimed and the ludicrous practices. One did not have to suffer directly from malapportionment or blatant racial gerrymanders to recognize them as abuses.

Malrepresentation and discrimination, it is true, harm some groups more than others. But do we, because it is not directly our problem, stand to one side to let the harm continue? Those not at risk, when they join with those that are harmed, recognize their shared interest in a just system of representation.

It is an impoverished, fundamentally unrealistic view of politics that ascribes reform to no more than group self-interest. Major reform movements succeed primarily because they appeal to broadly held principles and ideals. Historically, reforms of representative institutions — from the Thirteenth and Fourteenth Amendments through the secret ballot to the Voting Rights Act — have always built around the sense of decency and fair play of ordinary Americans. Is it the right thing to do? Is it fair? These are the questions to ask.

(b) Unequal Lines

Professor Dixon’s assertion that all district lines are “political” is correct, so far as it goes. Some lines, however, will do more than others to group or separate partisans, to protect or threaten incumbents, to reflect or deny community aspirations, to divide or unite cities, and so forth. It follows, then, that one can distinguish among lines in terms of their differing effects. That all lines are “political” does not mean that they are all equally destructive of competition or other democratic values, or that they are all products of political strategy.

The defenders of status quo redistricting, however, wish us to believe that the effects of different lines are all a matter of perspective, of political preference. Gerrymandering, they

21. Dixon, Robert, Democratic Representation: Reapportionment in Law and Politics (N.Y.: Oxford University Press, 1968) p. 18.

suggest, is beyond objective definition, and the whole issue of redistricting, because it involves complex political questions, is best left to the interplay of group pressures in the political process. (It is not unfair to note that similar arguments were made not so long ago by opponents of the “one-person, one-vote” and voting rights reforms.)

At issue, then, is whether there is such a thing as malrepresentation produced by gerrymandering. Robert Dixon, to invoke his great authority in proper context, was convinced of it. “Gerrymandering is discriminatory redistricting,” he wrote. We can tell when discriminatory redistricting has occurred and we can identify the means by which it has been produced. As he explained, gerrymandering “equally covers squiggles, multi-member districting, or simple non-action, when the result is racial or political malrepresentation.”²²

(c) Neutral Rules

The fundamental cause of malrepresentation today is the lack of rules to constrain the reach for unfair political advantage in redistricting. The rule requiring population equality has ended the silent gerrymander; and voting rights rules have put a stop to the most blatant racial gerrymanders. All other forms of gerrymandering, however, remain available to politicians.

Politicians’ freedom to develop districts that advantage themselves and harm their opponents has, in fact, increased and is increasing; partly, this is the result of the collapse of older rules (especially the requirement of county integrity) in the wake of the malapportionment decisions; and partly, it is the effect of computerized redistricting. New rules are needed to constrain politicians’ ever bolder and more sophisticated reach for political advantage.

But we are told that there are no neutral rules in redistricting, that all lines are political, that all districts are gerrymanders for one group or another. What is really meant by such objections, of course, is that new rules will produce new outcomes — new districts, new incumbents, and new majorities. At bottom, then, it is an argument for the current districts, the current incumbents, and the current majorities.

Sometimes, proponents of the position can be brought to admit that this is indeed what they really want. Then, however, they counter with the charge that advocates of new rules are seeking the advantage of the Republicans or the Democrats, whichever is the “out” party, or of conservative or liberal challengers, whichever are disadvantaged by the status quo. But denial that impartial rules can be applied to redistricting is worse than a cynical status quo argument. It is, in fact, to assert the inevitability of corruption right at the heart of our representative system. Like the safely entrenched bureaucrat, the response is the same: you cannot do anything about it. Representative government, however, requires more faith in political institutions.

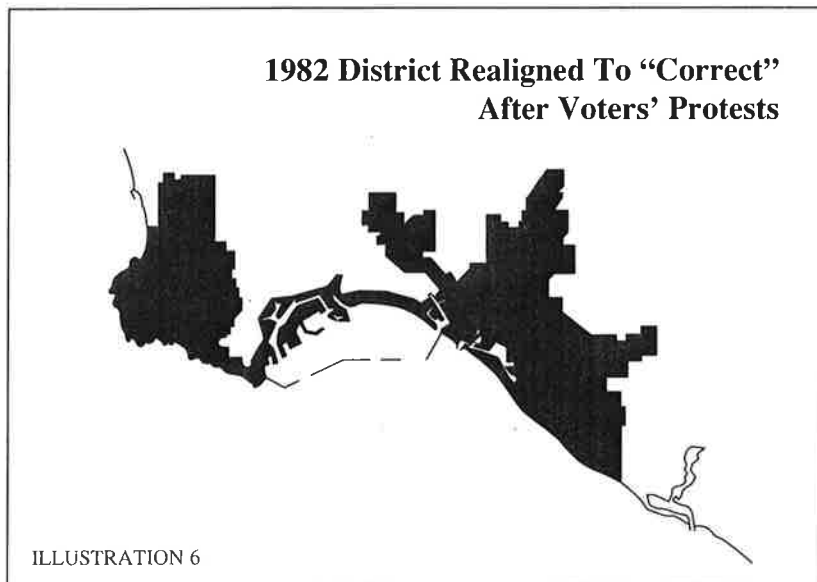
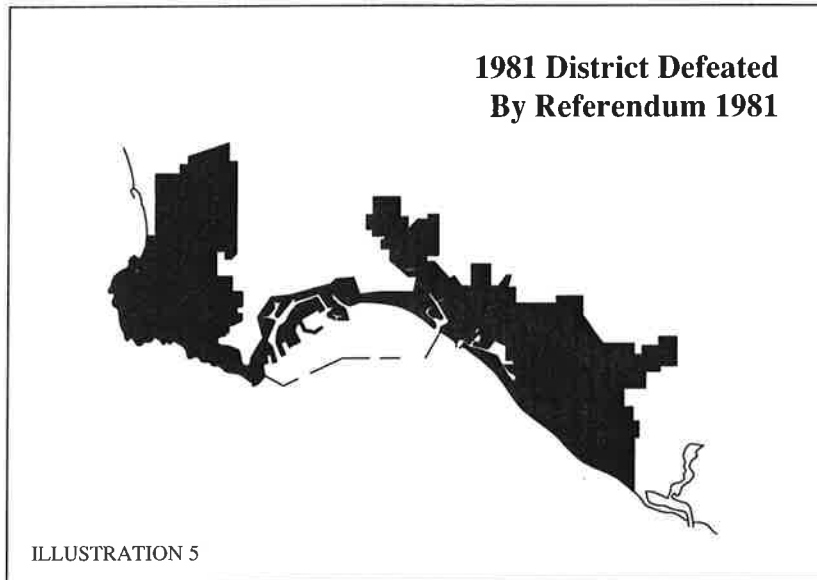
The interplay of group pressures is defined to allow current elitists the right of definition and action. Like any conservative, bureaucratic status quo, if you follow their rules you lose. In this case, they are taking your birthright as a free, equal citizen by self-serving, misleading rhetoric in the name of “their” people.

22. Dixon, *op. cit.*, p. 460.

ILLUSTRATIONS

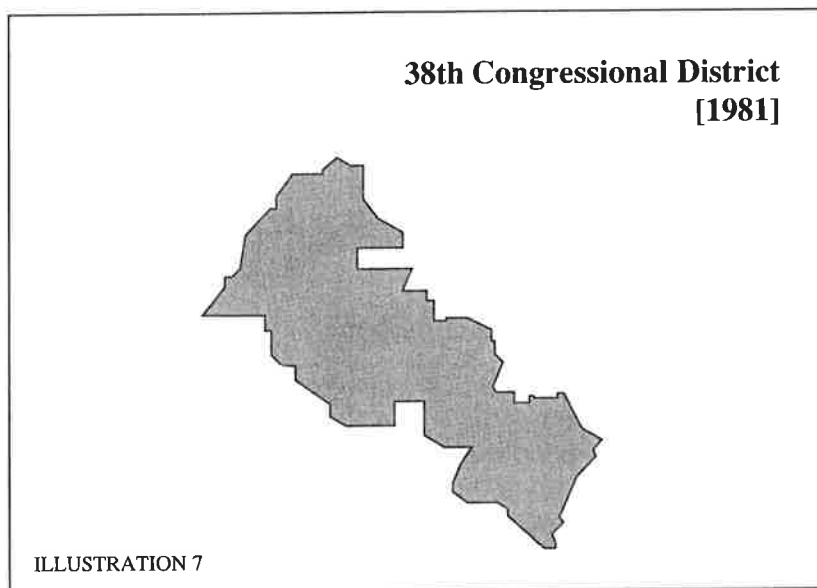
Arguments in favor of the status quo are probably best rebutted not by other arguments, but by examples of today's abusive redistrictings. We shall use illustrations from California, a state where the reach for political advantages via districting has escalated decade by decade, to the point where it now is arguably the most gerrymandered in the nation. And we shall focus on the districts created in 1981 and then "corrected" by the legislature in 1982.²³

California redistricting in 1981 and 1982 in the 42nd Congressional District:

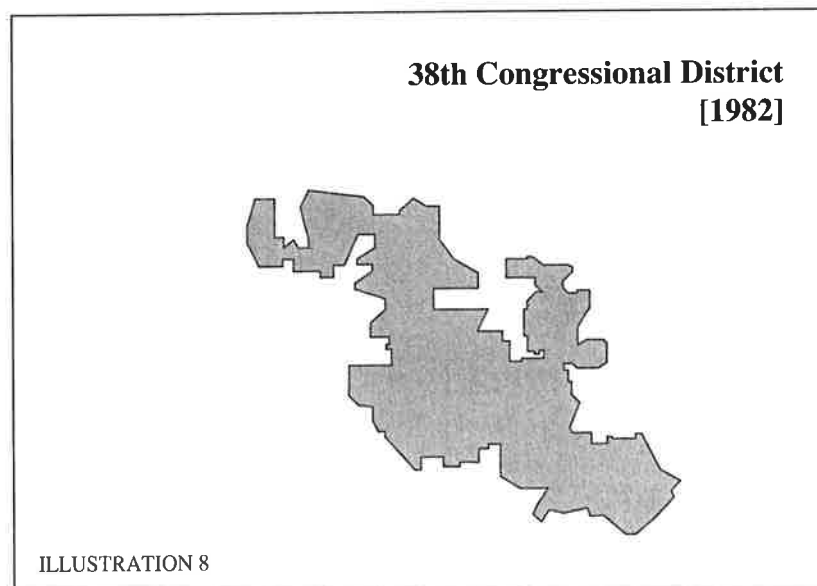


23. The brief history of redistricting abuse in California, in the introduction, should be read to see these gerrymandered districts in perspective.

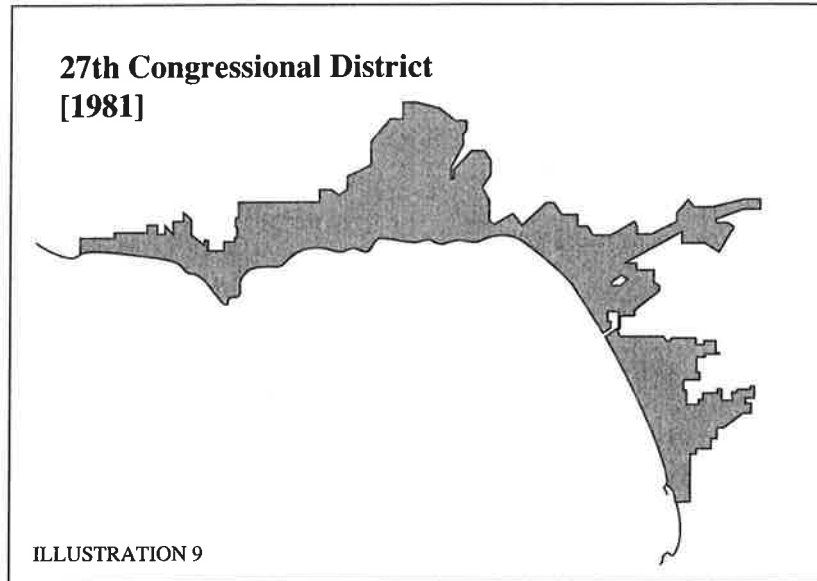
38th Congressional District [1981] defeated by referendum. Note the necks. Incumbent re-elected by 52.4% in 1982.



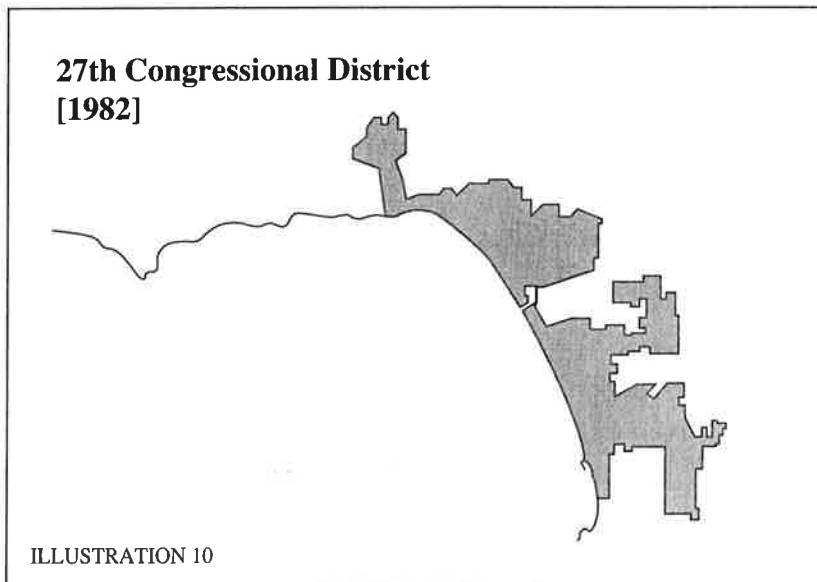
38th Congressional District [1982] to “correct” for the public’s objections. Note the additional extensions, necks, and crossing a county line:



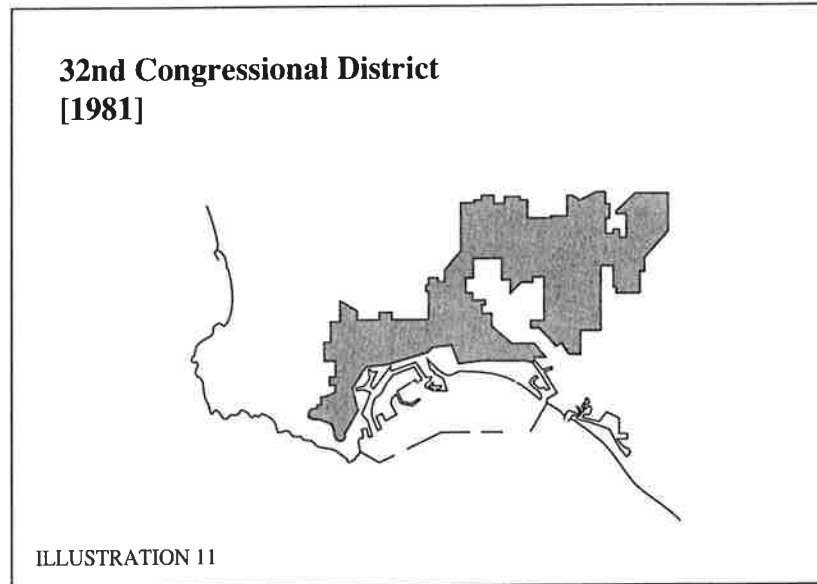
The 27th Congressional District [1981] and [1982]:
27th Congressional District [1981] defeated by referendum. Note the necks:



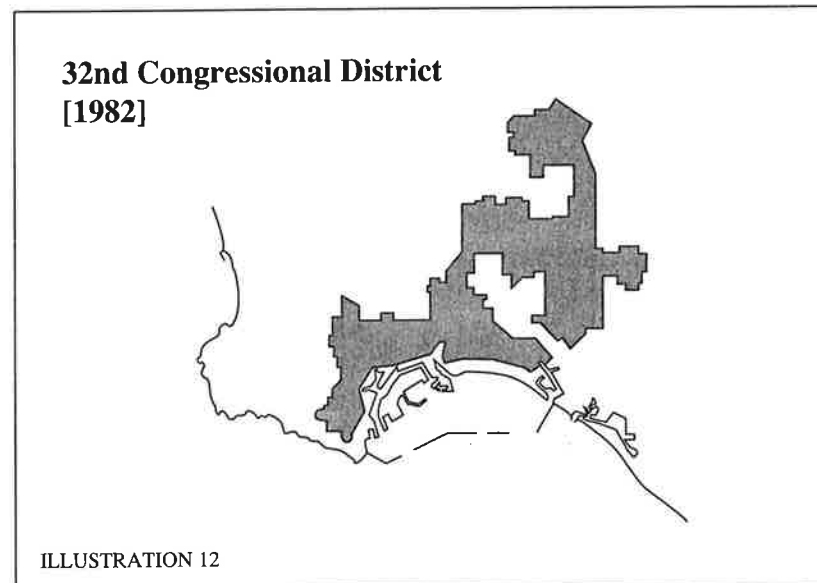
27th Congressional District [1982] “corrected” to meet the public’s objections:



32nd Congressional District [1981] defeated by the referendum. Note the necks:



32nd Congressional District [1982] “corrected” to meet the public’s objections. Note the additional neck — 500 yards wide — the length of a city, approximately 4 miles. WHY?



Was this what the public wanted when it defeated overwhelmingly the 1981 districts by referendum?

Did this alteration create a more responsive district?

How can citizens organize in this district?

How are the voters reached in this district?

Who benefitted from this district?

The ancient wisdom that a picture is worth a thousand words (or is it 10,000?) is proved here, we believe. It is important, however, to add this fact. The modified 1982 districts were enacted in a frantic two week period by legislators elected from voter-rejected districts, hours before a governor of the majority party left office. The 1981 districts had been rejected by popular vote with 60% majorities against the districts. Do the modifications reflect a responsible, responsive, dedicated commitment to a democratic society? The results illustrated here speak for themselves and illustrate the legislators' disregard for the people whom they claim to serve. Such actions raise the important question: Who guards the guardians?

II. A.C.T.I.O.N. Guidelines

A.C.T.I.O.N. Guidelines offer fundamental reform of a critical political process. In designing them, and in assessing their realism and likely effectiveness, we have tried to keep in mind two earlier, very successful examples of fundamental reform.

The first is the U.S. Constitution itself. The Founding Fathers were political realists and reformers. They did not say: politics is like this, nothing can be done, work within the system whatever its faults. To the contrary, they saw that status quo politics required fundamental change if the polity itself was to survive.

Guided by the principles of the Declaration of Independence, but recognizing also the fallibility of human nature, they designed a complex structure of institutions and procedures to balance and check power. They sought and designed a system of rule of law in place of the rule of men.

Although it would be presumptuous to suggest any comparison between our reform effort and that of the Founders, we can learn from their success. The Constitution won the support of the people in 1789 because it spoke to obvious evils of the status quo and because it addressed those evils in terms of the basic democratic-republican principles around which the new nation had first rallied in 1776.

A second reform which has important lessons to teach is the Automatic Apportionment Act of 1929. Again, political leaders faced a regime-threatening problem. Bitter controversies had developed over the number of representatives to be allocated to each state in the Lower House of Congress.

In the 19th century, the solution had been to increase the total number of members to accommodate growth, while retaining the existing representation for the older states. In 1911, however, when the House of Representatives capped itself at 435, every increase for one state meant a decrease for another state: current representatives had to vote on their own potential elimination. It became a political problem of the first order. After the 1920 census, the House refused to act to recognize demographic change, especially urban growth in relationship to rural decline. Similar problems occurred within the states, leading to silent gerrymanders or, in some cases, the creation of constitutional gerrymanders, such as in California.

On the national level, however, the impasse was settled in 1929 by the Automatic Apportionment Act, with a specific complex formula for implementation. A Harvard mathematician was brought in to develop an "equal proportions" formula whereby the average sizes of all states' congressional districts would be expressed as a proportion. The formula (the mathematics of which perhaps no more than a dozen members of Congress understand) produces a practical, self-enforcing result. Described in its simplest terms, it seems today to be no more than common sense. The Congressional Reference Service describes its operation as follows:

New Mexico's average size congressional district with three seats will be 433,323. Indiana's average size district is 27% larger than New Mexico's. If New Mexico's third seat is given to Indiana, then New Mexico's average size district becomes 649,984 and Indiana's 499,107. New Mexico's average size district then would be 30% larger than Indiana's. Based on this comparison, the method of equal proportions gives New Mexico 3 seats and Indiana 10 because the proportional difference is greater (30% v. 27%) than if New Mexico gets 2 and Indiana 11.²⁴

In 1941 and in each subsequent decade, strenuous efforts were made to alter the formula and/or to expand the House of Representatives. Despite such efforts, the rules have held and the allocations of congressional seats have become automatic. Outside agents apply the formula and the President announces the results.

A.C.T.I.O.N. GUIDELINES

"A.C.T.I.O.N. Guidelines" — A.C.T.I.O.N. is an acronym for **A Constructive Technique In Organizing Neutralization of Redistricting** — depend on three reforms:

- 1. Establishment of binding units of redistricting (URs) to limit the ability of bureaucratic technicians to elongate districts and develop gerrymanders;**
- 2. Systematic sequencing of compact, contiguous, community-oriented URs to limit human discretion in the creation of districts; and**
- 3. Use of a variable beginning point to neutralize the political impact by a chance selection of the sequence's beginning and direction.**

In essence, A.C.T.I.O.N. Guidelines deprive redistricters of discretion by changing redistricting into a procedure controlled by sequencing of redistricting units, with a variable beginning point. Districts with political "necks," the life sustaining anatomy of the gerrymander, are eradicated, as can be seen in the illustration on the following page. A.C.T.I.O.N. Guidelines, in effect, incorporate most features of several suggested reforms, but in a composite program.²⁵ When procedurally possible within the one-person, one-vote principle, they:

1. Define URs as counties; but metropolitan counties are subdivided into URs by use of major freeways and arterial highways to guarantee city and community unification.
2. Sequence the compact, contiguous, community-oriented URs to guarantee commonsense compactness, contiguity and community-based districts by limiting the extension of districts (but without complex formulae incomprehensible to the average citizen);

24. D.C. Huckabee, "The Apportionment Formula Question," Congressional Research Service, January 27, 1981, pp. 4-5.

25. See Appendix 2 for an outline of other redistricting reform proposals.

3. Provide public hearings, time limits, and potential referenda assuring that the procedures will be open;
4. Provide nesting (grouping districts together) for state senatorial and assembly districts; such districts can in some cases be closely related to other districts, such as congressional districts; and
5. Render district numbering automatic with the sequencing and the variable beginning point.

WHAT A.C.T.I.O.N. WILL DO:

Competition will return to the political system by establishing neutralized redistricting procedures.

Compact, contiguous, community oriented districts will make grassroots politics possible. Money need not be the sole determinant for success.

The A.C.T.I.O.N. Guidelines provide for new districts every ten years. Districts will not be based on incumbent districts, but on the basis of neutralized procedures. The procedures will open a new airvent for public opinion encrusted by the incumbency factor of a few hundreds of incumbents against the interests of millions.

New groups can enter the process, if they develop organizational potential and appeals to societal values rather than parochial self-interest. Most notably, the new competitors can be minorities, women, local officials and others with new ideas. The permanent URs, however, will tend to stabilize units for political action from one redistricting to another.

We believe that experienced legislators of high quality will be re-elected. Neglectful and arrogant legislators who have ignored public opinion will be removed by a vote of the people, which is what a democratic-republican government presumes.

As a result of the A.C.T.I.O.N. Guidelines' neutralization, each side has an equal chance, with the chances breaking according to lot or the flip of a coin, rather than manipulation. The contest can begin with a neutral action to start the game — the grabbing of a bat, or the toss of a coin; but the playing field is where the contest is fought, not in a closet. Advantages in one place become disadvantages in another.

True, advantages accrue, such as first at bat, receive the kickoff, and so forth; but the game begins by chance. Potential advantages and disadvantages exist for both sides. Why not the same principle for the greatest game of all — political power?

A.C.T.I.O.N. SYNOPSIS

Detailed A.C.T.I.O.N. Guidelines are necessary to control manipulation by legislative bureaucrats and technocrats.²⁶

26. See the Technical Appendix.

In essence, eight key provisions constitute the A.C.T.I.O.N. Guidelines:

1. URs are designed to achieve common sense compactness, contiguity and community oriented districts.
2. URs are required to be grouped in sequence.
3. The sequence begins with a lottery selection of the beginning point.
4. The direction of movement for creating the districts is determined by a flip of a coin. Heads will be in numerical sequence. Tails will be in reverse numerical order.
5. If population equality permits, the full UR must be incorporated before moving to the next UR in sequence.
6. Counties with populations of 75,000 or more may be subdivided into URs. The division lines will normally be based on freeway and arterial highways.
7. Cities split by the UR boundaries will be unified if possible.
8. If a census tract is split, block groups will be incorporated until sufficient population is acquired. If the next block group is too large for incorporation, blocks will be included in numerical sequence until the ideal population is achieved.

The main features of the A.C.T.I.O.N. Guidelines can be illustrated by the following hypothetical example.

Hypothetical Design

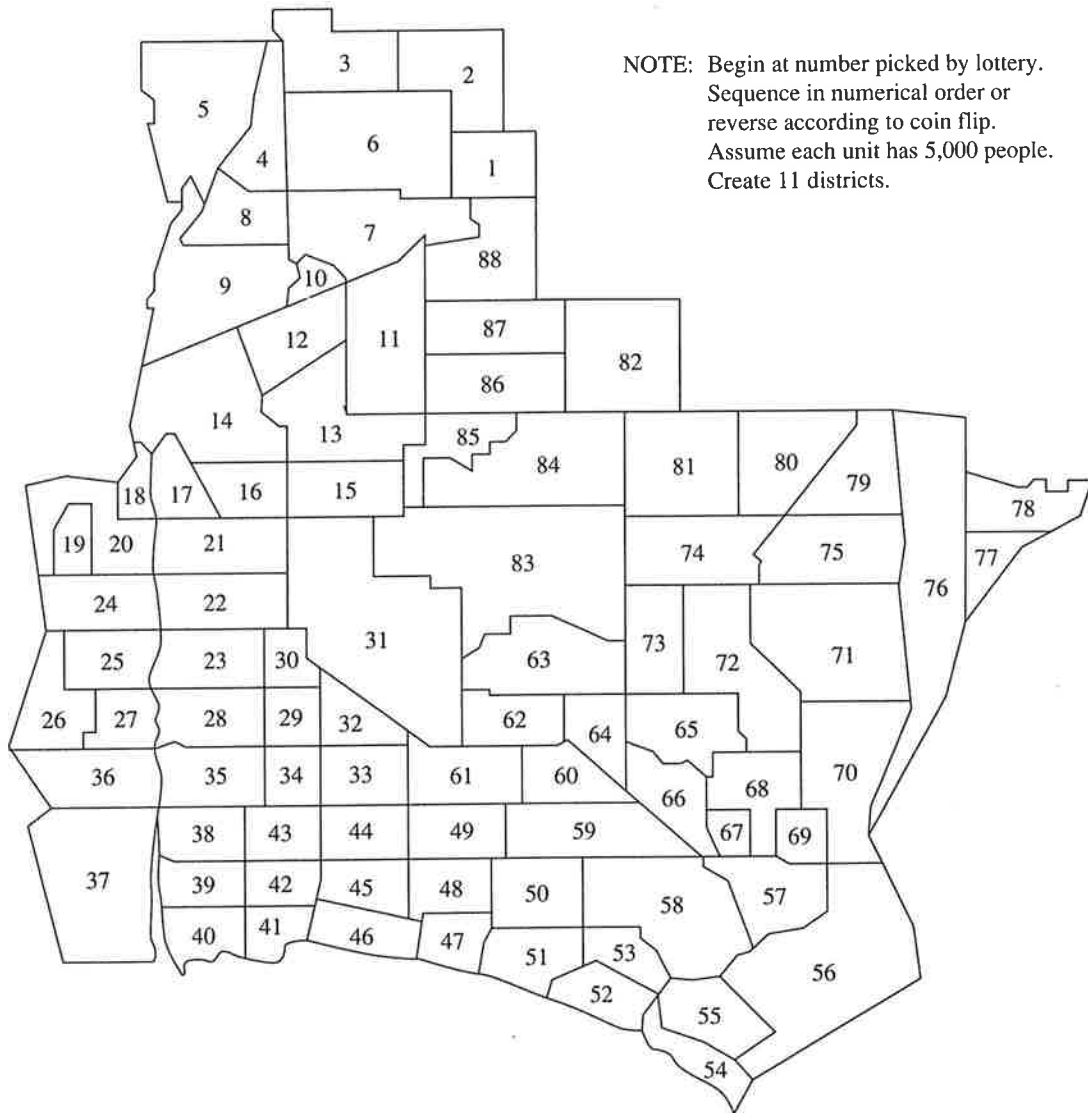


ILLUSTRATION 13

The important points can be summarized briefly. **Provisions 1-4** provide potentially 88 beginning points in the hypothetical example; the sequence could start at 1, 15, or 88 [or any others of the 88 possibilities].

Since districts will be organized either in numerical order (1-88), or reverse order (88-1), 176 possibilities exist. In the California context, approximately 360 possibilities will exist; in the Ohio proposal 292²⁷ alternatives are possible. In other states, the number of possibilities will vary depending on what limitations are sought and the number of URs created.

The procedure depends on chance; in other words, neutralization is achieved by alternative possibilities which will not be subject to deliberate political manipulation. Procedures replace negotiations, or arbitrary bureaucratic decision-making. Human discretion is minimized.

Provision 5 guarantees only one entrance or exit from each county or city. At the same time procedures require unification of cities if split by UR boundaries whenever possible.

Provision 6 limits the ability to elongate districts and to create gerrymander necks that link unrelated communities. The use of permanent boundaries for description of URs establishes limits on bureaucratic manipulation of procedures for political benefits.

Gerrymanders — districts deliberately created to distort the electoral results — are eradicated. Districts created by neutralized procedures may create political advantages, but the districts are not deliberate actions of self-interested parties.

With neutralized procedures, advantages for one party will probably be balanced by disadvantages elsewhere if chance is the controlling factor. By way of contrast, under current practices decade-long advantages accrue to the momentary majority [be it partisan or bipartisan].

Provision 7 which unifies cities and recognized sub-city units split by UR boundaries, can best be demonstrated by Illustrations 14 and 15.

Illustration 14 shows how the smaller portions of cities are transferred to the dominant UR.

27. See the next section, "A.C.T.I.O.N.: A Case Study."

Metropolitan County – Divided Cities

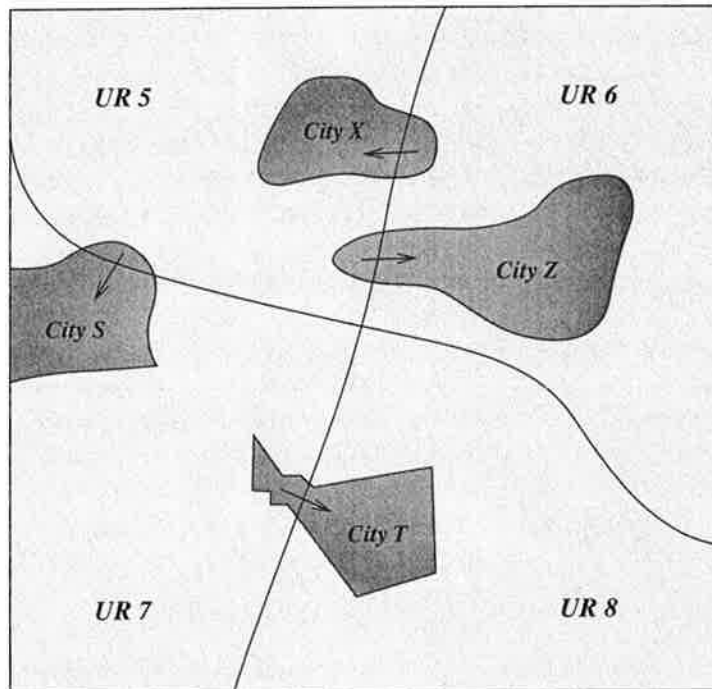


ILLUSTRATION 14

NOTE: City unification has priority under A.C.T.I.O.N. Guidelines. The smaller portion of a city is transferred to the UR containing the larger portion of a city. Cities X, Y, Z and T are unified by the smaller city portion being treated as part of the dominant UR.

Illustration 15 shows how sub-communities within a large city must be treated as wholes before moving to the next unit.

Sub-Division of Large City (SCs)

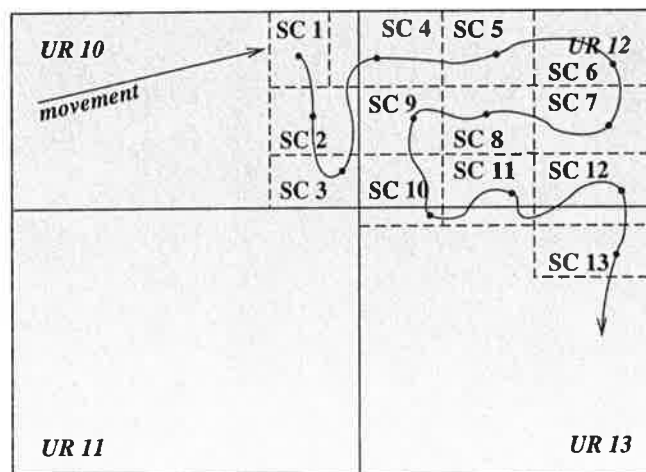


ILLUSTRATION 15

NOTE: Communities within large cities are recognized by A.C.T.I.O.N. Guidelines. The whole sub-division unit must be incorporated before moving to the next unit.

Illustrations II and III again emphasize that the smallest portion of a city is united with the largest portion of a city in another UR. No more than one entrance or exit is allowed for any city or county. Also, recognized communities in larger cities are guaranteed unification when population equality permits.

Provision 8 governs how division of census tracts is controlled and Illustration 16 demonstrates how it works.

Block groups 1, 2, and 3 can be accommodated. Group 4 must be split. Individual blocks in 4 will be incorporated to achieve precise population, normally by numerical sequence subject to common sense compactness and contiguity.

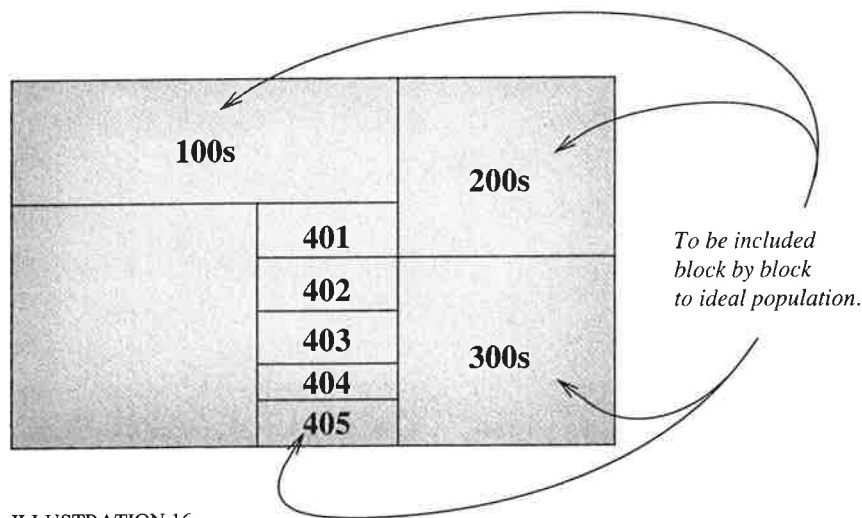


ILLUSTRATION 16

Provisions for splitting, limit the ability to form districts on the basis of politics. How A.C.T.I.O.N. Guidelines could kill gerrymanders is illustrated on the page "SLAYING THE GERRYMANDER (Cut the Necks).

The Guidelines are not formulae to be implemented only by incumbents or by technocrats who can interpret the formulae for political advantage. Guidelines provide a step by step procedure which any person can implement. Discretion does not impinge on the results. The procedure will produce substantially the same results whoever does the redistricting.

The Guidelines also provide for public hearings, time limits, and an open procedure. When possible (state senatorial, assembly and board of equalization districts) are nested (grouped together). Congressional districts are linked as closely as possible by procedures. District numbering is automatic in the order of district creation.

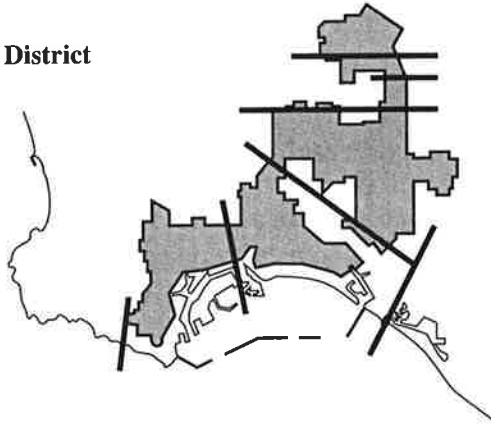
Slaying The Gerrymander Cut The Necks

Samples of what the A.C.T.I.O.N. Guidelines would do:

42nd Congressional District



32nd Congressional District



27th Congressional District

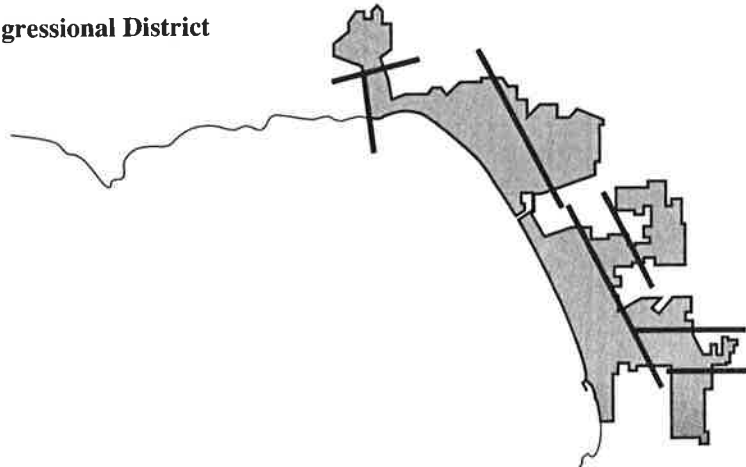


ILLUSTRATION 17

A.C.T.I.O.N. A CASE STUDY

The implementation of A.C.T.I.O.N. Guidelines to California was demonstrated at a conference at the Rose Institute in March of 1989 (and a further review is planned for the Spring of 1990).²⁸ One complaint about the A.C.T.I.O.N. program for California was the assertion that its originators had some hidden political agenda because of their familiarity with California political behavior. Though the neutralization program negates any such agenda, another state where the originators are not immersed in the political patterns offers an example freed from assertions of manipulation.

Can the A.C.T.I.O.N. Guidelines be applied or adapted to other states? Ohio offers an excellent comparative case study: redistricting practices in 1981 have some of the same problems associated with the California experience.

As previously indicated the A.C.T.I.O.N. program depends on establishing Units of Redistricting (URs) and then logically sequencing them in a manner to assure neutralization. The whole concept of sequencing depends on the involvement of local experts to establish the logical sequencing. It is presumptuous to assume an outsider can do the job better than local people, but for this experiment one person's opinion had to suffice.

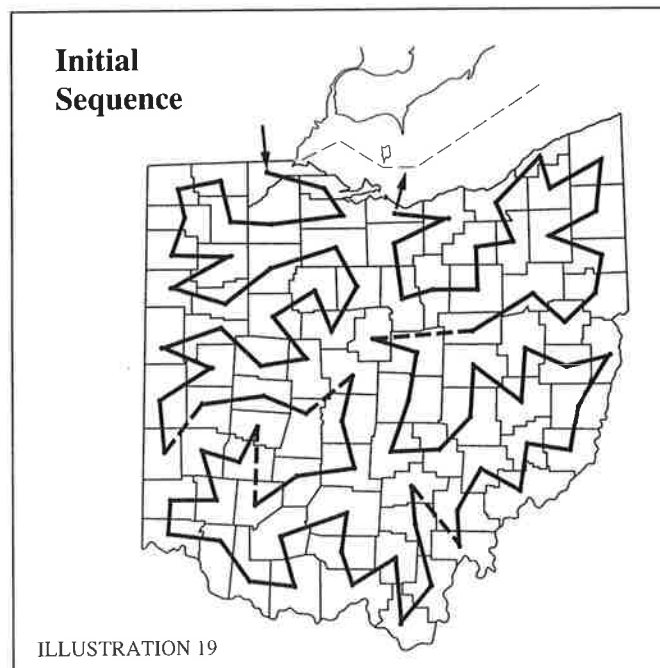
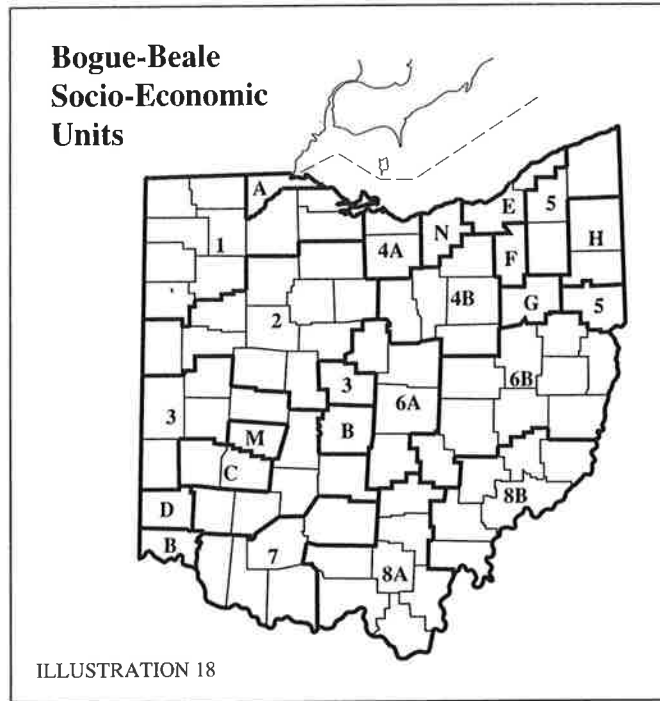
Methodology: The starting point for the sequencing in Ohio began by studying the socio-economic units developed by the Bogue-Beale monumental study of 1960 (Map III). A sequence was developed to incorporate each socio-economic area completely before moving to the next unit (see Map IV). A comparison of the most recent census maps for metropolitan areas (Map V) immediately substantiated the expectation that the 1960 analysis would be dated and require adjustments. This led to a second sequence (Map VI) which was used for the Ohio A.C.T.I.O.N. system.

URs were developed by the use of freeways and major arterial highways in metropolitan areas. With the 88 counties and the 58 URs developed for metropolitan areas the total of 146 URs emerged. With the alternative directions 292 possibilities exist of different districting configurations in Ohio. It should be stressed that the URs are utilized to control the elongation of districts. By utilizing the compact, contiguous, community-oriented URs the resultant districts will predominantly possess those characteristics. If exceptions exist, the results are from chance, not from deliberate political manipulation.

In California a complaint about the sequencing centered around its basic circular character. The comment was: the state is not a circle. Presumably the same comment could be made about Ohio — it does not zig-zag. In either case the design of the sequence and its appearance have no importance. The point of sequencing is to organize districts in compact, contiguous, and community-oriented form. The sequence controls the movement, eliminates discretion and the results are obvious.

28. Much of this section first appeared as a paper at the American Political Science Association meeting in Atlanta, August-September 1989. Hardy, Leroy C., "A.C.T.I.O.N. Guidelines Applied to Ohio" (a paper delivered at the A.P.S.A. Convention, Atlanta, Georgia, September 1989).

It should be stressed that the sample provided is only one of 292 possibilities. It is not the A.C.T.I.O.N. program for Ohio. It is what would happen if Lucas County was drawn from the 146 URs and the flip of the coin was tails; hence the movement would be counter-clockwise. Two hundred ninety-one other possibilities exist, many of which may be preferable to the sample run. The illustration used might very well be the worst scenario to emerge from the A.C.T.I.O.N. procedures.



**Metropolitan
Units [1986]**



ILLUSTRATION 20

**Sequence For
A.C.T.I.O.N.
Guidelines
In Ohio**

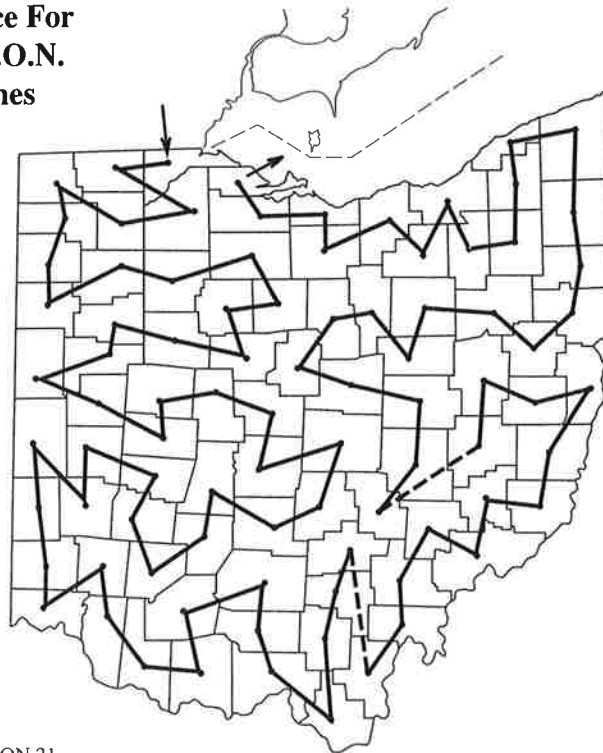


ILLUSTRATION 21

Without the detailed data to implement fully the A.C.T.I.O.N. Guidelines (the overlay of freeways and arterial highways to the census units), in Cuyahoga County the minority dimensions could be taken into account by including the bulk of the Black population in one district. Detailed procedures would have probably resulted in the same pattern (communities must be recognized), but possibly not to the same degree.

Strict adherence to the procedural rules should be maintained in the initial construction of the A.C.T.I.O.N. districts. The legislature (or a commission, or ultimately a court) could then alter the A.C.T.I.O.N. results by a 2/3 rule on the basis of recognized standards. Courts could also provide alteration to the A.C.T.I.O.N. program by redrawing two or three districts without upsetting the overall program.

It is crucial, however, to recognize that whenever rule of law (procedures) is replaced by the rule of men, the wisdom of the founding fathers is still valid. Guardians must be guarded. Rule of law is the principle upon which that noble experiment in human governance was founded. It is worth emulating two centuries later.

This exercise in adapting a procedure clearly points up the need to adjust the concepts to each political environment. Again the expertise of local practitioners must be emphasized. Local people can best perform the adaptation if they find it useful.

The Ohio experiment indicates that the multiplicity of jurisdiction units may make the URs defined in terms of freeways and arterial highways less necessary than in California. At the same time such grids control the ability of redistricters to elongate districts and fragment communities which typically frustrate effective grassroots activity.

A careful review of the Ohio results would indicate that minor modifications could be made with more detailed data. This is especially true in view of the A.C.T.I.O.N. design which regulates splits down to the Census Tract block level. Compactness would be facilitated, for example, in Wood County where three whole building blocks in the Ohio contest program were used, thereby extending the line southward; a similar adjustment along the north boundary with more exact division would have been more compact and would be more in line with the A.C.T.I.O.N. intent.²⁹

A.C.T.I.O.N. procedures have produced more compact, contiguous, community-oriented and competitive districts than previous official districts (Map V and VI).

29. The Center for Political Research sponsored a public contest for the drawing of congressional districts in Ohio in the Spring of 1989. The results were analyzed by Horn, David L., Goedicke, Victor, Hampton, Charles R., Lawrence, Joan, Vandenberg, Anthony, Wolman, Benson A., "Can Neutral Districting Procedures Yield "Gerrymandered Results," (a paper delivered at the A.P.S.A. Convention in Atlanta, Georgia, September 1989). The Center's address is 5819 Scott Road, New Marshfield, Ohio 45766.

**Existing Ohio
Congressional
Districts**

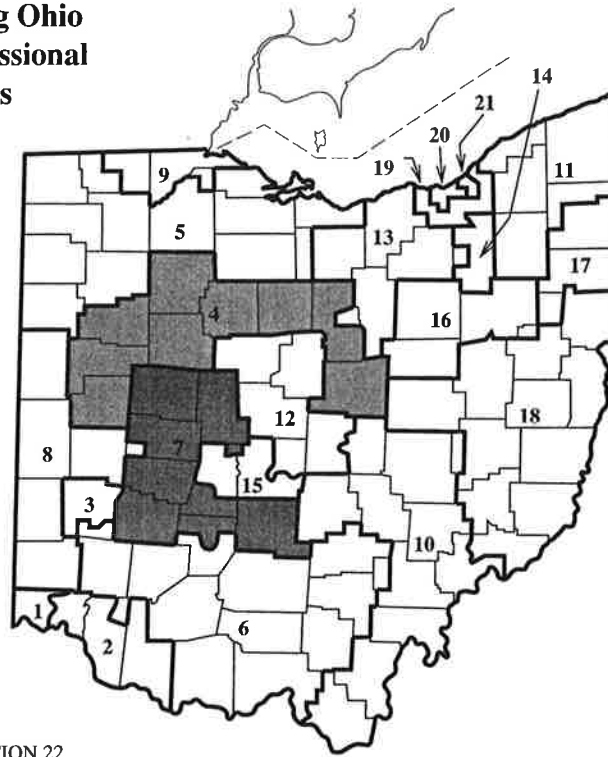


ILLUSTRATION 22

**A.C.T.I.O.N.
Congressional
Districts For
Ohio**



*(One Example of
292 Possibilities)*

ILLUSTRATION 23

III. A.C.T.I.O.N.

CHALLENGES AND REBUTTALS

In March of 1989, the Rose Institute hosted a conference on redistricting at which an early version of A.C.T.I.O.N. was unveiled. At that event and later, various criticisms of the Guidelines were advanced, by both friends and opponents of redistricting reform. In this section, we list the six criticisms and offer some arguments in rebuttal. Of course, we anticipate that other criticisms will be made in the future: indeed, we hope that our readers will bring them to our attention.

CHALLENGE #1

Chance (the variable beginning point and the direction of movement) play too great a role in A.C.T.I.O.N.; important public matters should not be decided by chance.

Redistricting, as we have seen, may determine electoral outcomes for a decade and even set the pattern for the decade beyond. It is hard to find an analogue for so great a power. In what game, for example, except in the politics of redistricting, does one party get to make all the calls, hold all the best cards, win all the ties from the first round to the last? In what game does the chance selection of a Gerrycrat determine the winner who can steal a people's priceless heritage?

In sports, at the beginning of the game or the contest, all competitors are given an equal chance, the odds are even, the playing field made level. If there is an advantage in going first, or taking this side or that, then it is made to depend on chance. A coin is flipped, perhaps; or a tennis racket is spun; or the team captain grabs the bat, and hand over hand decides the advantage.

First up is accepted by chance, and the game begins without cries of "foul." What is critical to such an uncontested beginning, of course, is that it is chance, not the power or the cunning of one player or the other, that decides it. The initial result may be adverse to one side, but it will be accepted, for the expectation is that another day, another chance toss of the coin will be to the loser's benefit.

In an honest contest, there will be good quarters and bad, good innings and bad; but not all innings or quarters will be stacked against a competitive game. And the umpire will not be always on the other side saying at every call: it's okay, it worked, better luck next game!

Today's political players have not only "stolen the bases," they've stolen the whole game before it has even begun: our democratic-republican game is over at the beginning of the decade. Incumbents and party bureaucrats play a stacked game from which their potential competitors and the people are shut out right from the start, before the competition can even begin.

Chance can correct the initial undermining of a democratic game which current gerrymandering allows, facilitates and perpetuates. Use of the variable beginning point and the alternative direction of movement in A.C.T.I.O.N. are devices to restore legitimacy to the competition and provide an equal chance for all our political players.

CHALLENGE #2

Incumbents are given too little discretion in A.C.T.I.O.N. Guidelines.

Again, an analogy to sporting competition is helpful. In honest games nothing is absolutely certain: it is unpredictable, exciting. The underdog, with skill and stamina, can pull an upset: interest is stimulated. Players compete, even against better teams, because they know that with effort and talent, and if given a fair chance, they may yet win.

In democratic politics, public opinion is the prize for which the parties should play. Instead, all too often, today's incumbent agents of the parties compete for the power to draw lines to shelter themselves from public opinion and from other party rivals. Politicians should be willing to take their chances in honest competition, on a field not defined to their advantage: instead, many prefer to rig the game and avoid responsibility for the values of the system.

Should we be surprised, therefore, that interest in the political game languishes? Who would want to compete in a rigged contest? Who would want to back a team that never wins in fair competition?

A.C.T.I.O.N. Guidelines will unstack the deck, level the playing field, even the odds. Incumbents are left all other powers as legislators; but they lose the power to stack the odds against their opponents. A fundamental question is: why should incumbents have special consideration in the people's game? Chance provides the neutrality to limit political manipulation which is inevitable without procedures (rule of law).

Another question is: how have legislators fulfilled their responsibility in the past? In California in the 1980s a 48 hour job took up half a decade. A \$50,000 task — to draw compact, contiguous, community-based districts — was turned into a \$6.4 million boondoggle (which is what the public expenditures represented in the 1980s, without any estimate of the private and party expenditures). AND FOR WHAT?

CHALLENGE #3

A.C.T.I.O.N. Guidelines do too little to increase minority representation.

The question of minority representation is perplexing. Among minorities important differences exist about the best tactic for improving representation. One side believes that minority communities should be concentrated to guarantee minimum representation. The other side argues for dispersal to maximize the opportunity for leverage in the legislative process (but not necessarily in terms of electing representatives). The latter view emphasizes that organized minorities, though not a majority of the voters, can be influential in politics. Although affirmative action in redistricting has been sanctioned and largely accepted, how to implement it remains debatable.

Disagreement also occurs over what is the threshold for political success. Must a district have a 50% registration in the minority category to guarantee success, or 40% or 60%? Does the registration requirement vary among minority groups? The nationwide results clearly indicate variations, depending on the political environment, the circumstances and the candidates. Rather than trying to out-guess minority desires, therefore, A.C.T.I.O.N. emphasizes recognition of community as a major consideration in the creation of districts.

Moreover, the A.C.T.I.O.N. Guidelines can provide for the redrawing of districts, if minorities substantiate that the districts drawn using URs are detrimental to minority interests. For example, a minority group (racial, religious, linguistic, gender, etc.) could propose the consolidation of a certain number of districts and their revision to achieve a better distribution of minorities. (Of course, such a proposal presented to the legislature or the court would have to analyze the potential effects on the other districts). The same possibility should also exist for divided cities.

The main point, of course, is that the community basis of URs will protect minorities from gerrymanders by either political party; and the associated provisions for district consolidation and re-division add an extra guarantee. No redistricting reform proposal does more for minority representation.

Today, minorities must go hat in hand to legislative leaderships for district hand-outs. Too often, also, newly elected minority incumbents prove themselves to be part of the problem, as they reach greedily for ever more minority voters to solidify their hold on their districts. A.C.T.I.O.N. ends subservience to the established powers.

The experiences of Latinos in 1971 and 1981 are instructive for all "minorities." Latinos were urged at a recent conference, to trust their incumbent leaders. An incumbent speaker urged: look what we gave you last time [it was one congressional district] in California. Without missing a beat, but without concrete examples, the speaker continued: this time we will give you more.

In 1981 the only gains that Latinos made in legislative redistricting were those facilitated by additional congressional seats that allowed advancement for certain favored Anglos. The gains came from assembly seats previously held by Anglos. A sham of change and role modeling was bought by incrementalism controlled by those who already had it made. What is never emphasized is that people voting on the bills will not commit political hari-kari. The promise (you will get more) can not be fulfilled unless someone is sacrificed. Reality requires the recognition that the stranglehold of incumbent self-interest must be broken by new rules.

CHALLENGE #4

A.C.T.I.O.N. overemphasizes the importance of city and county integrity.

Cities and counties larger than the size of districts inevitably must be split to achieve population equality. In that category for California's congressional districts are: San Francisco, San Mateo, Contra Costa, Alameda, Santa Clara, Sacramento, Ventura, Los Angeles, Orange, San Bernardino, Riverside and San Diego. Yet, in addition, in 1981-82,

San Joaquin, Fresno, Merced, Kern, Tulare, San Luis Obispo and Lake were all split. Similar illustrations can be provided for other states.

Why were some counties split and others not? This is the crucial point: someone has to make that decision. Who has that right?

One way to begin unravelling this knotty question is to note the arguments in favor and in opposition to the splitting of communities and then to underscore some empirical realities.

1. Any city/county/other jurisdictional area must be split if it is larger than the size of a district.
2. Other splits are inevitable because smaller demographic units do not cluster for ideal district populations.
3. Any arrangement of population will not satisfy everyone — in other words, citizens divide among themselves about what the split should be. Most understandable in this category are people at the “ends” of districts. The person at the end of a district will feel closer to the person across the street or the adjacent city, than to the far end of the district.

But districts can not be centered around each voter or even a community. Large aggregates of people must be grouped into units of meaningful political action. A means must be found to group citizens to their political advantage rather than to their detriment. Often, the distribution of population over sparsely populated areas will require districts that may seem ridiculous to some, because the citizens' personal ties do not correspond to predominant population patterns.

4. A case can be made for split units, if the split has some group advantage without destroying the group's political identity. For example, the city of Long Beach (375,000) long benefitted from having two representatives rather than one. With the identifiable Westside represented by a Democrat and the Eastside represented by a Republican, the city had effective representation in two party caucuses. Neither party could ignore Long Beach. (By way of contrast the current fragmentation of the city destroys its effectiveness in either of the two congressional districts).³⁰ Similar divisions of a large ethnic community can be advantageous if the group has an organizational basis for its own effective political action.
5. With so many and such various interpretations of the advantages or disadvantages, citizens and groups provide the redistricting experts with convenient rationales for almost whatever they conceive.

In other words, the splitting problem and its complexity almost defy objective evaluation, but someone must do it. The question is: do we want it done for the deliberate political advantage of some and the deliberate political disadvantage of others? Or, instead of such manipulation, do we want a rational, neutral procedure? A.C.T.I.O.N. Guidelines provide the latter.

30. See the Burbank illustration 27.

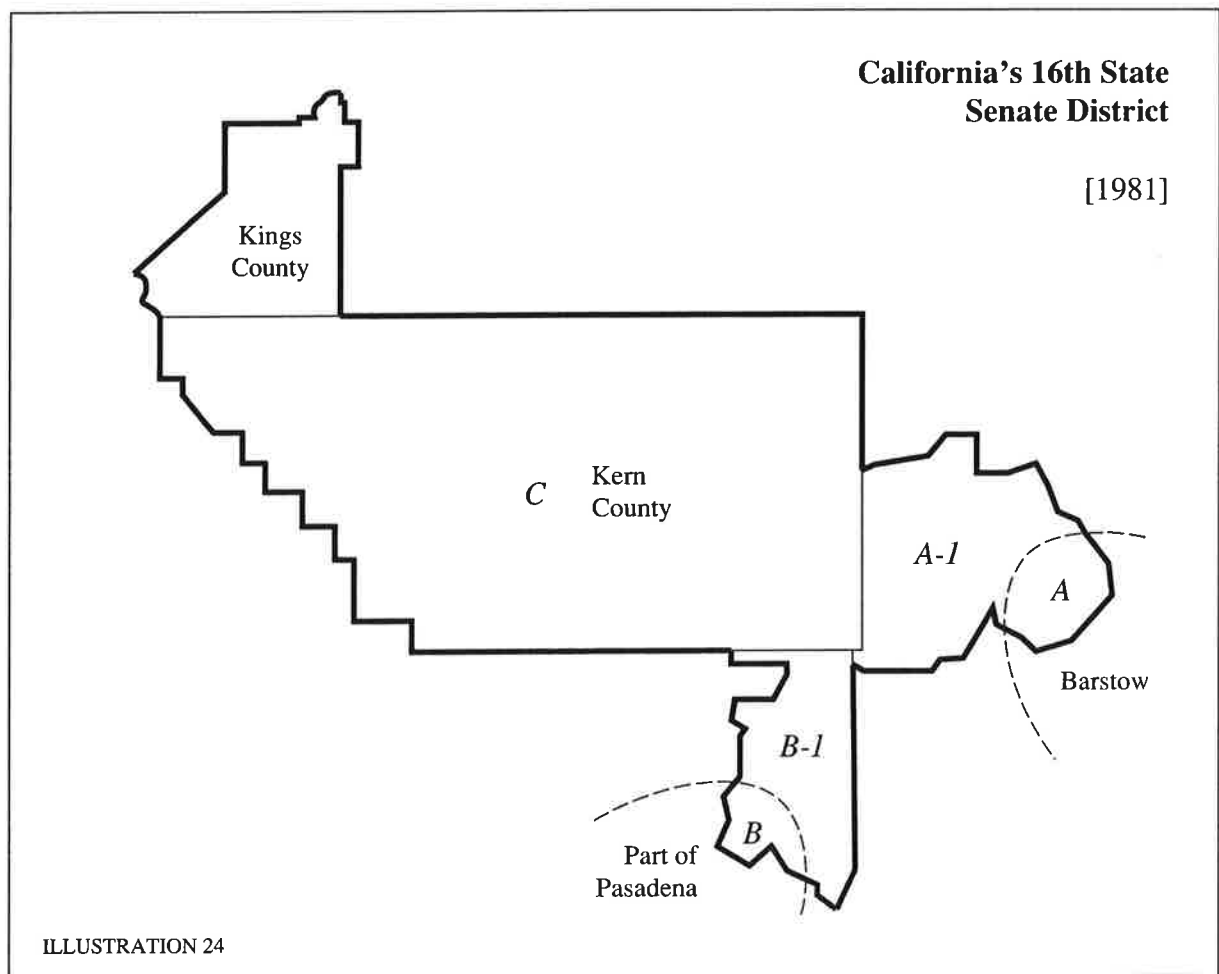
CHALLENGE #5

A.C.T.I.O.N. Guidelines give too much importance to compact districts.

Related to the city-county integrity problems is the general question of compactness. The major contention for non-compact districts hinges on the abstract assertion that some group is not represented; therefore, do not let compactness inhibit the drawing of lines. Or, it is claimed that politicians are acutely sensitive to special needs of the disenfranchised; therefore, they know how to aid them by drawing non-compact districts.

Often people accept the abstract benevolent action without considering the basic question: Where does redistricting lead on the basis of abstract good? How has representation been achieved and for whom?

Now look at a 1982 example of such benevolence in action:



50,000 Blacks and Latinos were asserted to be unrepresented in Area B: 25,000 Latinos were likewise unrepresented in Area A. The solution was to link both areas to Area C. A political miracle! People had representation and were asserted to be “liberated” from the party dominant in the former districts.

The connecting links had 1,500 persons in Area B-1 and 5,000 persons in Area A-1. How does one get from A to C? Or from B to C? Crow flying is for birds. Direct automobile travel is impossible through B-1 and unpleasant through A-1.

In 1986 when the elderly Democratic state senator retired, on a substantial pension, he was replaced by a Republican. Yet the initial argument asserted Republicans were not representing Areas A and B. Now the people in Area A and Area B have the same party representation from which they were “liberated” in 1981 and 1982. Who benefitted from these benevolent concerns?

A noted academic defender of the 1981 redistricting pointed with pride to the increased representation of Latino percentages in several districts; presumably the 16th SD was one of those. A similar advantage could have been asserted by black gains. Again, who benefitted from improved ethnic percentages? Significantly, the same study said nothing about the 1982 follow-up to 1981 action; and thus an impression of the full story actually stops with only half the tale. A glance at illustrations on these pages should prompt serious questions about how the non-compactness subterfuge has been used.

Now consider the stance of a spokesperson for a so-called grassroots organization which is vehemently opposed to large sums of money in politics. The spokesperson contends that compact districts are detrimental to minority representation. How, pray tell, do poor people organize themselves in districts such as the 16th SD, how do they raise money?

A glance at illustrations 25, 26 and 27, the pagination illustrations and the illustrations on previous pages should prompt serious questions about how the non-compactness subterfuge has been used.

**California's 32nd
Congressional District
[1982]**

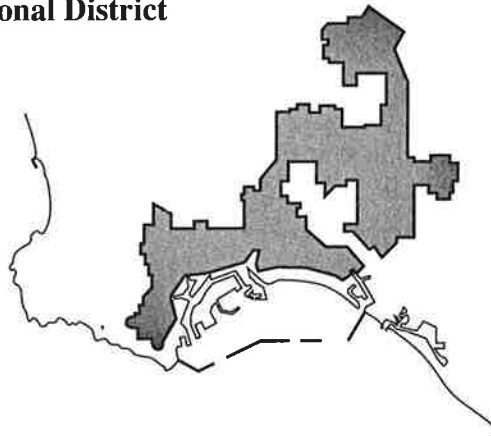


ILLUSTRATION 25

**Ohio's 19th
Congressional District
[1981]**

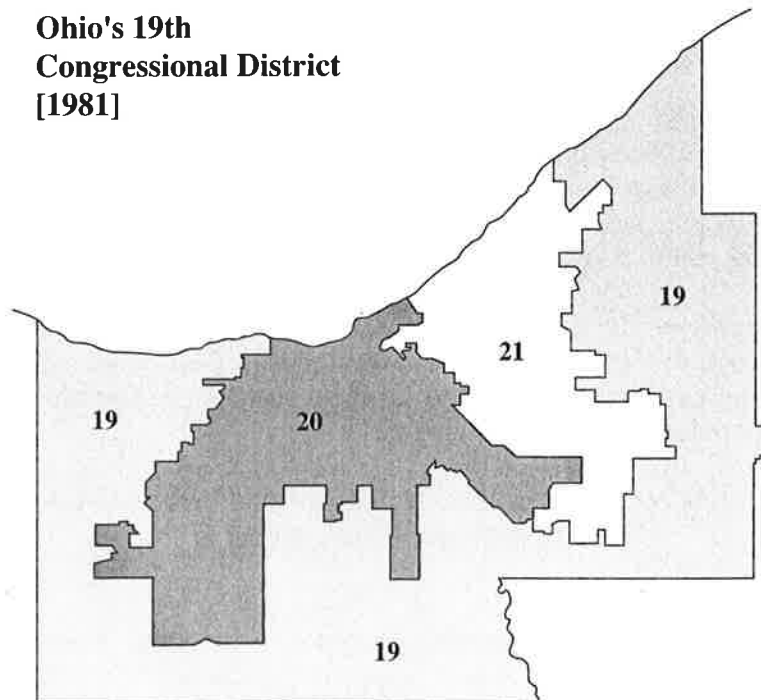
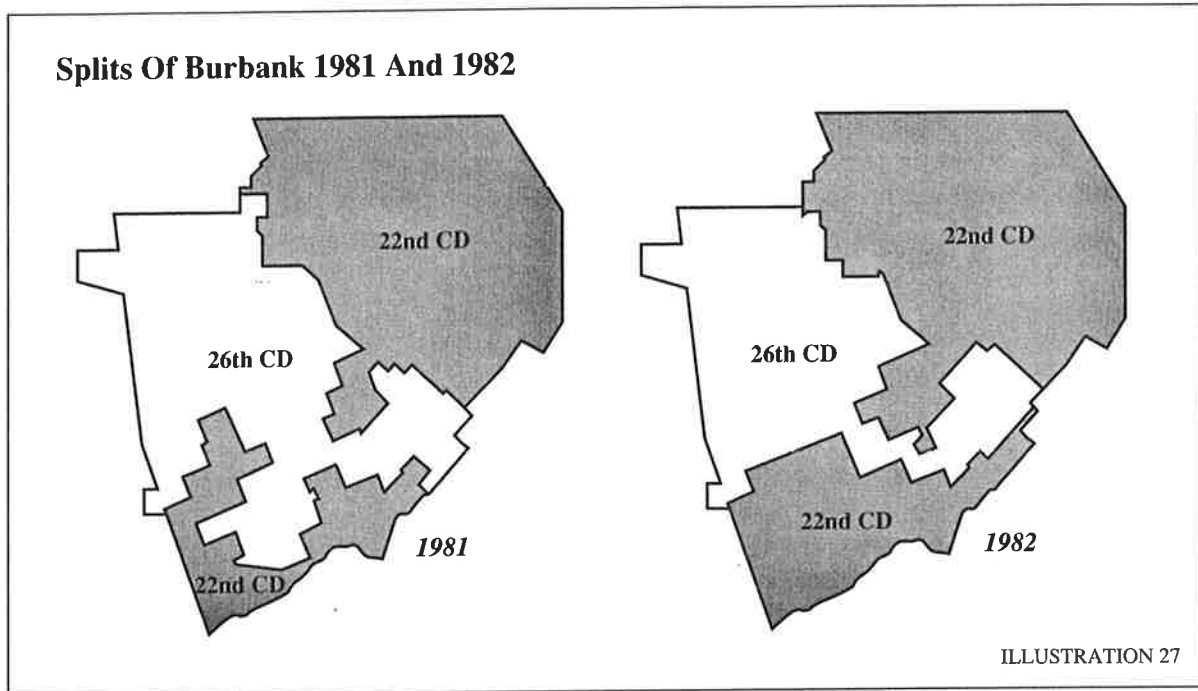


ILLUSTRATION 26



CHALLENGE #6

A.C.T.I.O.N. will lead to more marginal districts and these will, in turn, lead legislators to bow to group pressures.

Another rationale for today's gerrymandered districts is the argument that an incumbent in a safe district can be courageous against fluctuating public moods and vote in the public interest by having a safe district. Note carefully: who decides what is courage and what is the public interest? If majorities of voters oppose incumbents' opinions, is it democratic for the latter to retain their authority and lecture the majority on what is right?

Democracy assumes the ability of rational persons to decide their future. Leaders present alternative views to the public. An electoral system must reflect public opinion which, if free, can change. Democratic-republican government assumes that public opinion is to be reflected. The electoral system is the playing field.

If the electoral system is controlled in a manner detrimental to the expression of public opinion, to that degree a democratic-republican government is not a government based on "consent of the governed."

An essential element in a democratic-republican system is the willingness of its representatives to educate the public to new issues and problems. If a democratic system is to be improved, the public must be brought into its framework. Democracy requires an environment in which legitimate appeals to public opinion can be made, with an equal opportunity to develop a viable, thoughtful public opinion. Legislators are potentially among the most well informed persons in a society. Their articulations of new ideas or of facts to support the existing consensus could have a powerful effect on public education.

Normal impediments to democratic governance should not be compounded by making public action difficult, if not impossible. Current districts frustrate public participation and grassroots politics. Incumbents become dependent on fund-raising and campaign organizations to finance costly media campaigns, which have reached astronomical figures in marginal districts. To argue against marginal districts because of costs and dependence on pressure groups ignores the value of competition in the political process. As long as non-compact districts exist, citizens cannot counter costly campaigns based on direct mail techniques with grassroots activities and legwork. Marginal districts can stimulate participation, interest in politics and force legislators to be responsible to their constituents.

Districts created by A.C.T.I.O.N. Guidelines will be compact, contiguous, community-based and competitive. The playing field can be recognized by the average citizen. The nature of the districts will make grassroots politics a countervailing force to direct-mail campaigns. One would be naive to believe grass roots politics is easy. But A.C.T.I.O.N. Guidelines districts would provide an alternative to concerned citizens. Today the electorate is demobilized by persons who have the most to gain from a rigged system.

With A.C.T.I.O.N., competition will return to elections, making the political game worth playing. Additionally, compact districts will allow community activists and residents counter expensive direct mail efforts with traditional grass roots door to door campaigning; therefore, large sums of money will no longer ensure victory or scare off quality opposition.

Finally, the implementation of A.C.T.I.O.N. Guidelines will create a significant number of competitive districts. Specifically, "safe" districts will be greatly reduced in number and unlike today's elections, where only a handful of competitive districts exist, "special interest" cash contributions will need to be spread among many legislative races not concentrated in a few targeted areas.

IV. CONCLUSION: THE NEED FOR A.C.T.I.O.N.

Nearly a quarter of a century ago, Chief Justice Earl Warren asserted the proper goal of apportionment to be "fair and effective representation for all citizens." Unhappily, the abuse of malapportionment, at which the Reynolds and Wesberry decisions were aimed, has been replaced by redistricting abuses which are as unfair and as unacceptable as the previous practices.

The courts have established the criterion for reapportionment. Population equality has been defined as the basis for redistricting. Increasingly, however, strategies for adopting redistricting legislation have impeded fair and effective representation.

The citizens of California's computer-rigged, politically stacked, equipopulous districts have little chance to change their representatives, or even to influence incumbents who are securely locked in place. Serious challengers are deterred from running, because cities, counties and legislative districts (the home bases of effective local opponents such as city councilmen, county supervisors and state legislators) are deliberately fragmented by congressional district boundaries. Election after election affirms the lack of effective electoral competition.

The development of a tenure system in California's congressional and legislative districts is creating a "new class" of professional legislators, with an extensive staff bureaucracy. In redistricting, this staff bureaucracy becomes totally irresponsible, for it is effectively without knowledgeable legislative supervision. The bureaucratic technician becomes the controlling element in the system.

California may be "Number One" among the states in uncompetitive politics, but the curse of the gerrymander is national in scope and California's struggle has far-reaching importance. When incumbents are so safe, all the winds of political change are muted as they blow through the halls of Congress and state legislatures. Safe incumbents, fearing nothing in the general election, facing their only electoral risks in primaries, are sheltered from the pressures of mainstream public opinion and become as secure in their jobs as bureaucrats. Challengers are deterred from matching resources with incumbents who are stacked and packed into their districts. Money flows from PACs to political consultants (or to the use of initiatives at the state level) rather than into the open politics of campaigns. Campaigning itself is ruled by the electronic media and computerized direct mail, for these are the dominant technologies used to reach districts that sprawl across the map. How can one organize effective primary or general grass-roots campaigns? Voters have less and less reason to bother with races whose outcomes are foreordained.

At bottom, the fact is that the men (and the very small number of women) who are now responsible for redistricting have discovered in it a means to perpetuate themselves in power, to free themselves from the risks and threats of campaigns. Before we blame them, perhaps we should ask whether we might not do the same, for it is a formidably powerful temptation. Yet, if they continue their course unchecked, our representative form of government will sink into disrepute.

We should remember that all organizations have two dimensions: their structural and institutional aspects, which are manifest in organizational forms and functions, and the moral imperatives that are requisites for the humans who occupy positions of authority within the organizational framework. Whether autocratic or totalitarian or traditional — or democratic-republican — all political institutions work only to the degree that the participants respect the institutional ethos upon which the system is based.

Thus, in fascist states, the will of the leaders is unquestioned. Elections are unimportant except as ritual and rigged plebiscites; the legislature is little more than a highly paid male chorus; and all legal institutions are manipulated at the whim of the leadership.

Democratic-republican political institutions, by contrast, are based on “the consent of the governed.” The US House of Representatives at the national level is “the grand depository of the democratic principle,” just as are our legislatures in the states and our boards and councils in the counties and cities. The overall framework is constructed to provide rule of law as a substitute for the rule of men.

In a democratic-republic, elections are the means for determining the people’s will and the means, also, for removing rulers who are out of step with that will. The moral imperative in such a government is respect for the people’s will expressed in free, honest elections.

Today’s gerrymanders are sophisticated, far-reaching means of tampering with the outcome of elections: they undermine the expression of public opinion just as they thwart competition against incumbents. No threat is greater to a system of representative institutions than the scandal of their unrepresentativeness. No reform is more needed than to end abusive redistrictings. In this vital area of our democratic-republican system, we must once more replace the rule of men with the rule of law.

TECHNICAL APPENDIX

The Technical Appendix is focused on the state of California. A.C.T.I.O.N. Guidelines, however, are adaptable to other states, as the Ohio example has indicated; and they may be used in other jurisdictions at the local level, as well.

As the reader reviews the detail necessary to control the Gerrycrat, s/he should remember that the authors of the Guidelines seek constructive criticism to perfect the proposal. Likewise, the authors will gladly assist others in adapting the Guidelines to their special problems.

A.C.T.I.O.N. Guidelines are not liberal or conservative proposals. Rather the Guidelines propose a constructive way to reorganize a process in desperate need of reform.

Section I provides the essence of the guidelines which could be used by any group to expedite their redistricting efforts. It could be adapted to any jurisdiction, or used as the basis for an initiative. Parts I, II and III of Section I are essential; Part IV is optional, and describes one possible approach to the implementation of A.C.T.I.O.N. Guidelines.

Section II defines URs for California in a concise manner. It is nine pages long with the maps and designates URs that are understandable to the average citizen. The requirement that the URs be treated as wholes prevents gross elongation of districts. The provisions for URs guarantee long-term stability of political units, citizen recognition of permanent political units and the clustering of like URs.

Section III repeats some general guidelines, providing commentaries to clarify essential concepts, with illustrations and maps to demonstrate the simplicity of implementing the procedures.

Our experience is that bright undergraduates can master the implementation of A.C.T.I.O.N. in an hour or two. Indeed, A.C.T.I.O.N. Guidelines were expressly devised for use by lay persons, judges, commission members and people other than the highly expert technical staffs of legislatures.

A.C.T.I.O.N. Guidelines could be particularly helpful in solving judicial dilemmas in the political thicket of redistricting. Typically, the court faces a pending election. Often the choice is between continuing the previous districts or adopting one of the plans passed by the legislature, or an alternative plan presented by the opposing party. All are politically inspired, and the judiciary is caught in a quandary. Even if in good faith, when the judges accept their party's plan, it is deemed a political decision. In the rush for action to implement new elections, the court often does not have the time, staff or money to develop its own plan.

A.C.T.I.O.N. provides a resolution of the dilemma. The Chief Justice might draw the variable beginning point; the ranking Associate Justice of the opposite party might flip the coin; one of the legal clerks, with an inclination towards numbers, might be given the data and the A.C.T.I.O.N. procedures. Within 48 hours, a competent clerk should have a plan which the court in all honesty, with its integrity intact, can declare to be the result of politically neutral procedures.

The A.C.T.I.O.N. Guidelines sequencing concept is applicable to every state and to jurisdictions down to the level of city council or special districts.

Of course, the different configurations of each state, its regional divisions and its particular demographic concentrations, make a universal system of guidelines and sequencing impractical. Each state and its citizens should develop units of redistricting, with the assistance of its experts in the fields of demography, geography, sociology and political science. The knowledge of the lay person can be equally important, and citizen involvement should be encouraged.

It would be presumptuous for outside people to dictate a formula for another state. On the other hand, experience with the development of a plan for California may be a helpful guide for other jurisdictions, which is precisely why we have developed the model in this monograph.

It will be noted, too, (see above) that one of the authors replicated the A.C.T.I.O.N. Guidelines for the state of Ohio. We hope that these procedures may be helpful to other interested persons in adapting the neutralization procedures to their own state or jurisdictions.

Critics who fail to recognize the realities of redistricting politics may assert that the Guidelines are too detailed. Only detailed, binding rules will control redistricters. No effective reform of redistricting is possible without detail.

The objection that California's electorate will be deterred by the detail of A.C.T.I.O.N. URs ignores the great success of other reforms — Proposition 13 in 1978 is a prime example — that were extremely complex, but also very popular. So long as the reform speaks to major, politically recognizable and popular themes — which A.C.T.I.O.N. certainly does — the detail will not prevent passage of an initiative or constitutional amendment.

It is true that formulae for compactness, variations, remainders etc., can be spelled out in shorter space than the URs of A.C.T.I.O.N. Guidelines. It must be recognized, however, that such formulae are themselves not only quite complex but that they are also much more subject to manipulation and controversy than URs. What, in exact operational terms, does a particular mathematical definition of compactness really mean? The question could open the way for redistricters to reach for political advantage or lead into a morass of litigation.

By using the A.C.T.I.O.N. Guidelines, a public procedure manipulated to the advantage of incumbents can be restored to the light of day. As Justice Brandeis said long ago, the best disinfectant for corruption is sunlight. Open procedures will make violations readily apparent.

In the past, two techniques have facilitated many frauds in contemporary redistricting:

1. public hearings without clout that are meaningless; and
2. last minute revelations of proposals to prevent organized opposition.

Public hearings in redistrictings are often a carefully planned charade. Testimony from city X, which wants to be in district 10, can be used to justify its inclusion; but the testimony of city Y is ignored with the caveat that Group Z does not speak for Y. But who decides? At

the same time the claim can be made: We gave you an opportunity. Did you testify? No one asks: Would you pay attention? And the citizen is engulfed in the previous cloud of smoke: We will protect you, behave and "come hat in hand."

The second technique — the last minute revelation of the plans — is even more unconscionable in a democratic context. No one, including the legislative minority, can effectively organize opposition against an unknown potential. Would anyone except a GerryCrat, have conceived the possibility of the 32nd CD or the 16th SD? Yet, in a matter of hours, the ridiculous became a reality that lasted for a decade.

Without maps the problem is compounded.³¹ If the descriptions are: Jones Street to Board Avenue to Center Street, one can take a road map and trace the district. If the description is CT 1000, 1001, etc. the delineation requires a special map, which the average citizen, journalists, or even legislators, do not have available.

Where does it lead? The California charade in December 1982 highlights the dilemma. The deciding vote for the congressional plan was bought on the basis of unifying a county. The bill passed did not correspond to technical adjustments allowed to prevail.

The explanation? It was an exception. But the illegal exception allowed a congressional plan for a decade. The unification of one county (clearly desirable from its viewpoint) allowed the split of numerous other counties and cities. Other cities, counties, districts were arbitrarily divided. And the whole process was conducted out of sight of the public and the press.

SECTION I - BASIC A.C.T.I.O.N. GUIDELINES:

PART I. ESTABLISHMENT OF REDISTRICTING UNITS FOR CREATION OF DISTRICTS:

- A. The redistricting units described in Section II of the Technical Appendix constitute the redistricting units to be used for the creation of districts.
 1. The redistricting units are to be grouped as wholes for the creation of districts [congressional, assembly, state senate, and board of equalization].³²
 2. When cities are split by the boundaries listed in Section II, the cities are to be treated as whole units: the smaller portions of a city are to be considered part of the redistricting unit that contains the large portion of the city population.³³
 3. Unincorporated territory when surrounded on three sides by a city is to be considered as part of the city for redistricting purposes; otherwise, when not so surrounded,

31. When the descriptions are changed to facilitate computer operations, the citizen and the legislators themselves are totally dependent on the integrity of the technicians.

32. Footnotes in this section refer to detailed commentaries and illustrations in Section III. Henceforth the footnotes are included in Section III where detailed Commentaries elaborate on the intent of actual guidelines and illustrations demonstrate how the simple provision works. See page 75. The brief guideline is repeated in Section III to expedite usage of the Guidelines.

33. See page 75.

unincorporated territory will be considered as part of the city with the largest percentage of the census tract's population. A census tract which is totally unincorporated will be governed by the three side rule, or the sphere of influence definitions filed with the local agency formation board.³⁴

4. Only population equality of districts can permit the splitting of counties, cities, recognized subunits within cities, or census tracts. Such splitting will be governed by provisions in Part II.
5. Should the implementation of the sequencing produce isolation of sequenced units, the isolated portions will be incorporated in the district and equivalent population which otherwise would be included, will be removed along the edges adjacent to the next district to be created.³⁵
6. When a state senatorial district is being divided into two equal assembly districts, minor modifications are permissible on the regular sequence border to facilitate unification of communities. Such adjustments can only involve equivalent population as produced by regular sequential development of districts.³⁶

PART II. RULES GOVERNING INTERNAL SPLITTING OF UNITS OF REDISTRICTING:

A. Two types of URs exist:

1. Counties:
2. Sub-county units within counties based on the URs defined in Section I.

B. If a county must be split to achieve population equality, its sub-county URs are to be incorporated, according to the sequence listing, until the ideal population is achieved. Remaining population in the county or sub-county UR is to be transferred to the next UR in sequence and the district process begins again.³⁷

C. If a sub-county UR must be split, the following population units are to be recognized as wholes in the following priority:

1. Cities;
2. Sub-city administrative and other communities as recognized on January 1, 1989; and
3. Census tracts.

34. See page 76.

35. See page 77.

36. See page 78.

37. Examples II.B., II.C., and II.D. are included on p 79-81. The tendency for whole units to predominate is illustrated on p. 81.

D. When a new redistricting unit [county, sub-county, cities, sub-city administrative and community divisions, and census tracts] is entered, subordinate units immediately adjacent to the preceding unit are to be incorporated in logical numerical sequences or in rows until the whole unit, or the portion necessary to achieve ideal district equality, is included. If two redistricting units are adjacent, priority will be given to the unit whose inclusion will facilitate unification of communities.

1. Legal questions over such technicalities will be resolved by Court masters appointed by the Chief Justice.

E. If the regular sequencing produces a state legislative district with a population remainder of less than 1% or no more than 1% in a county, or in an incorporated community, the jurisdiction will be treated as a whole rather than splitting the community to begin the next district.³⁸

F. If a UR is drawn in a metropolitan county entitled to more than one district in a category which would prevent the county's acquisition of at least one full district, the drawn UR for the beginning of the sequence will become the nucleus for a full district.³⁹

If the district cannot be completed with the remainder of the county in the direction of movement as specified by the coin flip, additional URs in the county in the opposite direction will be incorporated until population is obtained for a full district. At that point the next district will be started in the regular direction of movement.

G. Districts will be "nested" (boundaries made to correspond) whenever feasible.

1. State Senatorial Districts (SSDs) will be created first.

2. Each SSD will be divided into two Assembly districts (ADs).

3. Congressional Districts will begin at the same point as SSDs.

4. Board of Equalization Districts [BEDs] will be created by grouping SSDs in the following manner:

- i. The first Board of Equalization district will consist of the 10 most northerly SSDs;

- ii. The second Board of Equalization district will consist of the second 10 most northerly SSDs;

- iii. The third Board of Equalization district will consist of the third 10 most northerly SSDs;

- iv. The fourth Board of Equalization district will consist of the remaining SSDs.

H. Future growth of defined URs may allow division of such units if the population doubles. The designation of such units will use freeways and arterial highways within the original UR. The Secretary of State will designate such divisions after the decennial census subject to a 2/3 vote veto by the state legislature.⁴⁰

38. See page 81.

39. See page 82; commentary of II.G. is found on page 82.

PART III. VARIABLE BEGINNING POINT:

- A. The sequence beginning point is to be determined by lot. An appropriate official will draw in public from the lot of 180 redistricting units the beginning unit. This drawing will occur on the Monday following the release of the first official decennial census figures. [This provision provides 180 potential starts to be determined by neutral chance.]
1. The redistricting unit drawn [county, or sub-county units] becomes the first redistricting unit for all districts [congressional, state senate, and assembly].
 2. Should a sub-county unit be drawn from a county with less than an entitlement to a full congressional district, the county of which the sub-county redistricting unit is part becomes the starting point as a whole county.⁴¹
- B. At the same public event, another appropriate official will flip a coin to determine the direction of movement from the beginning point.
1. Tails will designate reverse numerical sequence (counter clockwise) and heads will designate normal numerical sequence (clockwise). [This provision doubles the number of neutral chances to 360.]
- C. The sequence listed in Section II is to be used, but according to the beginning point and the direction as determined by the above-described procedures.⁴²
- D. In the San Francisco Bay Area [Sonoma, Napa, Solano, Contra Costa, Alameda, Santa Clara, San Mateo, San Francisco, and Marin] a systematic grouping of territory requires special procedures depending on direction of entrance into the area.⁴³ The details are
1. If entrance is from the north [Lake, Sonoma, Napa, etc.] after the whole unit 27 [Alameda] is incorporated in the district being created, additional population to complete the district will be taken from Santa Clara units in the following order to accumulate the necessary population to complete the said district: 47, 46, 45, 48, and 49.

After completion of that district, the creation of districts will begin with Unit 28 in Marin County.

2. If entrance is from the south [Santa Cruz, Santa Clara, etc.] after the whole unit 52 [Santa Cruz] is incorporated in the district being created, the sequence will be Santa Clara, Alameda, and Contra Costa. The redistricting unit sequence will be:

51, 50, 49, 48, 44, 43, 45, 56, and 47 in Santa Clara;

27, 26, 25, 24, 23, 22, 21, 20, 19, 18, 17 in Alameda;

40. See page 84-85.

41. See page 86.

42. See page 86.

and 16, 15, 14, 13, 12, 11 in Contra Costa.

If additional population is necessary to complete the district being created population will be taken from counties in the North Bay in the following order:

10, 9, and 8 in Solano; Napa County; and 6 and 5 in Sonoma.

After completion of that district, the creation of districts will begin with Unit 42 in San Mateo county. The sequence will be:

42, 41, 40, 39, and 38 in San Mateo; 37, 36, 35, 34, 33, 32, and 31 in San Francisco; and 30, 29, and 28 in Marin.

After inclusion of territory in Marin County, the remainders of units north of the Bay will be included and the district creation will proceed in the regular sequence.

E. If territory is isolated as a result of these procedures, Part I.5. will control.

INTRODUCTION OF PART IV OF BASIC A.C.T.I.O.N. GUIDELINES

The A.C.T.I.O.N. Guidelines create a procedure which various groups can use to promote a neutralization of redistricting. Parts I, II, and III embody such procedures. The initial actions are ministerial in nature and can be entrusted to several individuals or agencies.

The legislature and its staff can handle all the procedures. A commission can use the procedures to establish the basis for its deliberations. The Secretary of State, who is responsible for the conduct of elections, could be given the task.

Where modifications are deemed appropriate either the commission or the legislature must be given the responsibility for decision-making.

The writers suggest the following implementation steps to emphasize the joint responsibility of all segments of the government. Suggestions are incorporated in Part IV, which may or may not be incorporated into the A.C.T.I.O.N. Guidelines.

PART IV. RESPONSIBILITY FOR THE CREATION OF A.C.T.I.O.N. DISTRICTS AND PROCEDURES:

- A. The Secretary of State shall have the responsibility for creating districts in accordance with the A.C.T.I.O.N. formula.
- B. The Governor shall introduce the proposals of behalf of the people of California for legislative consideration together with his commentary.
- C. After submission of A.C.T.I.O.N. districts to the legislature, the legislature shall have 60 days to consider amendments within the limits of the A.C.T.I.O.N. formula.
 1. The legislature cannot approve the proposals during the first 30 days;
 2. Any three districts may be considered as a unit for realignment to assure conformity to the federal regulations, to promote city unification, or to facilitate compactness.
 3. Any legislator, citizen, or citizen group may make proposals to the legislature for modification of any grouping of two or three districts for constitutional reasons during the legislature's thirty day period between introduction and legislative passage of the A.C.T.I.O.N. districts.
 - a. Amendment proposals must state the reasons for modifications in the A.C.T.I.O.N. districts, namely, to unify cities, to achieve compactness, or to meet federal guidelines.
 - b. Such amendment proposals must include analysis of the effect on the other parts of the two or three districts being suggested for modification.
 - c. Any proposal which obtains committee approval will be submitted to the full legislature for a recorded vote.

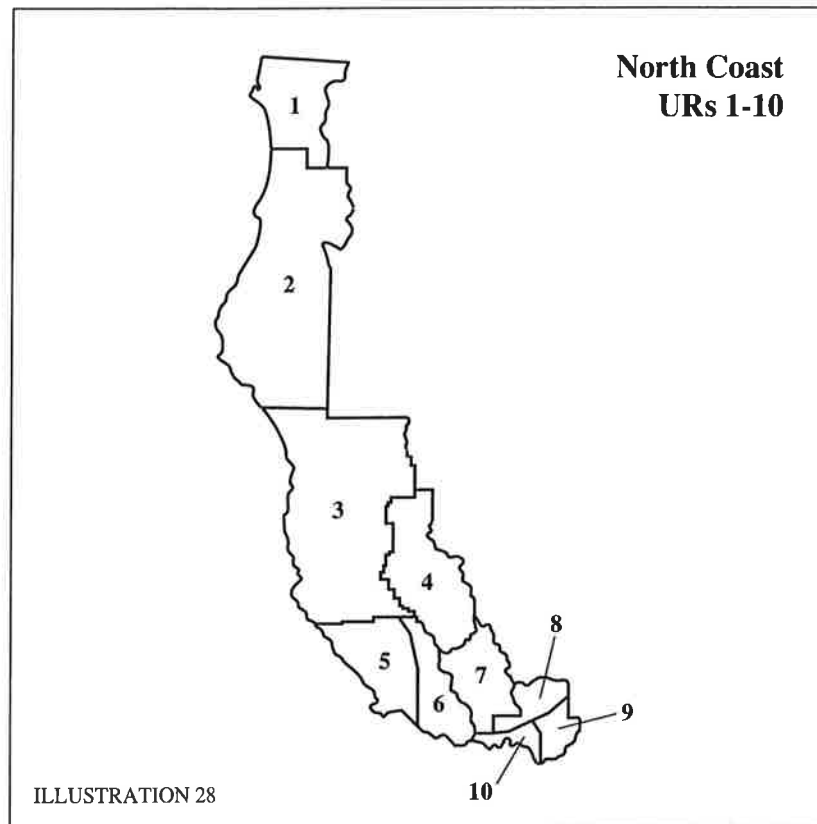
- D. If the legislature fails to approve a bill within sixty days the A.C.T.I.O.N. districts go into effect.
- E. If the governor vetoes an amended A.C.T.I.O.N. bill and it is not overridden, the Secretary of State shall order the implementation of the redistricting according to the A.C.T.I.O.N. guidelines.
- F. In any legal appeal, the A.C.T.I.O.N. guidelines become controlling unless ruled inconsistent with constitutional law.
- G. The State Supreme Court, upon petition of any eligible voter, shall review within a thirty day period after the implementation of the A.C.T.I.O.N. Guideline districts for conformity to the specified procedures. If any inconsistency of provisions exists, the State Supreme Court shall resolve the issue in conformity with the intent of the legislation; namely the most reasonable common sense interpretation of the meaning of compact, contiguous, and community-based. The Court decisions, or the decisions of court masters appointed by the Court, shall be rendered within 48 hours of the complaint.

Should the Court appoint masters, the group shall consist of five retired judges, no more than two of which may be of one party in the initial selection. The fifth member will be selected by a unanimous action of the first four judges.

SECTION II - CONSTITUTIONALLY RECOGNIZED UNITS OF REDISTRICTING (URs):

Note: In the copy below N, W, S, E refer respectively to the North, West, South and East county boundaries of the county involved; IS refers to Interstate Highways; other numbers refer to state highways.

- 1. Del Norte County;
- 2. Humboldt County;
- 3. Mendocino County;
- 4. Lake County;
- 5. Sonoma County—that portion bounded by the N, W, and S County boundaries and Highway 101.
- 6. Sonoma County—the remaining portion of the county;
- 7. Napa County;
- 8. Solano County—that portion bounded by W and N county boundaries, 12, and IS 80;
- 9. Solano County—that portion bounded by N, E, and S County boundaries, IS 680, and IS 80;
- 10. Solano County—the remaining portion of the county;

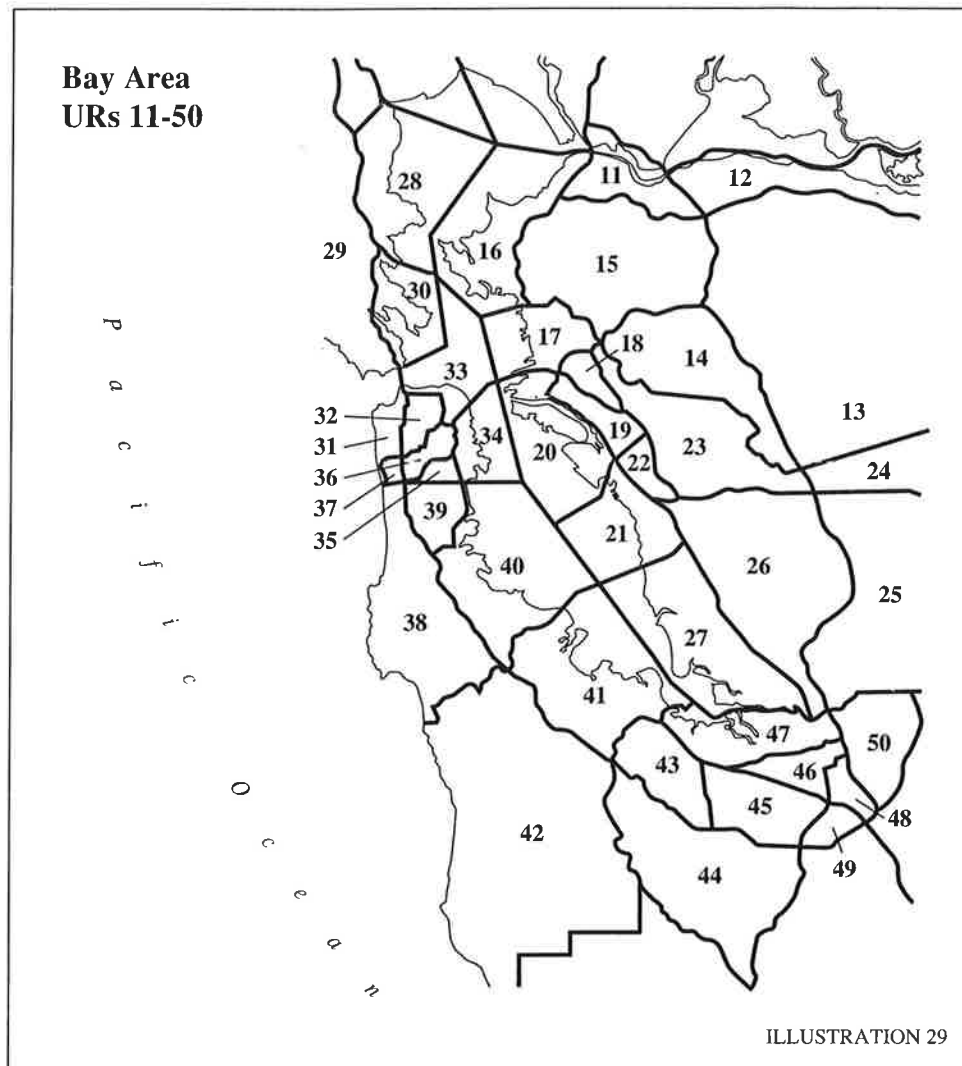


11. Contra Costa County—that portion bounded by the N County boundary, IS 80, 4 and IS 680;
12. Contra Costa County—that portion bounded by 4, 160, the N County boundary and IS 680;
13. Contra Costa County—that portion bounded by the S, E, and N boundaries, 160, 4 and IS 680;
14. Contra Costa County—that portion bounded by the S County boundary, IS 680, and 24;
15. Contra Costa County—that portion bounded by 24, IS 680, 4 and IS 80;
16. Contra Costa County—the remaining portion of the county;
17. Alameda County—that portion bounded by IS 80, 24, and the E, N and W County boundaries;
18. Alameda County—that portion bounded by the extension of the Southern Oakland City Line to the West County boundary; 17, IS 80, and the W County boundary.
19. Alameda County—that portion bounded by IS 580, 13, and 24;
20. Alameda County—that portion bounded by South Oakland City Line, IS 580, IS 80, and 17;
21. Alameda County—that portion bounded by 92, 17, the South Oakland City Limits and its extension to the W County boundary.
22. Alameda County—that portion bounded by 238, IS 580, the South Oakland City Limits, and 17;
23. Alameda County—that portion bounded by IS 580, IS 680, the N County boundary, 24, and 13;

24. Alameda County—that portion bounded by IS 580, the E and N County boundaries, and IS 680;
25. Alameda County—that portion bounded by S and E County boundaries, IS 580, and IS 680;
26. Alameda County—that portion bounded by S County boundary, IS 680, IS 580, 238 and 17;
27. Alameda County—the remaining portion of the county;

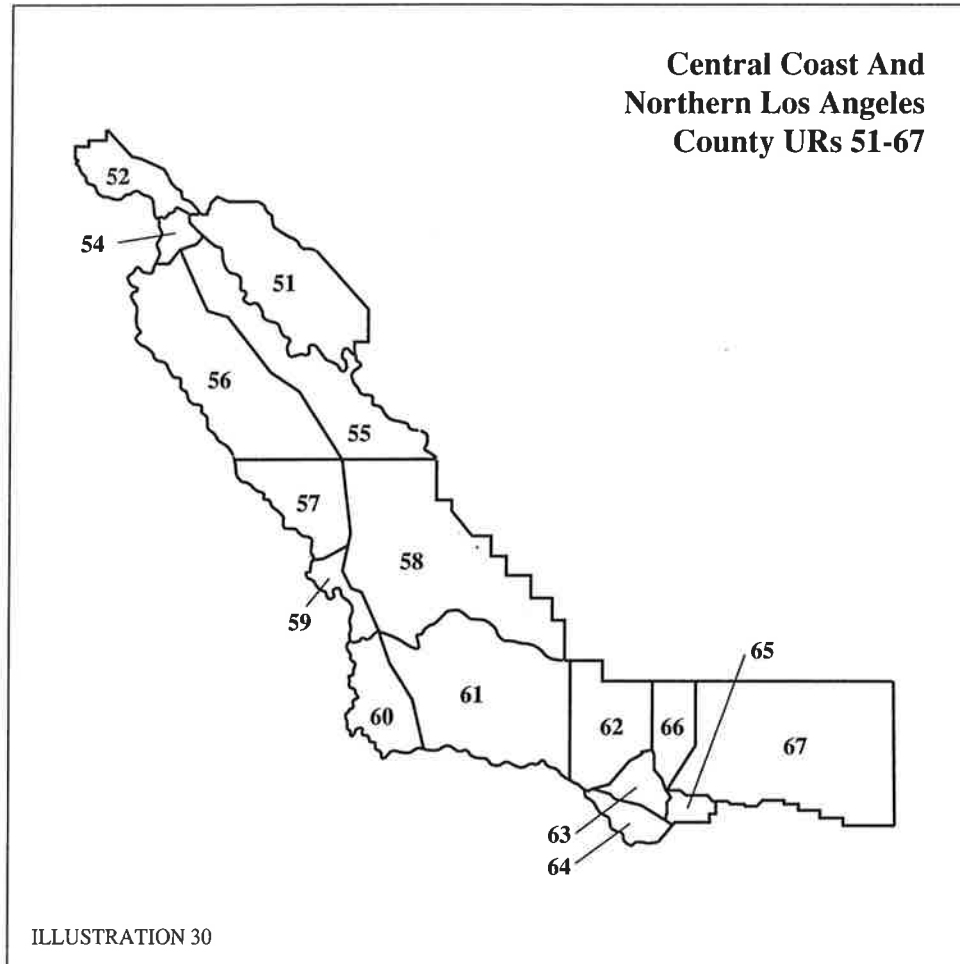
See Section III.D. for transition instructions.

28. Marin County—that portion bounded by 17, the E and N County boundaries and 101;
29. Marin County—that portion bounded by the N County boundary, the Pacific Ocean and 101;
30. Marin County—the remaining portion of the county;
31. San Francisco County—that portion bounded by the W and N County boundaries, 1, 35, Sloat Blvd., and its extension to the Pacific Ocean;
32. San Francisco County—that portion bounded by 101, IS 80, and the N and E County and City boundaries;
33. San Francisco County—that portion bounded by the S County boundary, IS 280, 101, Market Street, 35 and 1;
34. San Francisco County—that portion bounded by the S and E County boundaries, IS 80 and 101;
35. San Francisco County—that portion bounded by the S County boundary, 101 and IS 280;
36. San Francisco County—that portion bounded by 35, Market Street, 101 and 1;
37. San Francisco County—the remaining portion of the county;
38. San Mateo County—that portion bounded by Pacific Ocean, South City Limits of Half Moon Bay extended to the Pacific Ocean, 92, IS 280 and the N County boundary;
39. San Mateo County—that portion bounded by IS 380, 101, the N County boundary, and IS 280;
40. San Mateo County—that portion bounded by 92, the E and N County boundaries, 101, IS 380, and IS 280;
41. San Mateo County—that portion bounded by the S and E County boundaries, 92, and IS 280;
42. San Mateo County—remaining portion of the county;
43. Santa Clara County—that portion bounded by IS 280, 85, 101, and the N County boundary;
44. Santa Clara County—that portion bounded by the W and S County boundaries, 17, and IS 280;
45. Santa Clara County—that portion bounded by IS 280, 17, 101 and 85;
46. Santa Clara County—that portion bounded by 101, 17, and 237;
47. Santa Clara County—that portion bounded by 237, IS 680, the N and W County boundaries, and 101;
48. Santa Clara County—that portion bounded by 101, IS 680, 237 and 17;
49. Santa Clara County—that portion bounded by IS 280, 101, and 17;
50. Santa Clara County—that portion bounded by the S, E, and N County boundaries, IS 680 and 101;
51. Santa Clara County—remaining portion of the county;



52. Santa Cruz County
53. San Benito County
54. Monterey County—that portion bounded by the extension of the South City limits of the Marina to the Pacific Ocean, 156, and the N and W County boundaries;
55. Monterey County—that portion bounded by the S, and E County boundaries, 156, and 101;
56. Monterey County—remaining portion of the county;
57. San Luis Obispo County—that portion bounded by South City Limits of Morro Bay and their extension to the Pacific Ocean, 1, 101, and the N County boundary;
58. San Luis Obispo County—that portion of the county bounded by the S, E, and N County boundaries, and 101;
59. San Luis Obispo County—remaining portion of the county;
60. Santa Barbara County—that portion bounded by the Pacific Ocean, an extension of the Gaviota State Park boundary to the Pacific Ocean, 101, and the N County boundary;
61. Santa Barbara County—remaining portion of the county;
62. Ventura County—that portion bounded by the W and N County boundaries, to Mt. Pinos and due south to the southern boundary of the Los Padres National Forest, E to the W extension of the Fillmore City Limits, and 126 and its extension to the Pacific Ocean;

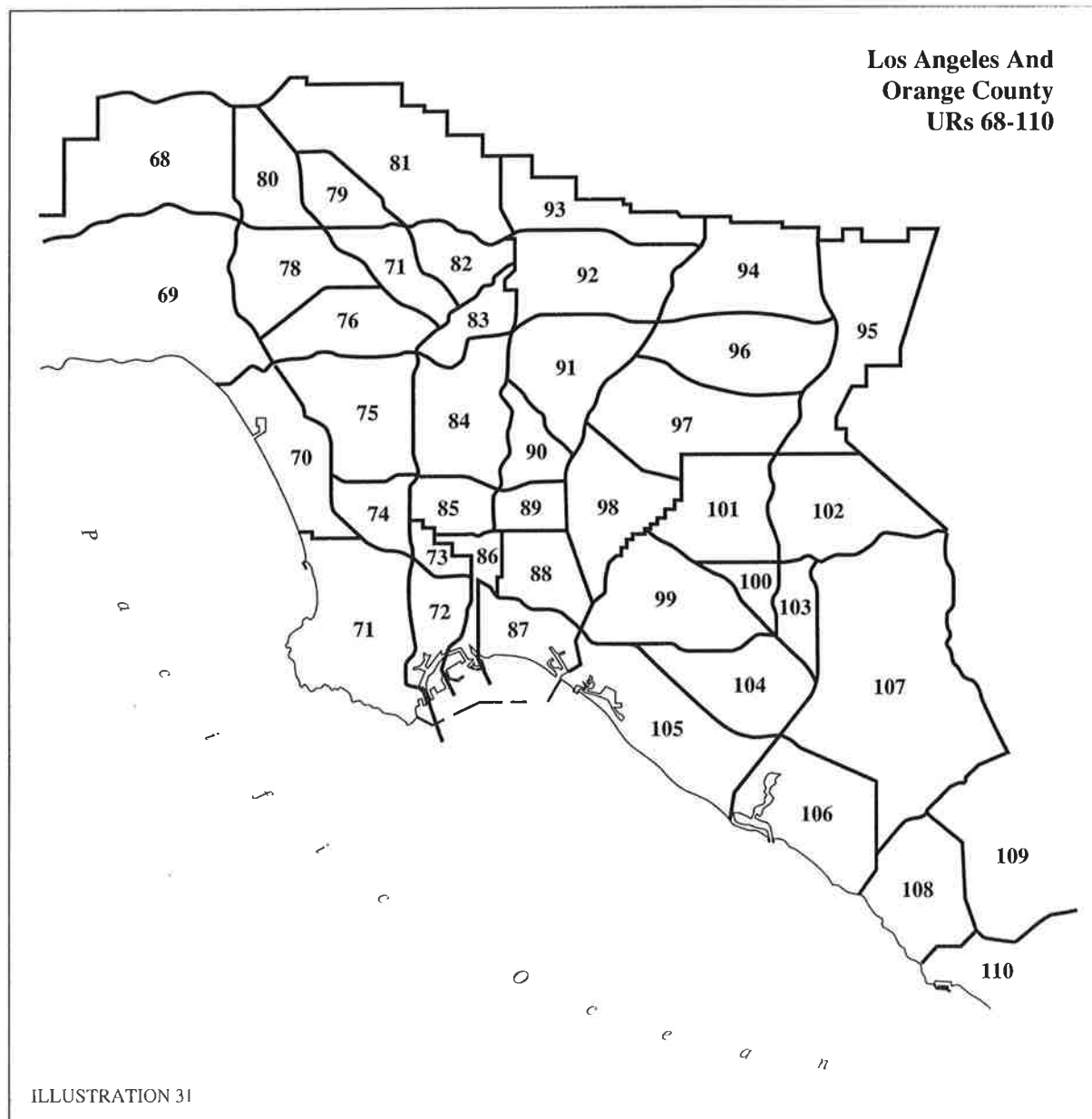
63. Ventura County—that portion bounded by 101, 23 and 126;
64. Ventura County—that portion bounded by the Pacific Ocean, E County boundary, 101 and 126 and its extension to the Pacific Ocean;
65. Ventura County—that portion bounded by 101, 23, and 126;
66. Ventura County—remaining portion of the county;
67. Los Angeles County—that portion bounded by 118 and its extension, the South boundary of the Angeles National Forest, the E, N, and W County boundaries;

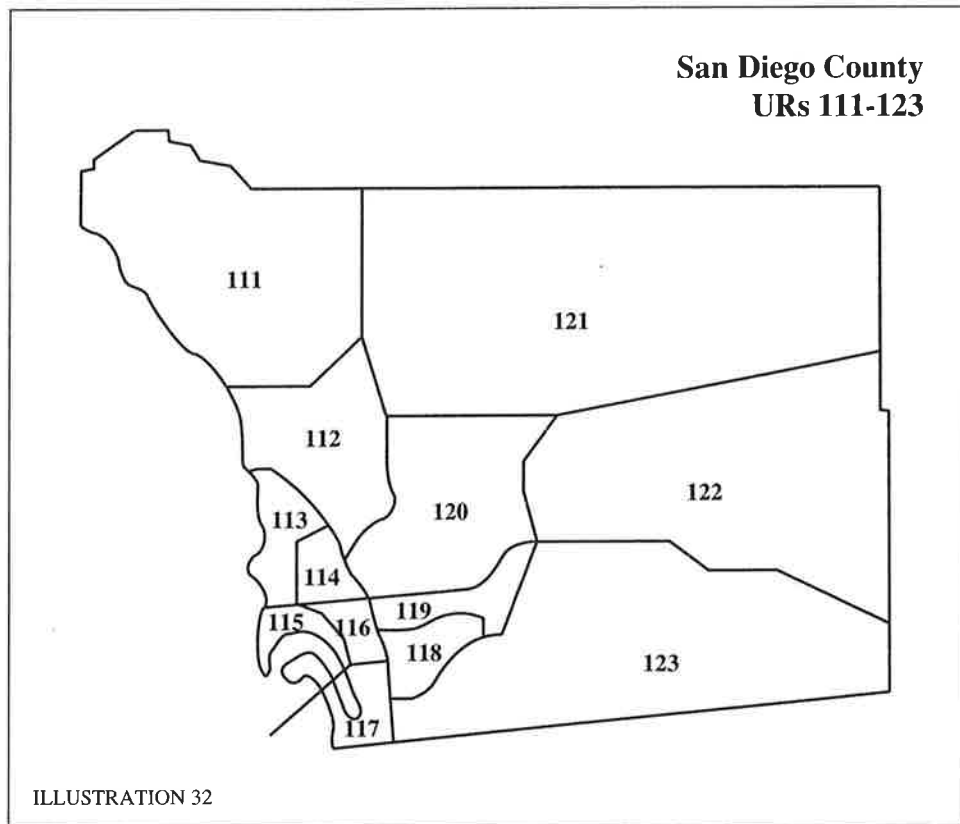


68. Los Angeles County—that portion bounded by 101, IS 405, 118, and the West County boundary;
69. Los Angeles County—that portion bounded by Pacific Ocean, IS 10 and its extension to the Pacific Ocean, IS 405, and 101;
70. Los Angeles County—that portion bounded by Pacific Ocean, North Hermosa Beach City Limits, 91, IS 405, and IS 10 and its extension to the Pacific Ocean;
71. Los Angeles County—that portion bounded by the Pacific Ocean to the Main Los Angeles Harbor Channel to 47, IS 110, IS 405, 91, and the North City Limits of Hermosa Beach;
72. Los Angeles County—that portion bounded by the Main Los Angeles Harbor Channel to 47, IS 110, IS 405, and the West Long Beach City Limits;
73. Los Angeles County—that portion bounded by IS 405, the E and N City Limits of Carson and IS 110.

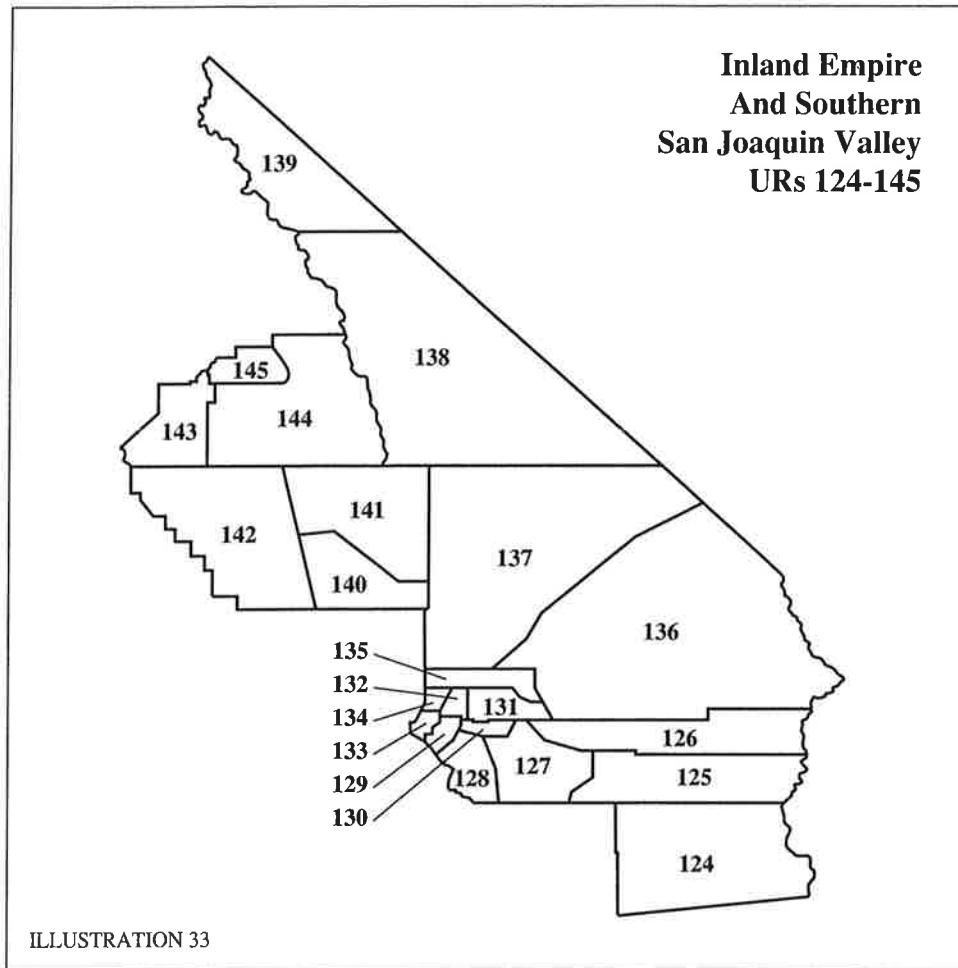
74. Los Angeles County—that portion bounded by IS 405, IS 110, and the Century Freeway;
75. Los Angeles County—that portion bounded by Century Freeway, IS 110, IS 10, IS 405;
76. Los Angeles County—that portion bounded by IS 10, IS 110, 101, 2, IS 405;
77. Los Angeles County—that portion bounded by IS 110, IS 5, 134, 101;
78. Los Angeles County—that portion bounded by 2, 101, 134, IS 405;
79. Los Angeles County—that portion bounded by 134, 5, 170;
80. Los Angeles County—that portion bounded by 134, 170, IS 5, 118, IS 405;
81. Los Angeles County—that portion bounded by 134, IS 210, West Pasadena city limits to the South Angeles National Forest, 118 extension to Angeles National Forest, IS 5;
82. Los Angeles County—that portion bounded by 110, the W city limits of South Pasadena and Pasadena, 134 and IS 5;;
83. Los Angeles County—that portion bounded by IS 10, IS 5, IS 10, the West city limits of Alhambra and South Pasadena, and IS 110;
84. Los Angeles County—that portion bounded by the Century Freeway, IS 710, IS 10, IS 5, IS 10 and IS 110;
85. Los Angeles County—that portion bounded by the N and E city limits of Carson, 91, IS 710, the Century Freeway and IS 110;
86. Los Angeles County—that portion bounded by the W and S Long Beach city limits, IS 710 and its extension to Pacific Ocean, IS 405, Cherry Avenue and the E, N, and W Long Beach City limits;
87. Los Angeles County—that portion bounded by the Pacific Ocean, the Los Angeles/Orange County line, IS 405, and IS 710;
88. Los Angeles County—that portion bounded by IS 405, IS 605, the 91, the E Long Beach City limits and Cherry Avenue;
89. Los Angeles County—that portion bounded by Century Freeway, IS 710, N City Limits of Long Beach, 91, and IS 605;
90. Los Angeles County—that portion bounded by Century Freeway, IS 605, IS 5 and IS 710;
91. Los Angeles County—that portion bounded by IS 5, IS 605, IS 10, and IS 710;
92. Los Angeles County—that portion bounded by IS 10, IS 605, IS 210, 134, West Pasadena, South Pasadena and the Alhambra city limits;
93. Los Angeles County—that portion bounded by IS 210, IS 605, the East Duarte city limits, the South Angeles National Forest boundary, and the West Pasadena city limits;
94. Los Angeles County—that portion bounded by IS 10, IS 210, the E Glendora City Limits, and its extension to the South Angeles National Forest, East Duarte city limits and IS 605;
95. Los Angeles County—that portion bounded by S and E Los Angeles County line, the South Angeles Forest Boundary, the E Glendora City Limits and its extension to IS 210 and 57;
96. Los Angeles County—that portion bounded by 60, 57, IS 10 and IS 605;
97. Los Angeles County—that portion bounded by the S Los Angeles County line, 57, 60, IS 605, and the S Whittier city limits;
98. Los Angeles County—the remaining portion of the county;
99. Orange County—that portion bounded by the 22, IS 5 and W Orange County line;
100. Orange County—that portion bounded by IS 5, the 57, and 91;
101. Orange County—that portion bounded by the 91, 57, and the N and W Orange County line;
102. Orange County—that portion bounded by the 91, E and N Orange County line, and the 57;
103. Orange County—that portion bounded by the 22, 55, 91, and 57;

104. Orange County—that portion bounded by IS 405, the 55, and 22;
105. Orange County—that portion bounded by the Pacific Ocean, and its extension, IS 405, 22 and W Orange County limits;
106. Orange County—that portion bounded by the Pacific Ocean, the extension of 133 and 133, IS 405, 55 and its extension to the Pacific Ocean;
107. Orange County—that portion bounded by S18, the West Cleveland National Forest and its extension to the 91, the 91, 55, IS 405, and 133;
108. Orange County—that portion bounded by the Pacific Ocean, West Dana Point city limits, IS 5, S18 and 133;
109. Orange County—that portion bounded by 74, the E County boundary, the West boundary of the Cleveland National Forest, S 18, and IS 5;
110. Orange County—the remaining portion of the county;



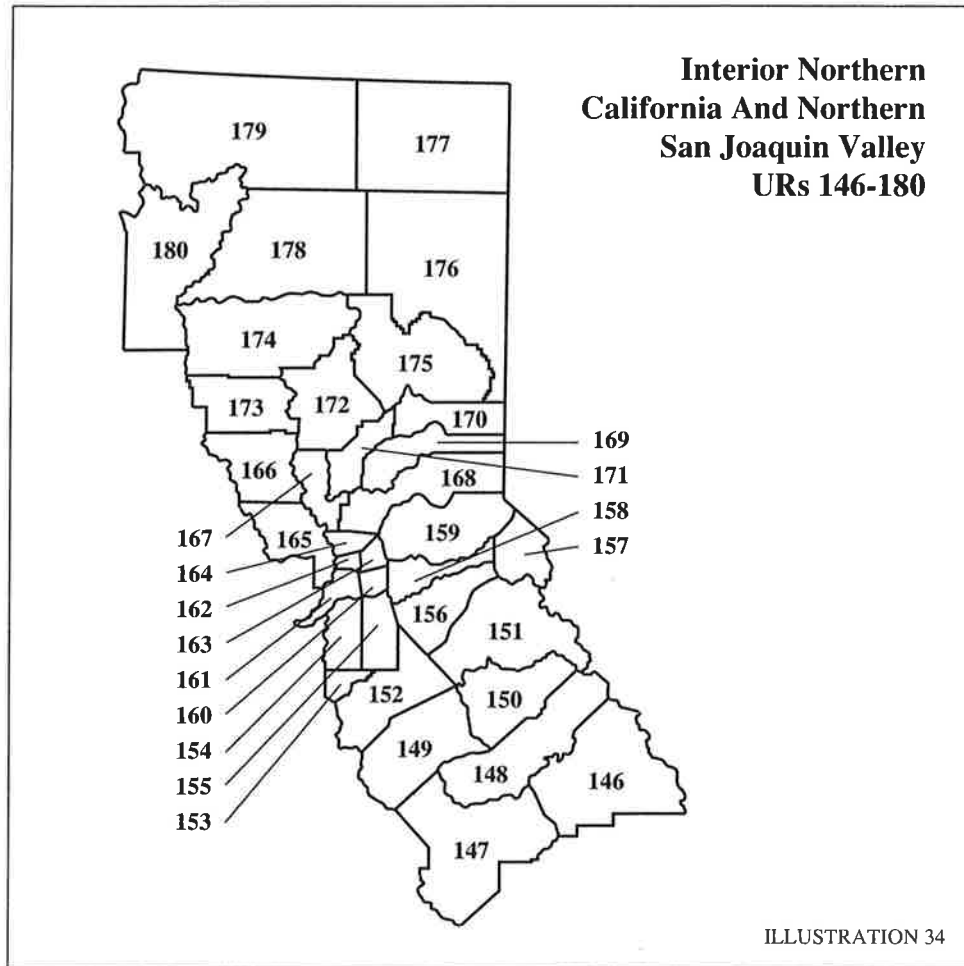


111. San Diego County—that portion bounded by the Pacific Ocean, the South Oceanside City Limits, 78, IS 15, and the N and W County boundaries;
112. San Diego County—that portion bounded by South boundary of the Torrey Pines State Park, IS 5 and IS 805, IS 15, 78, the S Oceanside City Limits and the Pacific Ocean;
113. San Diego County—that portion bounded by IS 8, IS 5, 52, IS 805 and the South boundary of the Torre Pines State Park and the Pacific Ocean;
114. San Diego County—that portion bounded by IS 8, IS 805, 52, and IS 5;
115. San Diego County—that portion bounded by S and E City Limits of Coronado, 75, IS 5, IS 8 and its extension to the San Diego River, and the Pacific Ocean;
116. San Diego County—that portion bounded by North National City Limits, IS 805, IS 8, IS 5, 75, E and S City Limits of Coronado;
117. San Diego County—that portion bounded by International Border, IS 805, North National City Limits and their extension to the Coronado City Limits, and the Pacific Ocean.
118. San Diego County—that portion bounded by S 17, 94, and IS 805;
119. San Diego County—that portion bounded by 94, S 17, 54, IS 8, and IS 805;
120. San Diego County—that portion bounded by IS 8, 67, 78, IS 15 and IS 805;
121. San Diego County—that portion bounded by 78, the E and N County boundaries, and IS 15;
122. San Diego County—that portion bounded by IS 8, the E County boundary, 78 and 67;
123. San Diego County—the remaining portion of the county;



- 124. Imperial County
- 125. Riverside County—that portion bounded by S and E County boundaries, IS 10, 243, 74, 371, and 79;
- 126. Riverside County—that portion bounded by IS 10 and the E and N County boundaries;
- 127. Riverside County—that portion bounded by S county boundary 79, 371, 74, 243, IS 10, 60, and IS 215;
- 128. Riverside County—that portion bounded by the W and S County boundaries, IS 215, 60 and 91;
- 129. Riverside County—that portion bounded by 91, and the N and W County boundaries;
- 130. Riverside County—the remaining portion of the county;
- 131. San Bernardino County—that portion bounded by S County boundary, the South Boundary of the San Bernardino National Forest, and IS 15 E;
- 132. San Bernardino County—that portion bounded by S County boundary, IS 15E and IS 15;
- 133. San Bernardino County—that portion bounded by W and S County boundaries, IS 15, and IS 10;
- 134. San Bernardino County—that portion bounded by IS 10, IS 15, and the South Boundary of the San Bernardino National Forest;
- 135. San Bernardino County—that portion in the San Bernardino National Forest;
- 136. San Bernardino County—that portion bounded by the N and E Boundaries of the San Bernardino National Forest, the S and E County boundaries, and IS 15;
- 137. San Bernardino County—the remaining portion of the county;

- 138. Inyo County;
- 139. Mono County;
- 140. Kern County—that portion bounded by the S and E County boundaries, 58, 99, and IS 5;
- 141. Kern County—that portion bounded by 58, the E and N County boundaries, and 99;
- 142. Kern County—that portion remaining in the county;
- 143. Kings County;
- 144. Tulare County—that portion bounded by W, S, E, and N County boundaries, the West Boundary of the Sequoia National Park, and 198;
- 145. Tulare County—that portion remaining in the county;



- 146. Fresno County—that portion bounded by the S, E, and N County boundaries, and 99;
- 147. Fresno County—that portion remaining in the county;
- 148. Madera County;
- 149. Merced County;
- 150. Mariposa County;
- 151. Tuolumne County;
- 152. Stanislaus County;
- 153. San Joaquin County—that portion bounded by W and S County boundaries, 99, 120 and IS 205;
- 154. San Joaquin County—that portion bounded by IS 205, 99, and the N and W County boundaries;
- 155. San Joaquin County—that portion remaining in the county;

156. Calaveras County;
157. Alpine County;
158. Amador County;
159. El Dorado County;
160. Sacramento County—that portion bounded by S and E County boundaries, 50 and 99;
161. Sacramento County—that portion bounded by W and S County boundaries, 99 and 50;
162. Sacramento County—that portion bounded by IS 80, IS 880, and 99;
163. Sacramento County—that portion bounded by 50, the E and N boundaries, and IS 80;
164. Sacramento County—the remaining portion of the county;
165. Yolo County;
166. Colusa County;
167. Sutter County;
168. Placer County;
169. Nevada County;
170. Sierra County;
171. Yuba County;
172. Butte County;
173. Glenn County;
174. Tehama County;
175. Plumas County;
176. Lassen County;
177. Modoc County;
178. Shasta County;
179. Siskiyou County;
180. Trinity County.

SECTION III - COMMENTARY RE: PART I OF A.C.T.I.O.N. GUIDELINES

Provisions in Section I effectively, but without complex formulae, guarantee:

1. unification of counties and cities when possible;
2. only one cross-over entrance or exit from a redistricting unit is permitted (when division is necessary);
3. under most circumstances, at most only one county, one city, or one census tract will be split in any one district.

COMMENTARY RE: PART I. A.1. THE DEFINITION OF UNITS OF REDISTRICTING (URs)

I. A.1. provides:

- A. The redistricting units described in Section II constitute the redistricting units to be used for the creation of districts.
 1. The redistricting units are to be grouped as wholes for the creation of districts [congressional, assembly, state senate, and board of equalization].

Units of Redistricting [URs] have been structured to promote compactness, contiguity and community orientation. The units have been described in Section II as briefly as possible, primarily by the use of Interstate Freeways and major arterial highways. Boundaries such as freeways and arterial highways establish effective limits on the extension of districts.

The stated boundaries of the URs are significantly modified by the provisions of Part II.A.2. to which require cities to be treated as whole units if population equality permits. The decision for splitting is determined by procedures, not political clout. Human discretion is minimized.

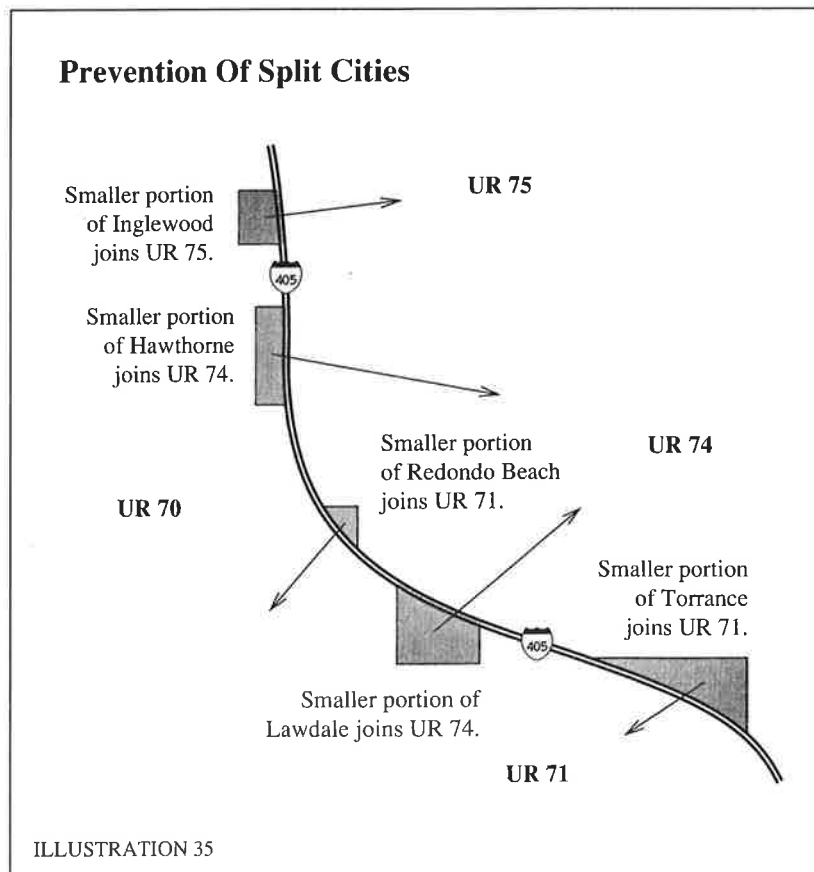
COMMENTARY RE: PART I A.2. UNIFICATION OF CITIES

I. A.2. provides:

2. When cities are split by the boundaries listed in Section II, the cities are to be treated as whole units: the smaller portions of a city are to be considered part of the redistricting unit that contains the large portion of the city population.

The use of freeways and arterials highways is to simplify procedural detail. At the same time, A2 requires if possible the unification of cities.

Real Example:



Units 70, 71, 74 and 75 are described by reference to IS 405. A superficial reading of the Appendix might lead to the conclusion that cities divided by IS 405 would be split.

THIS IS NOT TRUE. II. A2 states the smaller portion of any city divided by a freeway will be added to the larger portion in another redistricting unit; hence cities are to be unified, if population equality permits, according to the guideline procedures. Cities will inevitably be split in a limited number of cases but the procedures are designed to minimize such splits. When such splits are required, procedures control, not human discretion based on political advantage.

Area A in Unit 70 [part of Inglewood] is treated as part of Unit 75.

Area B in Unit 70 [part of Hawthorne] is treated as part of Unit 74.

Area C in Unit 74 [part of Redondo Beach] is treated as part of Unit 71.

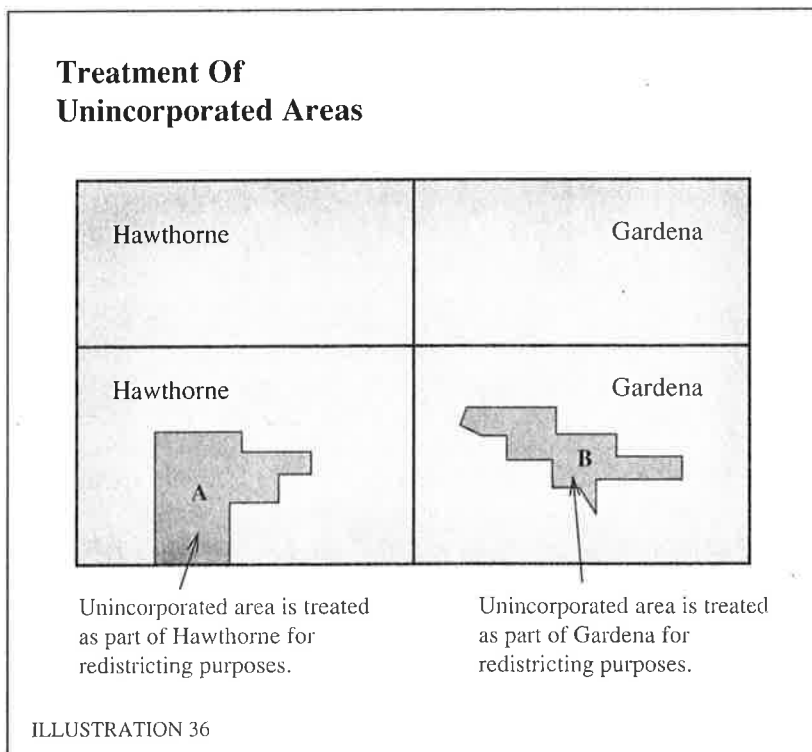
Area D in Unit 71 [part of Lawndale] is treated as part of Unit 74.

Area E in Unit 74 [part of Torrance] is treated as part of Unit 71.

ILLUSTRATION RE: PART I A.3. UNINCORPORATED AREAS INCLUDED IN LOGICAL CITY UNITS

I. A.3. provides:

3. Unincorporated territory when surrounded on three sides by a city is to be considered as part of the city for redistricting purposes; otherwise, when not so surrounded, unincorporated territory will be considered as part of the city with the largest percentage of the census tract's population. A census tract which is totally unincorporated will be governed by the three side rule, or the sphere of influence definitions filed with the local agency formation board.



Example: Area A, An Unincorporated Area Surrounded on Three Sides by the City of Hawthorne:

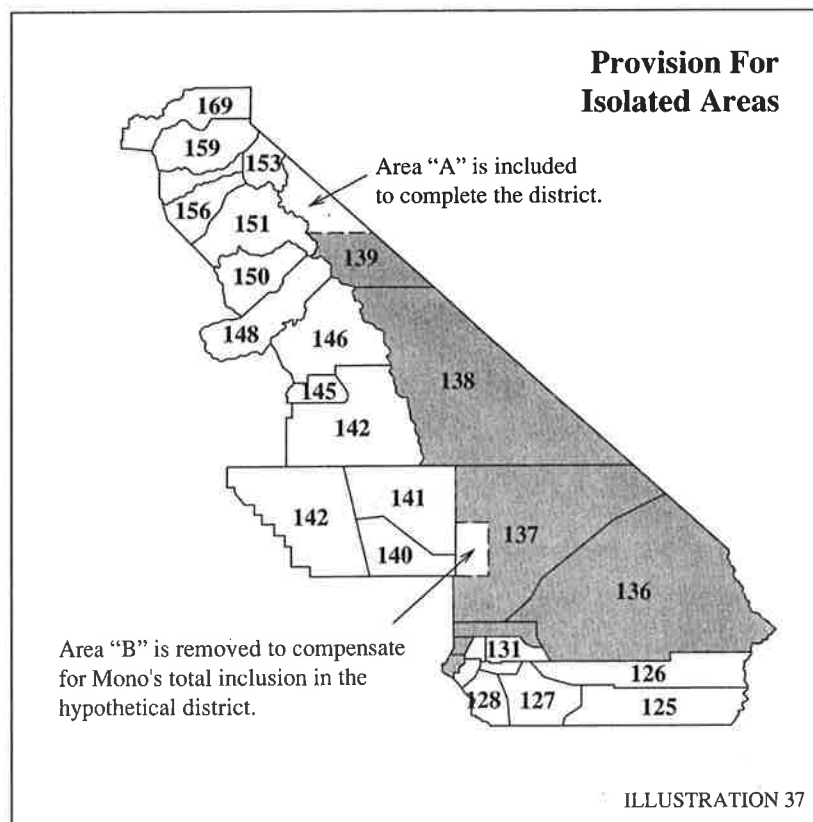
Example: Area B, An Unincorporated Area Surrounded on Three Sides by the City of Gardena:

ILLUSTRATION RE: PART I. A.5. PROVISION FOR ISOLATED UNITS AS A RESULT OF PROCEDURAL POSSIBILITIES AND AS A RESULT OF POPULATION DENSITY:

I. A.5. provides:

5. Should the implementation of the sequencing produce isolation of sequenced units, the isolated portions will be incorporated in the district and equivalent population which otherwise would be included, will be removed along the edges adjacent to the next district to be created.

Hypothetical Example: Assume a district is being created, moving northward. UR 137 has already been included, the next unit is 138. With the inclusion of 138 the district still lacks 3,000, which must come from 139; but 139 has 8,000 population. The next unit in sequence is 140. The 139 surplus cannot be connected to 140. Provision I. A5a provides for the inclusion of all of 139 and the equivalent 5,000 would be removed from areas in 137 which have already been included in the district. Area [B] would be attached to contiguous 140 and the next district would begin.



Commentary

RESULT: Area B is substituted for Area A.

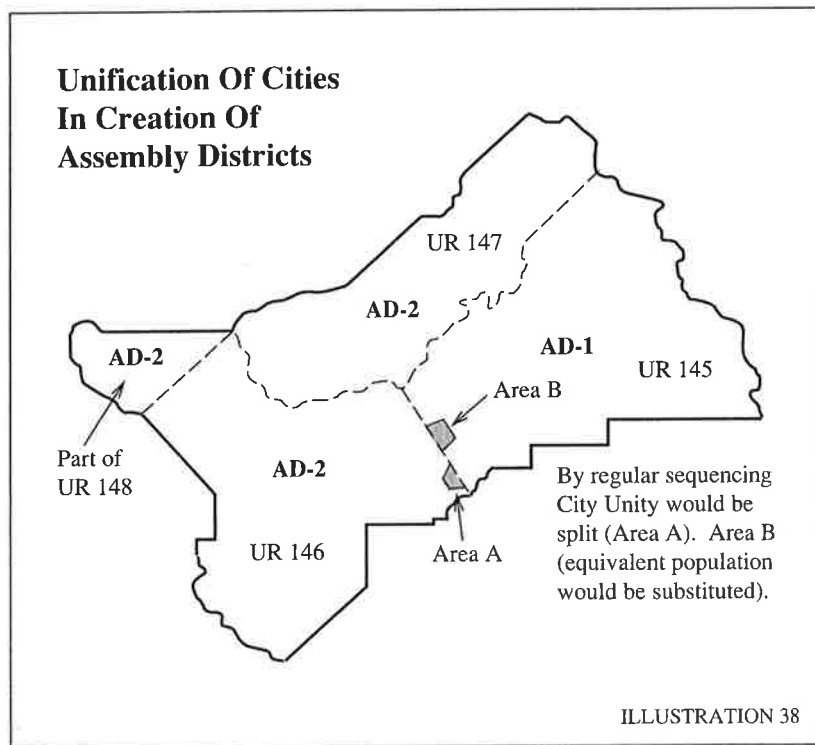
139 is unified.

137, which was already split, is divided by procedures into relatively compact districts, with meaningful contiguity, and with community orientations.

ILLUSTRATION RE: PART I A.6. HYPOTHETICAL DIVISION OF STATE SENATORIAL DISTRICT INTO ASSEMBLY DISTRICTS, EXCEPTIONS TO ALLOW UNIFICATION OF CITIES:

I. A.6. provides:

6. When a state senatorial district is being divided into two equal assembly districts, minor modifications are permissible on the regular sequence border to facilitate unification of communities. Such adjustments can only involve equivalent population as produced by regular sequential development of districts.



Commentary

Hypothetical Example: Assume a senatorial district has been created consisting of URs 145-147 and part of UR 148. Two assembly districts [AD #1 and AD #2] are to be created within the senatorial district.

Assume the normal sequence pattern results in the split of the Unity City [Area A]. In that case an equivalent population from surrounding unincorporated territory [Area B] might be substituted to allow the unification of Unity City.

In other words, modification of the sequencing along the division boundary could be made to allow the unification of Unity. Area B would be attached to AD #2 rather than AD #1. Area A would be unified in AD #1 rather than split in AD #2.

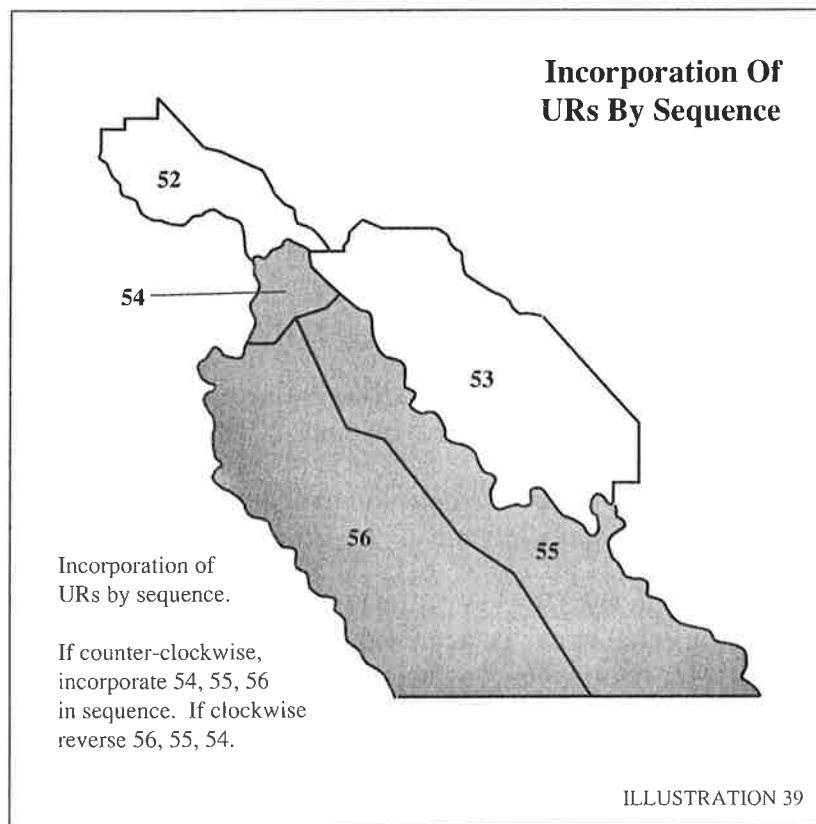
In another case, one city on the border which would bring the assembly districts within appropriate range might be substituted for the division of Unity City.

In either case, adjustments could only be made by substitution of roughly equivalent populations. Human discretion would be minimized and deviations from the law's intent easily substantiated.

ILLUSTRATION RE: PART II B HYPOTHETICAL COUNTY SPLIT:

II B provides:

- B. If a county must be split to achieve population equality, its sub-county URs are to be incorporated, according to the sequence listing, until the ideal population is achieved. Remaining population in the county or sub-county UR is to be transferred to the next UR in sequence and the district process begins again.



Commentary

Assume Monterey County has too much population for total inclusion in a district. Portions of Monterey County would be included in sequence.

If the movement was southward, UR 54 would be included, then UR 55, and if necessary portions of UR 56.

If the movement was northward, UR 56 would be included, then UR 55, and if necessary portions of UR 55.

ILLUSTRATION RE: PART II C SPLITTING OF UNITS

II C provides:

- C. If a sub-county UR must be split, the following population units are to be recognized as wholes in the following priority:
1. Cities;
 2. Sub-city administrative and other communities as recognized on January 1, 1989; and
 3. Census tracts.

Commentary Re: Splitting of Census Tracts

Example: Counties and cities which must be split will be divided by census tracts in numerical sequence as previously indicated.

When the last census tract in the district being created must be split to achieve population equality [Note: population is the controlling criterion], the following procedures will be used.]

Block groups within a census tract must be treated as wholes and be incorporated adjacent to the last whole census tract. When a total block group will overpopulate the district the block group will be divided by blocks. Blocks will be incorporated according to numerical sequence, subject only to the following two provisions:

1. Blocks must be contiguous and promote common sense compactness. [Note we are dealing with units whose population is in the 10s and 100s].
2. Blocks may within the last 500 population be incorporated out of sequence, if more precise population equality can be achieved. In no case may such block incorporation violate contiguity or reasonable compactness.

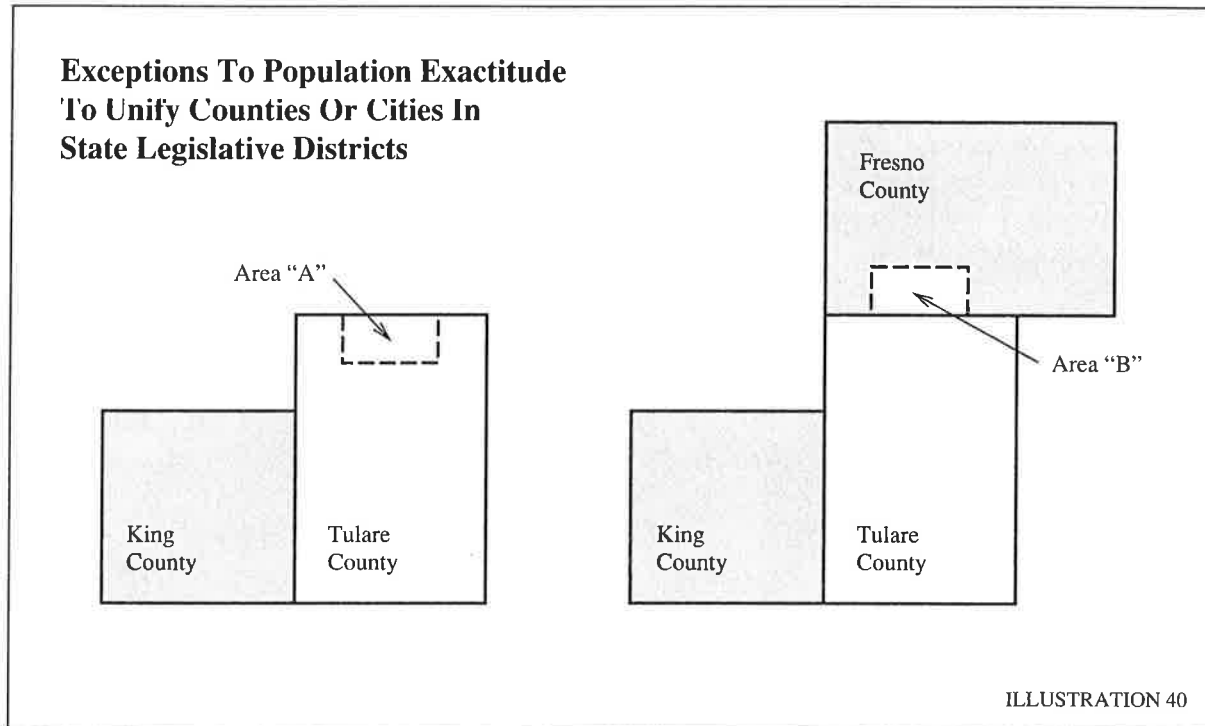
An Illustration of the Tendency Toward Wholeness of Redistricting Units By Procedures:

The previous example I.A.5. illustrates the method of transition from one unit to another. Note: The overwhelming number of redistricting units will be treated as wholes.

ILLUSTRATION RE: PART II. E.1.

II. E.1. provides:

- E. If the regular sequencing produces a state legislative district with a population remainder of less than 1% or no more than 1% in a county, or in an incorporated community, the jurisdiction will be treated as a whole rather than splitting the community to begin the next district.



Commentary: Completion of District Within the 1 Percent Deviation to Allow Unification of County:

Hypothetical Example: Assume the district being created consists of Kern, 143 [Kings], and 144 [part of Tulare]. If all of 145 [the rest of Tulare] is included the district would be 2,500 over the norm [but within a 1% deviation]. According to the guidelines, procedures would allow Tulare County to be treated as a whole despite the slight excess population.

Assume the opposite: incorporation of unit 145 would leave the district short 2,500 population and require a cut of Fresno County for 2,500 people. The deviation would be less than 1% under the norm. According to the guidelines, procedures would allow Tulare County to be treated as a whole despite the slight shortage of population. The district would stop at the Tulare County line and Fresno County would not initially be split.

ILLUSTRATION RE: PART II.F.

II F provides:

- F. If a UR is drawn in a metropolitan county entitled to more than one district in a category which would prevent the county's acquisition of at least one full district, the drawn UR for the beginning of the sequence will become the nucleus for a full district.

If the district cannot be completed with the remainder of the county in the direction of movement as specified by the coin flip, additional URs in the county in the opposite direction will be incorporated until population is obtained for a full district. At that point the next district will be started in the regular direction of movement.

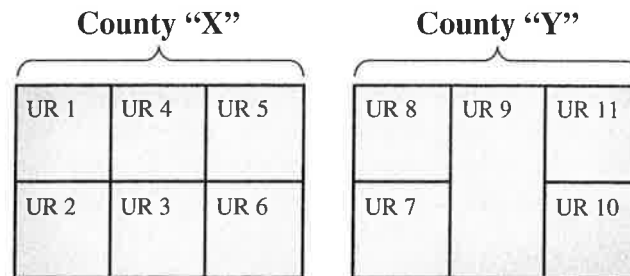


ILLUSTRATION 41

Commentary

The district to be created is assumed to require 525,000 people, assume each UR has 100,000 people. If UR3 was drawn and the regular sequence implemented [assuming in numerical sequence], UR3, UR4, UR5 and UR6 would only total 400,000; thus County X with an entitlement of one district plus would be divided into two districts.

To prevent such a division of the county [to protect county integrity] provision II.F is included. Thus after URs 3, 4, 5, and 6 were included rather than moving to UR7 in County Y, which might split that county as well, additional population would be taken from County X from UR2 and UR1. Specifically all of UR2 and 25,000 from UR1 would be used to complete a full district in County X. The remainder of 75,000 in UR1 would include in the last district created in the sequence.

The result would give County X a full district. The next district would begin in County Y in the regular sequencing pattern. At the same time, County Y would be treated as a whole if less than 575,000; rather than both counties X and Y being divided.

COMMENTARY RE: II.G.3

II.G.3 provides:

- G. Districts will be "nested" (boundaries made to correspond) whenever feasible.

3. Congressional Districts will begin at the same point as SSDs.

Commentary: Because SSDs do not equally divide into the number of CDs congressional districts cannot correspond in boundaries. For example, it is anticipated that California will have 51 CDs in 1991 and 40 SSDs. The sequencing on the basis of the same beginning point, however, will maximize the overlap of districts. Approximately every eighth congressional district will substantially parallel a SSD. Other districts will substantially overlap and make districts more meaningful to citizens and useful for political organization.

Some people have suggested that the number of SSDs be made to correspond to the number of CDs. In turn, each SSD would have 2 ADs. Such a proposal would require a constitutional amendment to raise the number of SSDs and ADs. It would also increase the costs for additional state legislators.

Proponents of that position might also point out that the number of legislators in California is small in comparison to other states. The population of California has grown significantly since the 40/80 limits were established in the 19th Century. The result has been to increase substantially the seat to population ratio of districts.

A.C.T.I.O.N. Guidelines takes no position on this issue. The commentary is included only for discussion purposes.

COMMENTARY RE: II.G.4

II.G.4 provides:

G. Districts will be “nested” (boundaries made to correspond) whenever feasible.

4. Board of Equalization Districts [BEDs] will be created by grouping SSDs in the following manner:

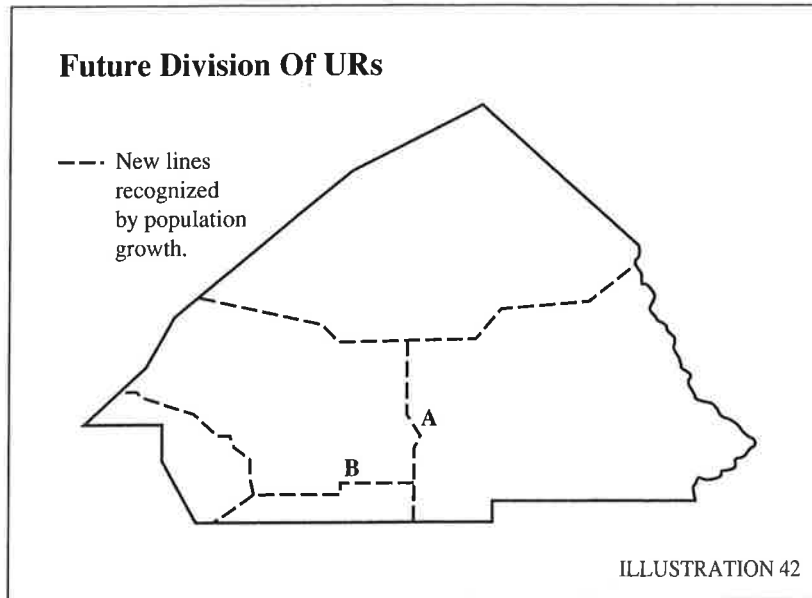
Commentary

This provision guarantees reasonable compact, contiguity and community based Board of Equalization districts. If the provision is not included, a beginning point in a rural area, especially east of the Coastal Range, would potentially elongate districts in an unreasonable manner.

ILLUSTRATION RE: PART II H HYPOTHETICAL FUTURE GROWTH AND SUBSEQUENT DIVISIONS

II H provides:

- H. Future growth of defined URs may allow division of such units if the population doubles. The designation of such units will use freeways and arterial highways within the original UR. The Secretary of State will designate such divisions after the decennial census subject to a 2/3 vote veto by the state legislature.



Commentary

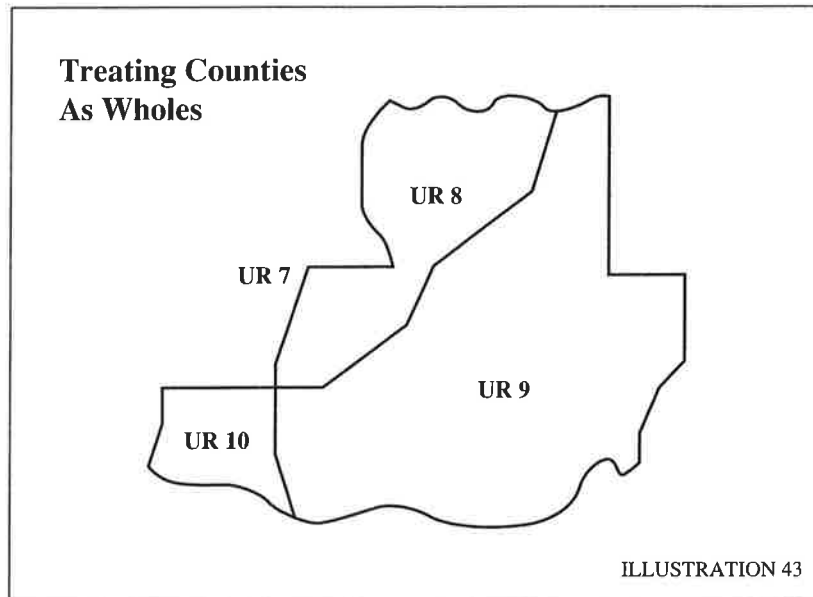
Assume a UR experiences a great growth in the 1990 decade and more than doubles its population. Additional major freeways and arterial highways are built. A constitutional authority (in California, perhaps the Secretary of State) would be authorized to split the unit for redistricting purposes in conformance to intent of the legislation or the initiative. The legislature could be given review rights, perhaps subject to a 2/3 vote.

Freeways A and B are assumed to have been constructed in this hypothetical illustration.

ILLUSTRATION RE: PART III A.2. HYPOTHETICAL COUNTY TO BE TREATED AS WHOLE IF A UNIT WITHIN THE COUNTY IS DRAWN

III A.2. provides:

2. Should a sub-county unit be drawn from a county with less than an entitlement to a full congressional district, the county of which the sub-county redistricting unit is part becomes the starting point as a whole county.



Commentary

Assume UR 8, is drawn as the beginning point and the direction of creation is northward (to UR 7). All of Solano County [UR 8, UR 9, and UR 10] would be treated as the beginning point.

If this procedural clause is not included, Solano County with a population of perhaps 200,000 would begin by being split if the movement was northward. Procedures would unify Solano County as it moved northward. Procedures would automatically unify Solano if the movement was southward.

ILLUSTRATION RE: PART III C FOUR HYPOTHETICAL ALTERNATIVE MOVEMENTS

III C provides:

- C. The sequence listed in Section II is to be used, but according to the beginning point and the direction as determined by the above described procedures.

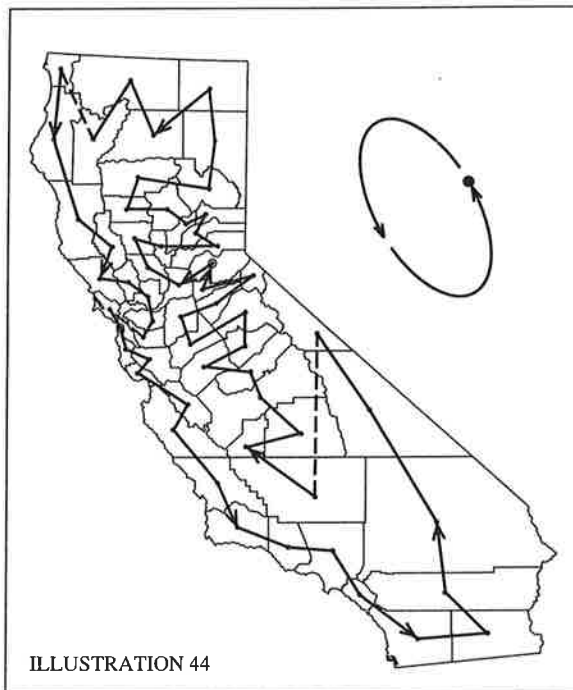


Illustration 44 Hypothetically a County on the East of the Coastal Range is Drawn [El Dorado], The Coin Flip Requires Movement Counter Clockwise.



Illustration 45 Hypothetically a County on the East of the Coastal Range is Drawn [Mariposa], The Coin Flip Requires Movement Clockwise

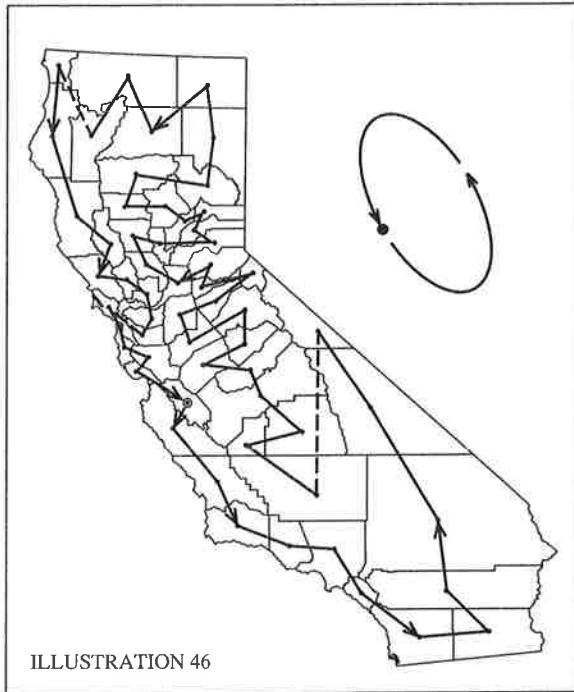


Illustration 46 Hypothetically a County on the West of the Coastal Range is Drawn [San Benito], The Coin Flip Requires Movement Counter Clockwise



Illustration 47 Hypothetically a County on the West of the Coastal Range is Drawn [Solano], The Coin Flip Requires Movement Clockwise

Commentary RE: #1 If the beginning point selected by lot is East of the Coastal Range, and if the northern direction is the result of the coin flip, the movement will be counter-clockwise, from the point of beginning. When Number 180 is reached, the districting order will shift to 1 and continue to complete the sequence.

Commentary RE: #2 If the beginning point selected by lot is East of the Coastal Range, and if the southern direction is the result of the coin flip, the movement will be clockwise, from the point of beginning in reverse numerical order. When Number 1 is reached, the districting order will shift to 180 and continue the sequence in reverse order until the districts are completed.

Commentary RE: #3 If the beginning point selected by lot is West of the Coastal Range, and if the southern direction is the result of the coin flip, the movement will be counter-clockwise, from the point of beginning. When Number 180 is reached, the districting order will shift to 1 and continue to complete the sequence.

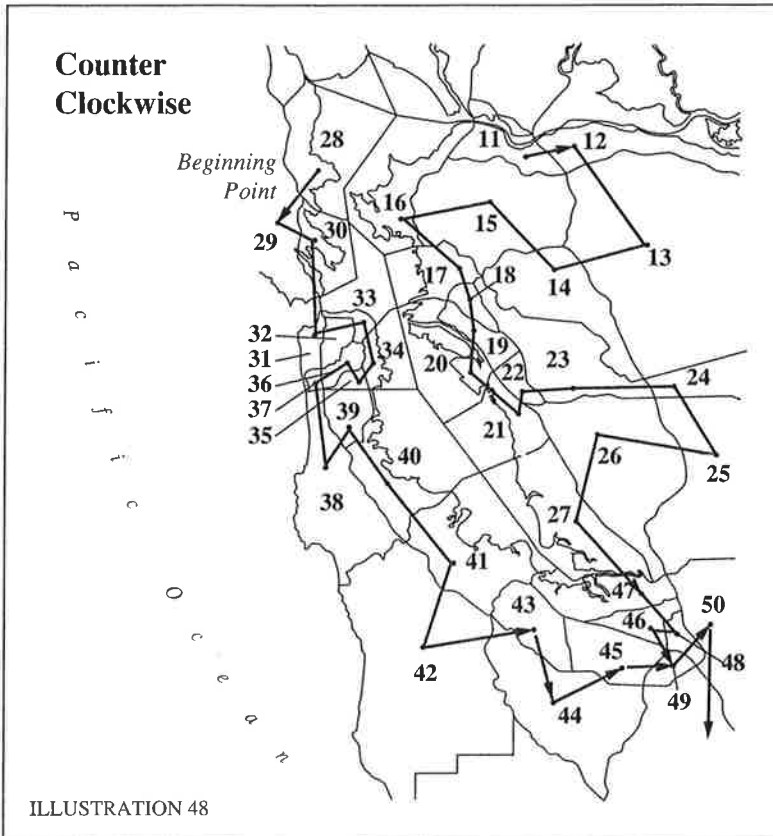
Commentary RE: #4 If the beginning point selected by lot is West of the Coastal Range, and if the northern direction is the result of the coin flip, the movement will be clockwise, from the point of beginning in reverse numerical order. When Number 1 is reached, the districting order will shift to 180 and continue the sequence in reverse order until the districts are completed.

ILLUSTRATION RE PART III D HYPOTHETICAL COUNTY TREATMENT IF SAN FRANCISCO OR SAN MATEO IS DRAWN AND THE MOVEMENT IS TO BE CLOCKWISE

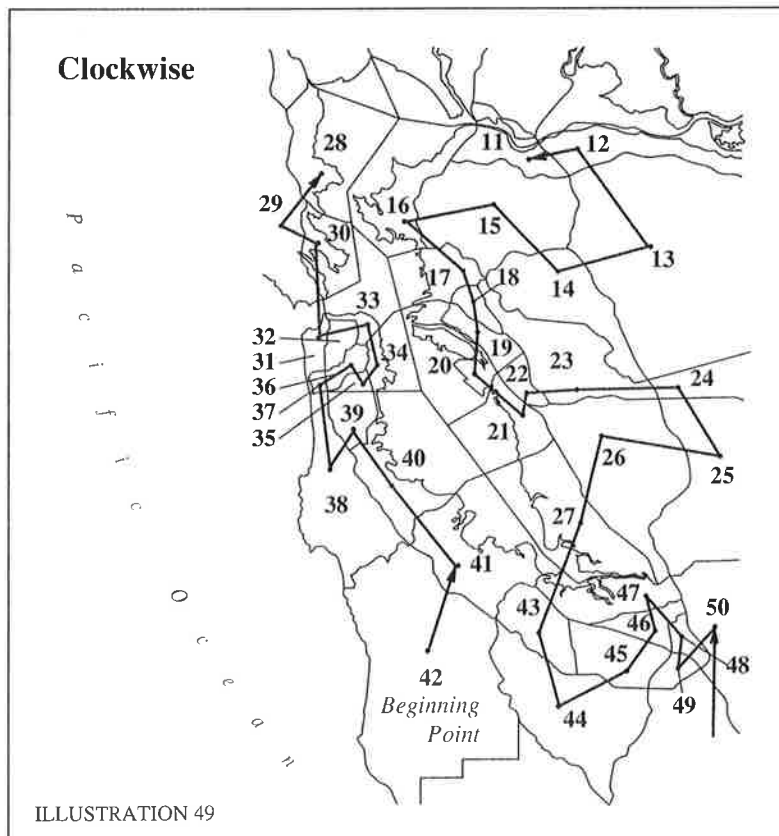
III D provides:

- D. In the San Francisco Bay Area [Sonoma, Napa, Solano, Contra Costa, Alameda, Santa Clara, San Mateo, San Francisco, and Marin] a systematic grouping of territory requires special procedures depending on direction of entrance into the area.

Commentary: The details are included in the Section I, Part III.D. To follow the map and commentary below, the reader should refer back to Section I, Part III.D. if necessary.



Beginning point after creation of district from Alameda with remaining portions from Santa Clara.



Beginning point after creation of district from Contra Costa with remaining portions from Solano, Napa, Sonoma.

COMMENTARY RE: CLOCKWISE

Assume a Unit in San Mateo is drawn. All of San Mateo County would become the nucleus for a district. Additional population would come from San Francisco. Because of the population size of San Mateo, only a small portion of San Francisco would be taken. San Francisco would become the dominant portion of the next district.

Similar results would occur if a Unit of San Francisco was selected. San Mateo County would become the overwhelming portion of the last district to be created if San Francisco was the beginning point. With San Mateo divided into 5 redistricting units, any one of which could be drawn as the beginning point, there are five chances of that happening. With San Francisco divided into 6 redistricting units, any one of which might be drawn as the beginning point, there are six chances of that occurring.

The clockwise movement in the Bay Area guarantees substantial or total unification [depending on 1990 census figures]. San Mateo County will be the beginning point for a district and hence the outcomes explained in paragraph 1.

With the variable beginning point, there are 176 chances of this occurring out of 352 possibilities. Furthermore, in the counter-clockwise movement there are 11 possibilities of the same unification occurring (see below). Thus of 352 possibilities San Francisco and San Mateo have 187 chances of unification or substantial unification. In no case will individuals control the division: procedures control.

COMMENTARY RE: COUNTER CLOCKWISE

If the counter-clockwise movement is followed, the chance of division of San Francisco and San Mateo is likely, depending on the census figures of 1990. However, if either San Francisco or San Mateo are beginning points, their unification is guaranteed.

Under any circumstances the counties would likely be dominant portions of districts being created, with a minimum of splits under any circumstances.

Repeat for Emphasis: In addition to the 180 guarantees of unification or substantial unification for San Francisco and San Mateo, with the counter-clockwise movement there are 11 possibilities: San Francisco and San Mateo have 187 chances of unification or substantial unification. In no case will individuals control the division. Procedures control.

SPECIAL COMMENTARY

This procedural reality should be judged in relationship to what happened in 1981 and 1982. Were the desires of the counties considered under the current rules? A.C.T.I.O.N. Guidelines guarantee minimum splits by procedures, not by human discretion.

Note: Alternative methods based on an odd or even number can be substituted; for example, the last number of the lottery following the first release of census figures, or the last digit of the mean figure of an agreed upon grouping. The important consideration: it must be selected at random.

APPENDIX: REFORM PROPOSALS

As the hypocrisy becomes more obvious, the hokum more ludicrous, and the lines ever wilder, reformers have suggested a bewildering variety of proposals for change. The reform proposals, in one form or another, challenge the results of legislatively controlled redistricting under current practices. Fundamental is the belief that an inherent "conflict of interest" exists when state legislators are allowed to draw their own district lines in the absence of rules.

Gerrymander analysis suggests incumbent protection is the basis upon which redistricting managers develop a winning strategy for passage of the redistricting legislation. Such self-serving inclination on the part of political actors is inherent in human character. If given an opportunity for benefit, participants will forget the system's fundamental premises and reach for advantage. The gerrymanders of recent redistrictings prove the point.

Currently five major types of reform are being discussed:

The commission options:

Common cause has long headed the movement of "reapportionment reform" via commission. The national Common Cause approach has three main elements: establishment of an independent, non-partisan redistricting commission in every state; strict anti-gerrymandering standards; and prompt judicial review.

California has seen its share of commission proposals. Efforts to establish a California Commission were defeated in 1982 and 1984; Proposition 14 was defeated by 3,065,072 votes (45.5%) to 3,672,301 votes (54.5%) in November 1982; Proposition 39, sponsored by Governor Deukmejian in 1984, was defeated by 3,995,762 votes (44.8%) to 4,919,860 votes (55.2%). Currently an initiative authored by Supervisor Tom Huening is being circulated in California. The proposal includes a commission and various guidelines are stipulated. Other states have had commission proposals and some have been adopted. (In the Spring of 1990, the Rose Institute will sponsor a conference on the several redistricting initiatives being proposed in California.)

Contests:

In Indiana and Ohio citizen groups have sponsored contests to solicit proposals for redistricting. An Indiana plan, proposed by Norman S. Primus, calls for a neutral administrator responsible for:

- * securing population data and maps and preparing them for public use in map drawing
- * establishing schedules
- * selection of a final plan for submission of proposals from public proposals as the result of applying "quantitative criteria."

In Ohio, David L. Horn, who leads the Center for Research in the Governmental Process, has initiated a series of public contests for redistricting plans.

Structural changes:

Among the proposed structural changes are:

1. supermajority;
2. public hearings and time limits; and
3. mandatory referenda.

The supermajority advocates of the idea of a super-partisan legislative vote of two-thirds in order to limit party strategies. The theory supporting this idea is that a simple majority can be made more responsible because it must seek allies sufficient to form a supermajority. One party would normally have to obtain approval of the other party (therefore, have to bargain) to secure a supermajority. What the supermajority solution may ignore is the potential for minority party "sell-out." For example, Republican actions in 1951 and Democratic retaliation in 1961, had no difficulty obtaining a 2/3 vote for the legislation which was, in both cases, detrimental to the minority party.

Public hearings and time limits are among the most frequent structural proposals. Negotiations of gerrymanders are time-consuming exercises. People bargaining over political matters, which are subject to various interpretations, prefer negotiation conducted behind closed doors which can be unveiled late in the legislative session, when little can be done to prevent enactment. Crisis tends to pressure legislators to agree with almost anything to complete an action that vitally involves their futures. In such an environment, legislators have little chance to review what their technicians have created. The height of irresponsibility occurred in 1982 when California bureaucratic technicians merely rewrote the technical language to match their aims rather than what the legislature had actually approved.

The solutions proposed to check such secret decision-making are to require public hearings and a time limit (e.g., 60 or 90 days after receipt of census data, or passage into law prior to June 30) to inhibit the secret development of gerrymanders. Such delay would facilitate referenda. In turn, the threat of a referendum might bring about a degree of restraint, because of the uncertainty of a referendum outcome, which would encourage the legislative majority to avoid that possibility.

Mandatory referenda or review and redistricting by initiative can be used to check blatant gerrymanders. Such a move, however, would probably require mechanisms for the establishment of interim plans for the next succeeding elections.

An alternative device would permit redistricting by initiative to occur within a certain period after the initial redistricting. The approach, of course, imposes some strain on the initiative process. Critics point out that voters would have to choose between the lines of different maps. Decisions would require evaluation of complex information, but in the process interested citizens would have second thoughts about legislative gerrymanders.

Guidelines:

In addition to structural changes which might alter redistricting practices, other reformers rely on standards or guidelines to control redistricting. The four most common are:

1. nesting;
2. compactness;
3. city/county integrity; and
4. district numbering.

District “nesting:” Nesting refers to grouping two assembly districts in one state senatorial district, and sometimes with congressional and board of equalization districts. Citizens would find the “nested” districts more understandable; they would limit the reach for advantage; and they would encourage competition.

Compactness: Compactness can be determined by many measures, both simple and complex: the aggregate length of boundaries (e.g. the Common Cause concept that the aggregate length of all district lines should not exceed by more than 5%, their shortest possible aggregate length); use of measures of population density and the proximity of population to the district’s center; the number of times that lines drawn between opposite extremities cross district boundaries; and so forth.

The asserted advantages of these formulae are objective and measurable standards. The problem centers on what formula is most objective and best measures compactness. The concept is also challenged because it ignores county, city, and other community boundaries.

Recognition of County/City Integrity: This standard is commonly supported by people throughout the nation. If a city or county is unified, it is deemed to be more effective politically; its officials have a unified base for political advancement and electoral competition is encouraged; and citizens find districts more understandable.

In California, proposals have been made to limit the number of times county or city boundaries may be crossed. These efforts have been in reaction to rambling lines that arbitrarily split cities and counties at the expense of community integrity in 1981 and 1982. The 1980 travesties had been foreshadowed by the proposals of 1971 and 1973.

Some proposals simply require that only one district may cross the common boundary of any two counties, or that cities with less population than that of a district must not be divided (unless it is necessary to do so to achieve population equality).

District numbering: In some cases, district numbering can be altered to create political problems for opponents. Various proposals have been made to regulate the numbering system.

Community unit sequencing:

New reform proposals, advanced in this Monograph, resulting from the Haynes Grant to the Rose Institute, require the sequencing of counties, cities or other community units.

In essence the sequencing reform deprives redistricters of human discretion by changing redistricting into a procedure controlled by sequencing of redistricting units, with a variable beginning point. Districts with “necks” based on political considerations, the life sustaining anatomy of the gerrymander, are not possible.

The A.C.T.I.O.N. Guidelines are not inconsistent with the commission or contest approaches. The Commission could adopt the A.C.T.I.O.N. Guidelines as neutral procedures. The multiple possibilities of the A.C.T.I.O.N. Guidelines could each be submitted to a contest.

Likewise, the A.C.T.I.O.N. Guidelines incorporates most of the suggested changes and common guidelines of other reforms. Most importantly, the A.C.T.I.O.N. Guidelines guarantee the implementation of common sense or reasonable compactness, continuity, community oriented, and competitive districts (the 4 Cs) within the one person, one vote criterion. The URs prioritize any additional factors within the context of the basic criterion.

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