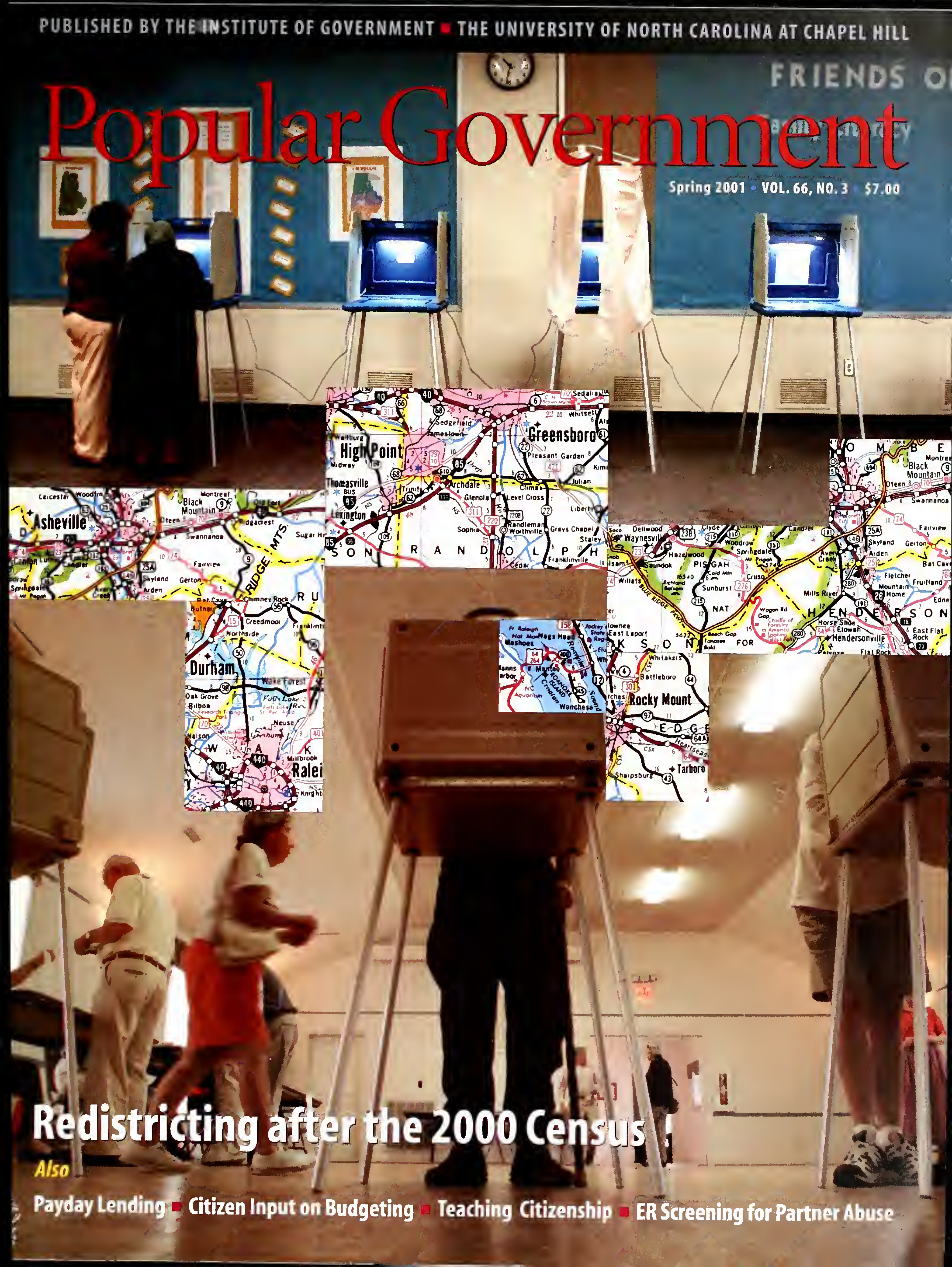
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Popular Government
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Redistricting after the 2000 Census
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Popular Government

James Madison and other leaders in the American Revolution employed the term "popular government" to signify the ideal of a democratic, or "popular," government—a government, as Abraham Lincoln later put it, of the people, by the people, and for the people. In that spirit *Popular Government* offers research and analysis on state and local government in North Carolina and other issues of public concern. For, as Madison said, "A people who mean to be their own governors must arm themselves with the power which knowledge gives."

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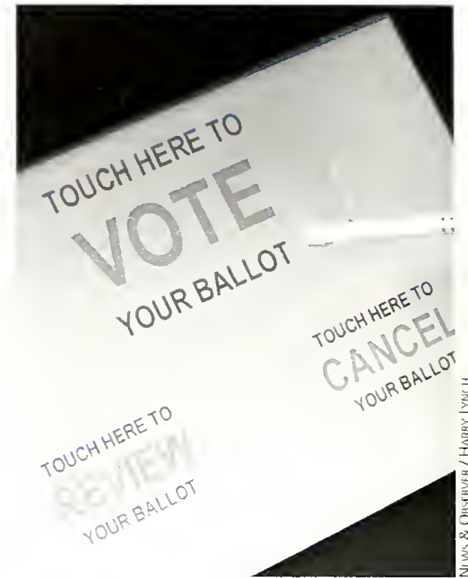
Redistricting for Local Governments after the 2000 Census

Robert P. Joyce



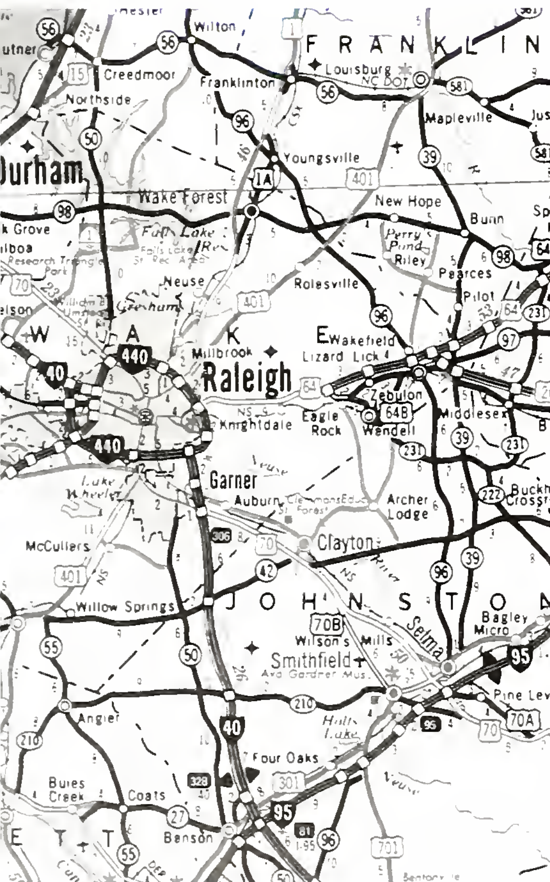
News & Observer / Harry Lynch

With the results of the 2000 census in hand, more than one hundred North Carolina cities, counties, and school systems may face the politically loaded challenge of redrawing their election districts to comply with the one-person/one-vote requirement of the U.S. Constitution.

Through the 1990s the North Carolina General Assembly drew and redrew the state's twelve congressional election districts four times, as successful challenges under the Voting Rights Act of 1965 and the Equal Protection Clause of the U.S. Constitution occurred one after another. No city, county, or school system wants that to be its fate in the first decade of the 2000s.

The responsibility for drawing new districts for elections to Congress and to the state House of Representatives and Senate lies with the General Assembly. The responsibility for drawing new districts for local government rests with the city councils, the county commissions, and the school boards.

Compared with the state legislature, local governments may receive less attention when they face redistricting, but the questions of law and the practical problems will be just as challenging. This article describes those questions and problems, and gives some answers.



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Must you consider redistricting at all?

Whether a jurisdiction must consider redistricting turns on the sort of electoral system it uses.

Do you elect all your members at large?

If all the members of the city council, the county commission, or the board of education are elected at large—that is, if everyone in the city, the county, or the school system votes for all the members—then you do not have to redistrict. There are no districts to redraw. You need not finish reading this article. If you elect board members from districts, however, you should go on to the next question.

What kinds of districts do you have: mere residency districts or true electoral districts?

The North Carolina statutes for cities and counties permit three types of districts, with very different redistricting consequences.[1]

Residency districts. In the first type of district, candidates must reside in the district from which they wish to run, but all the voters of the jurisdiction vote for that seat. This type is commonly referred to as a "residency district." As with at-large voting (of which this is a variant), there is no requirement to redistrict after the 2000 census.[2] In fact, for counties a statutory provision requires a local act of the General Assembly to change residency-district boundaries.[3]

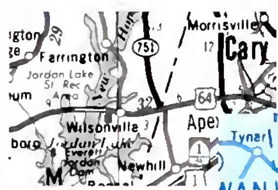
Single-member districts. In the second type of district, candidates must reside in the district from which they wish to run, and only the voters of the district can vote for that seat. Commonly referred to as a "single-member district," this is the type to which the greatest redistricting attention must be paid after the 2000 census. The trend in recent years has been for jurisdictions to move from at-large elections to single-member districts. It has been spurred, as discussed later, by a drive to create districts that provide minority populations with greater opportunities to elect candidates of their choice.

Blended districts. The third type of district is a variant of residency districts. In this type the candidate must reside in the district from which he or she wishes to run, and all the voters of the jurisdiction vote for that seat in the general election, just as in regular residency districts. In this third type, however, in the primary election, only the voters of the district vote. So this type of district resembles a single-member district in the primary election and an at-large arrangement in the general election. This type requires the same attention after the 2000 census that the single-member district does.

If the election of your board members is from *residency districts*, you do not have to redistrict, and you may stop reading this article. If, however, you have *single-member* or *blended* districts, you should go on to the next question.

Do you have the necessary power?

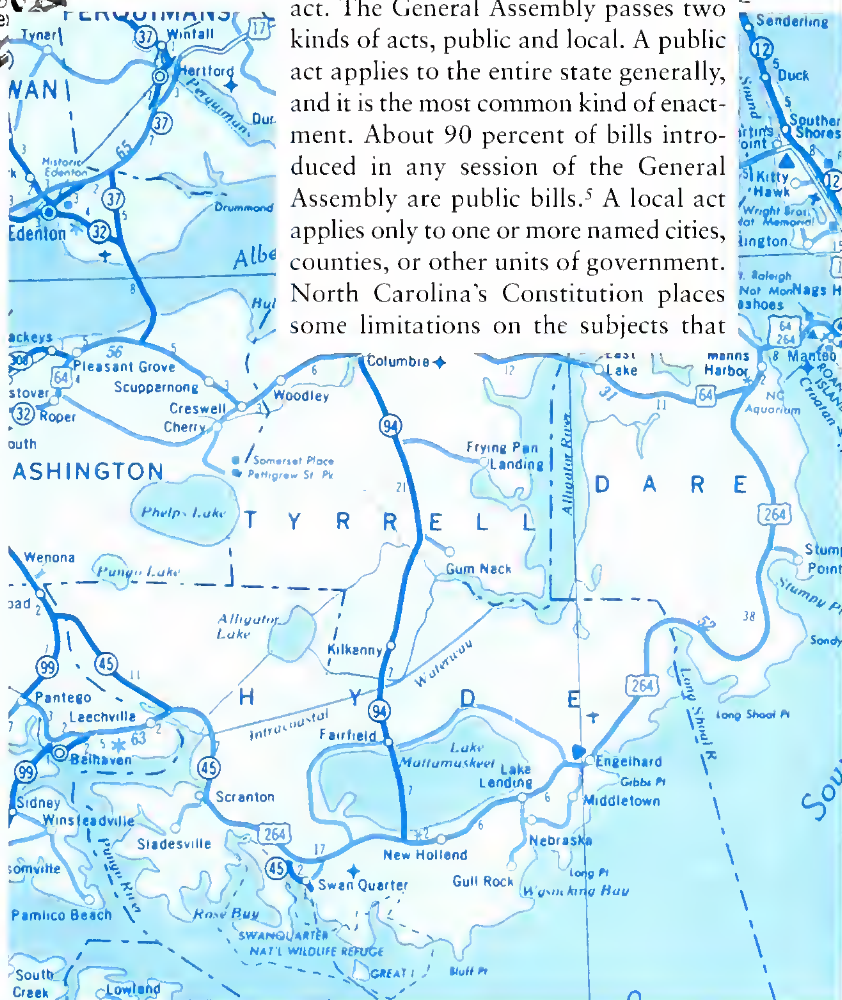
If your jurisdiction has single-member or blended districts, you must consider redistricting. As discussed later, you may not have to redistrict. That will depend on the relative population changes among your districts since 1990. But if you must redistrict, do you have the authority to do so? The answer to that question generally is yes. The General Assembly has passed special boundary-revision statutes for cities, counties, and school systems,[4] but in any jurisdiction's particular situation, the answer may turn on how the use of electoral districts (and the current actual boundaries) came about.



How did your use of electoral districts come about?

The presumptive method of elections is at large. For most of North Carolina's modern history, nearly all the members of city councils, county commissions, and school boards were elected that way. Beginning in the 1980s, however, there was a movement away from at-large elections to elections by districts, spurred primarily by the need to comply with the federal Voting Rights Act of 1965 (again, discussed in more detail later). Today, 103 jurisdictions use single-member or blended districts and so are subject to redistricting (see Table 1, page 4).

There are three ways in which electoral districts may have come into use for a city or a county, but only two ways for a school system. First, the General Assembly may have moved a city, a county, or a school system from at-large elections to district elections through a local act. The General Assembly passes two kinds of acts, public and local. A public act applies to the entire state generally, and it is the most common kind of enactment. About 90 percent of bills introduced in any session of the General Assembly are public bills.[5] A local act applies only to one or more named cities, counties, or other units of government. North Carolina's Constitution places some limitations on the subjects that



Maps Courtesy of the North Carolina Department of Transportation

Table 1. North Carolina Jurisdictions Subject to Redistricting

Subject to Redistricting			Not Subject to Redistricting	
Counties (30)	**Cities (41)**	**School Boards (32)**	**Counties Using Residency Districts (24)**	**Cities Using Residency Districts (26)**
Anson	Albemarle	Alexander	Bertie	Angier
Bladen	Benson	Anson	Brunswick	Archdale
Camden	Cary	Beaufort	Chatham	Atkinson
Carteret (blended)	Charlotte	Bladen	Cherokee	Ayden
Caswell	Clinton	Caswell	Currituck	Belhaven
Chowan	Dunn	Charlotte-Mecklenburg	Dare	Bessemer City
Columbus	Edenton	Cumberland	Franklin	Bladenboro
Craven	Elizabeth City	Duplin	Gaston	Calabash
Cumberland	Enfield	Durham	Gates	Cherryville
Duplin	Fayetteville	Edenton-Chowan	Henderson	Concord
Edgecombe	Fremont	Edgecombe	Hertford	Durham
Forsyth	Goldsboro	Franklin	Hyde	Eden
Granville	Greensboro	Granville	Johnston	Fletcher
Guilford	Greenville	Guilford	Macon	Gastonia
Halifax	Henderson	Harnett	Moore	Hickory
Harnett	High Point	Hickory City	Northampton	Lewiston-Woodville
Lee	Jacksonville	Iredell-Statesville	Pender	Lincolnton
Lenoir	Kings Mountain	Lenoir	Randolph	Morganton
Mecklenburg	Lake Waccamaw	Madison	Rutherford	Mt. Airy
Montgomery	Laurinburg	Martin	Scotland	Sanford
Nash	Lexington	Montgomery	Surry	Shelby
Pamlico	Longview	Nash–Rocky Mount	Watauga	Southport
Pasquotank	Lumberton	Newton–Conover City	Wake	Stanley
Pitt	Mooresville	Pamlico	Wayne	Trinity
Robeson	New Bern	Pitt		Valdese
Sampson	Plymouth	Robeson		Weddington
Vance	Princeville	Rockingham		
Washington	Raleigh	Union		
Wilson	Randleman	Vance		
Wayne	Reidsville	Wake		
	Roanoke Rapids	Wilson		
	Rocky Mount	Winston-Salem/Forsyth		
	Siler City			
	Smithfield			
	Statesville			
	St. Pauls			
	Tarboro			
	Thomasville			
	Williamston			
	Wilson			
	Winston-Salem			

Counties, Cities, and School Boards Using At-Large Voting

All the rest

may be covered by local acts, but none of them relate to the election of city council members, county commissioners, or school board members. Cities, counties, and school systems are creatures of the General Assembly, and the General Assembly is free to impose on any of them an electoral system of its choosing.

Second, the city, the county, or the school system may have moved from at-large elections to district elections through a court order or a consent decree. That is, someone may have challenged the at-large system in court on some legal basis—most likely as a violation of the Voting Rights Act of 1965—and either prevailed in the lawsuit, thereby obtaining a court order, or reached a court-approved settlement with the jurisdiction, resulting in a consent decree signed by the challengers, the jurisdiction, and the judge.

Third, the city or the county (but not a school system) may have voluntarily moved from at-large elections to district elections, using "home rule" powers granted by the General Assembly. The home-rule statutes permit a city or a county, by following procedures laid out in the statutes, to change a number of aspects of its elections, including the number of members of the governing board, the length of their terms, and whether they are elected at large or from districts.[6] There is no comparable home-rule provision for school systems.

How were the particular boundaries for your current districts set?

As with the use of electoral districts, the current boundaries for your districts may have been drawn in one of three ways. First, they may have been set in the local act that moved you from at-

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large to district voting in the first place. Second, they may have been set by the court order or the consent decree that moved you to district voting. Third, they may have been set by action of the governing board. In the third case, the city council, the county commission, or the school board acted under the authority of statutes specifically giving it this line-drawing authority.[7]

What difference does it make how the current boundaries were set?

Your authority to change the current boundaries may depend on how they were put into place. If the boundaries were set by local act, then cities and counties are specifically authorized by the boundary-revision statutes to revise them to correct for population imbalances after the 2000 census.[8] For school systems, the relevant statute says that the board may revise them to correct for population imbalances after the census if the local act does not provide a method for revising them.[9]

If the boundaries were set by court order or consent decree, you need to check the document to determine whether it provides a method for revising the boundaries. There are three possibilities. First, the document may set the boundaries but provide no method for revision. In that case you must consider whether you need to go to the court that entered the order or the decree to get an order permitting you to revise boundaries. Second, the document may both set the boundaries and provide a method for revision. If so, you must follow that method. Third, the document may set the boundaries and explicitly provide that they may be revised to correct for population imbalances after a census, in which case you may proceed under the boundary-revision statutes.[10]

If the boundaries were set by action of the governing board, then you may proceed under the boundary-revision statutes.

May the General Assembly do the redistricting for you?

Yes, if it is willing to do so, except perhaps in the case of districts set by court order. The General Assembly retains the power to draw your district lines by local act. If it exercised that power, it could handle problems that might prove tricky for the local board, like assigning incumbents to districts or shortening current incumbents' terms. For more discussion of this subject, see the later section on incumbency protection.

Are you required to redistrict?

Population imbalance triggers the obligation to redistrict. Through much of American history, the courts did not

impose an obligation to redistrict even when populations became extremely imbalanced. After the 1960 census, for example, of twenty states retaining the same number of members in the U.S. House of Representatives as they had been allocated after the 1950 census, not one redistricted. Among them were Georgia, which had last redistricted in 1931; Colorado and Connecticut, in 1921; Idaho and Montana, in 1917; Louisiana, in 1912; and New Hampshire, in 1881.

The issue came to a head in two U.S. Supreme Court cases in the early 1960s. In the first, *Baker v. Carr*,[11] the Court for the first time recognized that population imbalances in electoral districts may violate the Equal Protection Clause of the Fourteenth Amendment. In the second, *Reynolds v. Sims*,[12] the Court for the first time held a legislative districting plan to be unconstitutional on the basis of population imbalance. In that case the thirty-five districts of the Alabama Senate varied in population from 15,417 to 634,864. The spread in the state House of Representatives was even greater. Advancing the notion that came to be called "one man, one vote" (later, "one person, one vote"), the Court said that "the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise."[13] These early cases dealt with redistricting for elections to state legislatures. The Court soon made clear that the one-person/one-vote principle applied to local elections as well.[14]

How do you know whether you *should* redistrict after the 2000 census?

In determining whether there is substantial equality in population among districts, courts routinely apply a "10 percent rule." Local jurisdictions can use this rule too. It works like this: Divide the new population by the total number of seats. That gives you the "ideal" population per seat. Next, apply the new census numbers to your old election districts. Look at the new population of your most populous district, and figure the percentage by which it exceeds the ideal population. Next, look at the population of the least populous district, and figure the percentage by which it is short of the ideal district. Now add those two percentages. If the total is 10 percent or more, you should redistrict.

The 10 percent rule is court made, not statutory, and its effect is a highly technical, legal one.[15] It serves as the method by which courts allocate the burden of proof in a lawsuit regarding whether a districting plan violates the one-person/one-vote principle. A deviation of 10 percent or more automatically establishes a prima facie violation. The burden of proof is then on the city, the county, or the school system to justify the deviation by showing a rational and legitimate policy for the inequality in districts—be they old districts that have become unbalanced or new districts that have been drawn with such a deviation. This is a difficult task. If the maximum deviation is less than 10 percent, on the other hand, the courts consider the population disparity minimal, and the city, the county, or the school system "is entitled to a presumption that the apportionment plan was the result of an honest and good faith effort to construct districts . . . as nearly of equal population as is practicable."[16]

Advancing the notion that came to be called "one man, one vote" (later, "one person, one vote"), the Court said that "the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise."

Are you *required* to redistrict if the numbers show an imbalance of 10 percent or higher?

Yes, even though not all the statutes directly say so. For cities the applicable statute explicitly requires city councils to review the 2000 census data to "determine whether it would be lawful to hold the next election without revising districts to correct population imbalances."[17] For counties there is no *requirement* in the North Carolina statutes that they correct a population imbalance after the census; there is only *authorization* for them to do so. The statute provides that the county commissioners "may by resolution redefine the electoral districts."[18] By contrast, the statute for school systems appears to require redistricting: "The local board of education shall revise electoral district boundaries from time to time as provided in this subsection."[19]

Even in the absence of a statutory requirement, however, city council members, county commissioners, and school board members are obligated by the oaths they take (in which they pledge to uphold the U.S. Constitution)—and should be motivated by the fear of liability in a lawsuit—to redraw districts promptly to redress imbalances.

Do you count people not eligible to vote?

Yes. Provisions in the North Carolina statutes call for substantial equality among districts based on total population. For cities the statute specifies "the same number of persons as nearly as possible"; for counties, the statute speaks of assigning "the population" to districts that are "as nearly equal as practicable"; and for school systems, the statute addresses "correcting population imbalances."[20] In each case the statute clearly contemplates consideration of total population, which will include some people who are not eligible to vote. The largest group will be people under eighteen years of age.

To comply with these statutes, cities, counties, and school systems should use the census numbers that count all residents, whether or not they are eligible to vote. That is, in figuring whether there is a 10 percent deviation, you should count people under the age of eighteen and nonresident citizens, including military personnel assigned locally and inmates in state correctional or medical facilities.[21]

In the mid-1990s the voters of Mecklenburg County approved changes in the methods of election of their county commissioners and school board members, moving from at-large elec-

tions to a mix of at-large and single-member districts, using the same districts for both the commissioners and the school board members. The deviation between the most populous district and the least populous district was 8.33 percent, well within the 10 percent rule. But if the comparison had been based solely on voting-age population (that is, not counting people under age eighteen), the deviation would have been 16.17 percent. This difference arises because the proportion of people under eighteen is higher among nonwhites than among whites, so districts with high concentrations of nonwhites will have a lower proportion of voting-age people than districts with high concentrations of whites. In a lawsuit the claim was put forward that this 16.17 percent deviation among the voting age population violated the one-person/one-vote principle. The federal district court agreed, but the federal circuit court of appeals overturned the district court's decision, holding that the constitutional requirements are satisfied by deviations under 10 percent based on total population as reflected in the census.[22] This federal appeals court decision cites with favor the North Carolina total-population statutes.

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What procedures are required?

The statutes clearly place the authority for redistricting in the hands of the city council members, the county commissioners, and the school board members. For cities and school systems, no particular procedures are specified. For counties the statute sets out a requirement that the commissioners find as a fact "whether there is substantial inequality of population among the districts."[23] The commissioners should by formal action make such a finding. For "substantial inequality" the board may rely on the 10 percent rule, described earlier. If the commissioners find that there is a substantial inequality, they may draw new districts.

Should you embody the new districts in an ordinance or a resolution or some other action?

For counties the statute requires that the redefined districts be set out in a resolution.[24] For cities and school systems, the statutes do not specify particular forms. Cities may employ either ordinances or resolutions; if the election districts were embodied in an ordinance the last time they were drawn, the city should stick to the ordinance format. School boards do not have the authority to adopt ordinances, so a resolution is the proper format.

For cities and counties, there are direct statutory requirements that city and county maps show the boundaries.[25] There is no corresponding requirement for school systems; nonetheless, a map is imperative.

Even in the absence of a statutory requirement, . . . city council members, county commissioners, and school board members are obligated by the oaths they take (in which they pledge to uphold the U.S. Constitution)—and should be motivated by the fear of liability in a lawsuit—to redraw districts promptly to redress imbalances.

Left, a precinct official assists a voter with disabilities. Below, a young mother votes while her son looks on.

News & Observer / John Rottet

Should you have public hearings?

The answer to this question will depend on local circumstances. Cities, counties, and school systems are all free to adopt additional procedures if they wish. They might, for example, appoint a citizen advisory board to study the redistricting question and propose new boundaries. The danger, of course, is that the advisory board will come up with a plan that the governing board does not like, and the result is a political problem. The board might conduct public hearings or in some other way establish procedures for public comment.

There is no requirement that the board obtain public input, but doing so may be a very good idea for two reasons. First, it demonstrates that the board is responsive to the people on an issue as fundamental as the election of their representatives. Second, a hearing (or another input mechanism) may be helpful in achieving preclearance of the redistricting plan for cities, counties, and school systems subject to the requirements of Section 5 of the Voting Rights Act of 1965, discussed later.

A public hearing, if held, will likely be most effective if a couple of alternative plans are available for discussion. They will help focus the comments and provide a meaningful context. Citizens attending should be permitted to present their own plans.

Should you hire outside consultants?

There are valid reasons to consider hiring outside consultants and valid reasons not to do so. In some instances, of course, redistricting will not be necessary at all—where population change has not been great and the 10 percent rule is not violated. In some other instances, even where the imbalance does exceed 10 percent, it will be possible with relatively straightforward effort to bring the districts into compliance. The duty to come up with a proposal can be delegated to the manager or to the city's or county's planning staff, for instance, to work in conjunction with the unit's attorney. There is a political bomb waiting to explode, however, if the redrawing necessitates pitting incumbents against one another, and the manager or the staff may not wish to be involved.

Consultants, on the other hand, bring two great advantages. First, if they are carefully chosen, they bring expertise. They should have skills in assessing the census data that exceed the skills likely to be found on the board or the staff. Also, they should be thoroughly familiar with the legal considerations involved in the one-person/one-vote principle, discussed earlier, and in the tricky notions of racial fairness and equal protection, discussed later. Second, consultants can lend the process a sense of fairness—they are outsiders brought in, not insiders protecting themselves—and they can be blamed if things go wrong.

Can you consider redistricting in closed sessions?

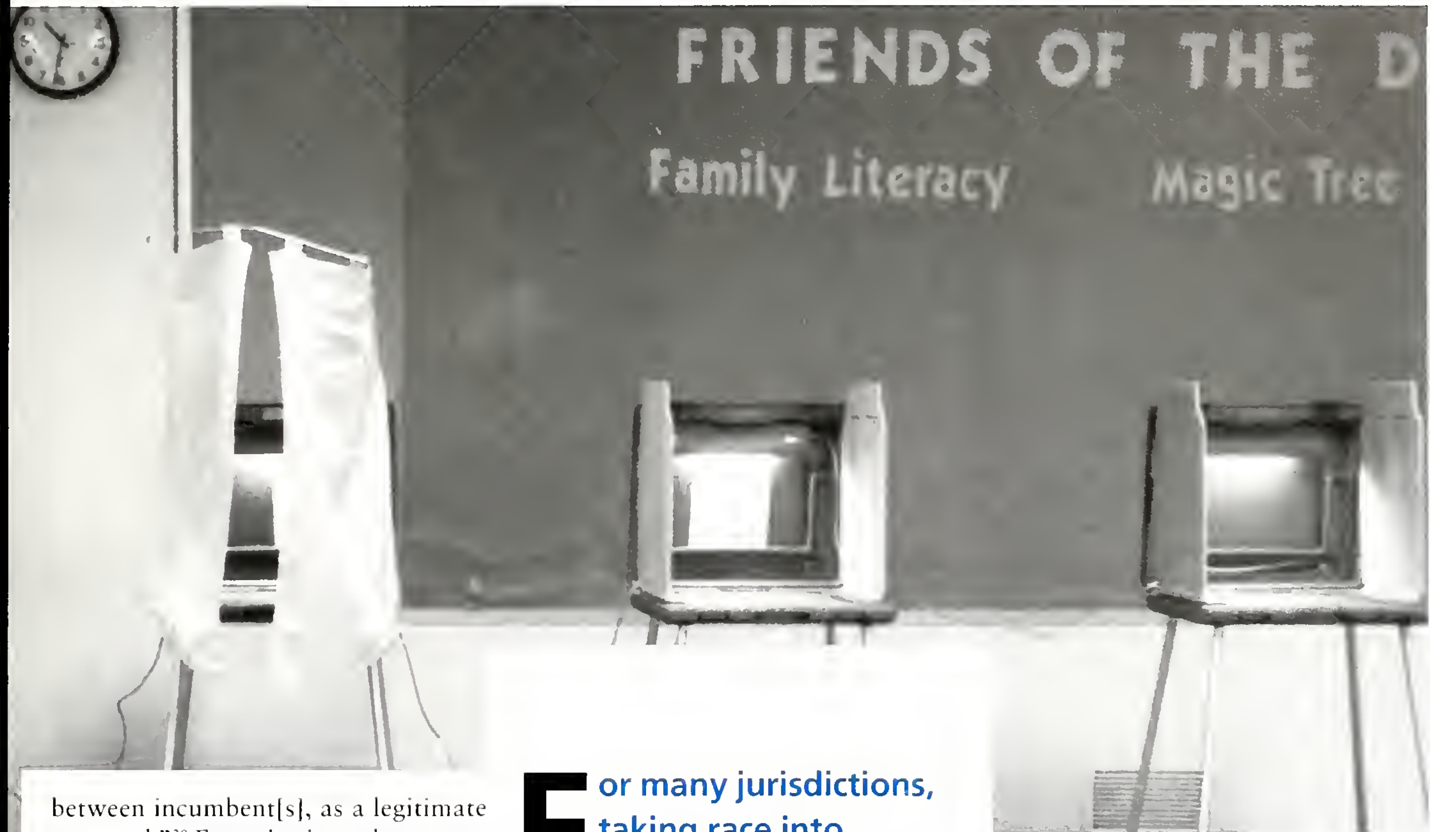
No. The open meetings law requires that meetings of public bodies be open to the public, except for particular subjects set out in the statute.[26] Redistricting is not an exception. If the board sets up a committee of board members to work on redistricting, the meetings of that committee too must be open. Work by staff on the project is not subject to the statute, however.

Can you keep drafts of tentative plans secret?

Not completely, no. The North Carolina Supreme Court has interpreted the state's public records law,[27] which gives citizens the right to see and copy most documents made or received in the course of the government's business, to include preliminary drafts of documents.[28] At what point a working document becomes a preliminary draft subject to the requirements of public inspection is a matter not fully settled in the law.[29] The safe procedure is to assume that once a redistricting map is recognizable as such, it is probably a public record.

May you protect incumbents?

Yes. The U.S. Supreme Court has recognized "incumbency protection, at least in the limited form of avoiding contests



News & Observer / John Rottet

between incumbent[s], as a legitimate state goal."[30] Expecting incumbent members of a city, county, or school governing board not to look out for their own interests is asking too much.

It is fully defensible to make every effort to ensure that, after redistricting, no two incumbents share a district. Demographics and other considerations may make it unavoidable, however, and in that case, incumbents will face one another. Board Member A, elected from District 1, may find himself, after redistricting, residing in District 2, along with Board Member B. In that case, until the next election, District 1 will have no member living within it and no one directly representing it. An effort should be made to avoid this undesirable situation, but it may occur. In no event, however, may the redistricting work to shorten any member's term[31] unless the redistricting is done by the General Assembly through a local act.

A problem may arise when, because of staggered four-year terms, only some members of the board will be up for reelection at the election immediately following redistricting and others will be up two years after that. In that instance Board Member A, whose residence is redistricted from District 1 to District 2 but who is not up for election at the next election, may find himself with a choice down the line. If the District 2 seat is up at the next election, someone will be elected from District 2 in that election. Board Member A may choose to file to run then (perhaps against Board Member B, who has remained in District 2 all along, or perhaps against someone else). If Board Member A wins, then he becomes the representative from District 2, and a vacancy is created in District 1. If Board Member A loses, then he remains in office for two more years until his original term expires. At that point he has no seat to run for, since he resides in District 2 and the District 2 seat is not up then.

For many jurisdictions, taking race into account in drawing new district lines will be the most difficult part of the redistricting process. Race is typically a politically challenging issue, and in the politics of redistricting, it is especially challenging.

How do you take race into account?

For many jurisdictions, taking race into account in drawing new district lines will be the most difficult part of the redistricting process. Race is typically a politically challenging issue, and in the politics of redistricting, it is especially challenging. As difficult as the politics of the matter are, however, the legal issues involved may be even more difficult.

Why are the legal issues so difficult?

In 2001 the nation finds itself at the uneasy intersection of two important legal standards: the Voting Rights Act of 1965 and the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. The law under the Voting Rights Act has been developing for more than three decades, and jurisdictions faced with redistricting after the 1990 census focused on its requirements as a primary legal concern. In the 1990s, however, a body of law began developing under the Equal Protection Clause. It is not yet fully formed, but it has drawn directly into question the former legal interpretations of the requirements of the Voting Rights Act.

Table 2. **North Carolina Counties Subject to Section 5 of the Voting Rights Act**

Anson	Edgecombe	Hoke	Person
Beaufort	Franklin	Jackson	Pitt
Bertie	Gaston	Lee	Robeson
Bladen	Gates	Lenoir	Rockingham
Camden	Granville	Martin	Scotland
Caswell	Greene	Nash	Union
Chowan	Guilford	Northampton	Vance
Cleveland	Halifax	Onslow	Washington
Craven	Harnett	Pasquotank	Wayne
Cumberland	Hertford	Perquimans	Wilson

Note: All cities and school systems within these counties also are subject to the preclearance requirement.

Below, college students register voters during a campus drive. Redistricting will not *require already-registered voters to re-register.*

News & Observer / Seshu Badrinath

Are you covered by the Voting Rights Act?

Yes, you are covered by the Voting Rights Act, along with every other part of the United States, but that answer is a little misleading. Frequently when people say, "We are covered by the Voting Rights Act," or "We are a Voting Rights Act county," they are using shorthand to mean that their jurisdiction is covered by a particular part of the act known as Section 5.[32] Section 5 applies only to certain governmental units that had especially low voter-registration rates when the Voting Rights Act was passed. In effect, those jurisdictions were presumed to have been discriminating. Most southern states are entirely under Section 5, but only forty North Carolina counties are subject to it.

To prevent the introduction of new election procedures that adversely affect minority voting, governmental units subject to Section 5 must obtain approval from the U.S. Department of Justice before making any change in election procedures. The approval procedure is commonly referred to as "preclearance."[33]

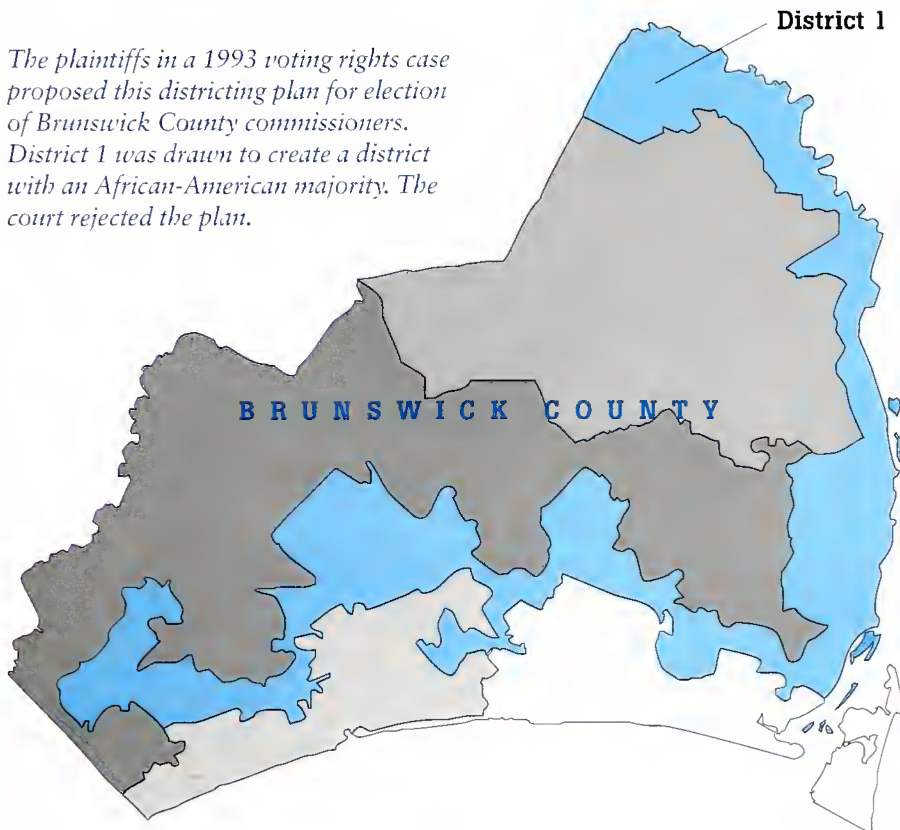
In a Section 5 county, do you have to submit your redistricting plan for preclearance?

Yes. Any change in election procedures in any of those forty counties must be precleared. (For the identities of the counties, see Table 2. The requirement applies to all governmental units within these counties, including cities and school systems.) Examples include a switch to or from an at-large election system, any change in the term of office for an elected position, municipal annexations, moving of polling places or precinct lines, new office hours for the board of elections, conversion from paper ballots to voting machines, and, of course, redistricting. Because any statewide election law or procedure change obviously affects those forty counties, all such changes must be precleared before they can become effective.

The Justice Department reviews each such change to determine whether the change makes it less likely that African-Americans or other minorities will be able to elect candidates of their choice. This standard is known as "retrogression."[34] The question, in effect, is whether the change makes things worse for minorities. The department objects to few changes, but it is most likely to challenge certain kinds of changes, including annexations, changes in the method of election (from district to at-large elections, for example), and alterations in district lines. An objection from the department may be the start of negotiations between the governmental unit and federal officials to alter the proposed change to

Figure 1. **Districting Plan Proposed in 1993 for Election of Brunswick County Commissioners**

The plaintiffs in a 1993 voting rights case proposed this districting plan for election of Brunswick County commissioners. District 1 was drawn to create a district with an African-American majority. The court rejected the plan.



Source: Michael Crowell, of Tharrington Smith, Raleigh, LLP, attorneys for Brunswick County in the 1993 case

If, for example, 30 percent of a county's population consists of African-Americans but none have ever been elected to the five-member board of commissioners, that is strong evidence that the method of election is discriminatory.

make it acceptable. If a change is made without department approval or without ever having been submitted for preclearance, the department is likely to go to court to stop its implementation.

How does the submission work?

State law sets the responsibility for submitting changes for preclearance.[35] The State Board of Elections is responsible for submitting statewide changes that affect all governmental units in the state. City and county attorneys are responsible for those that apply only to their jurisdictions. Changes concerning school systems are to be submitted by the board attorneys.

The rules for making a preclearance submission are found in the Code of Federal Regulations.[36] No change can go into effect until it has been precleared. Once the submission is made, the Justice Department has sixty days either to object to the change (as retrogressive) or to ask for more information.

Once the Justice Department makes its final decision on a local preclearance request, the notification letter must be filed by the local attorney with the North Carolina Office of Administrative Hearings for publication in the *North Carolina Register*.

What if you are not in a Section 5 county?

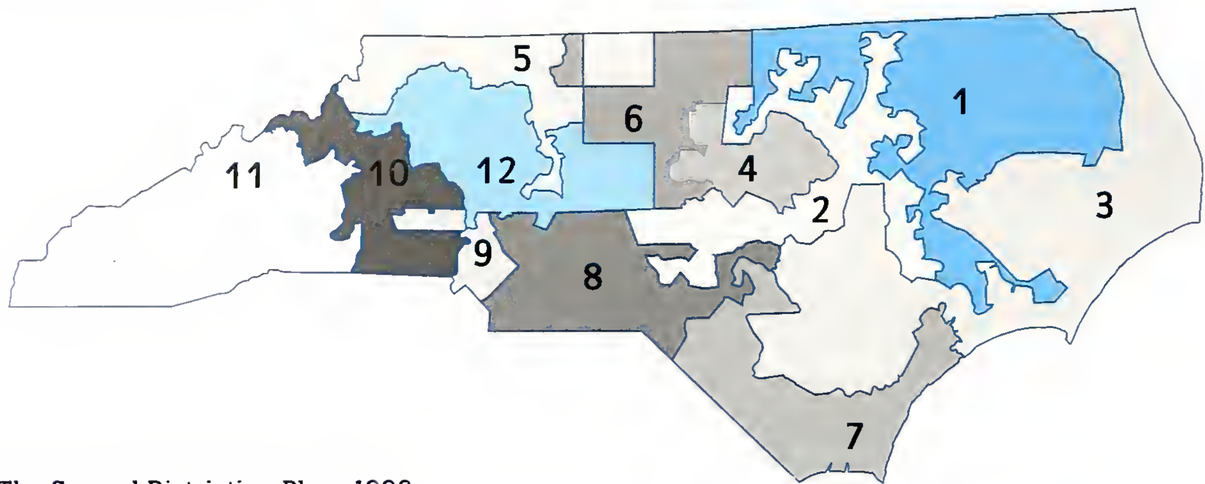
You still are covered by the major part of the Voting Rights Act, Section 2.[37] Section 2 prohibits all states, cities, counties, and other political units from setting voting qualifications or using election procedures that deny or abridge the voting rights of minorities. A person who believes that any governmental unit has such a qualification or procedure may sue in federal court to have it invalidated under Section 2.

The most common subject matter for these lawsuits is a challenge to methods of conducting elections that make it harder for African-Americans to be elected, especially the use of at-large elections.

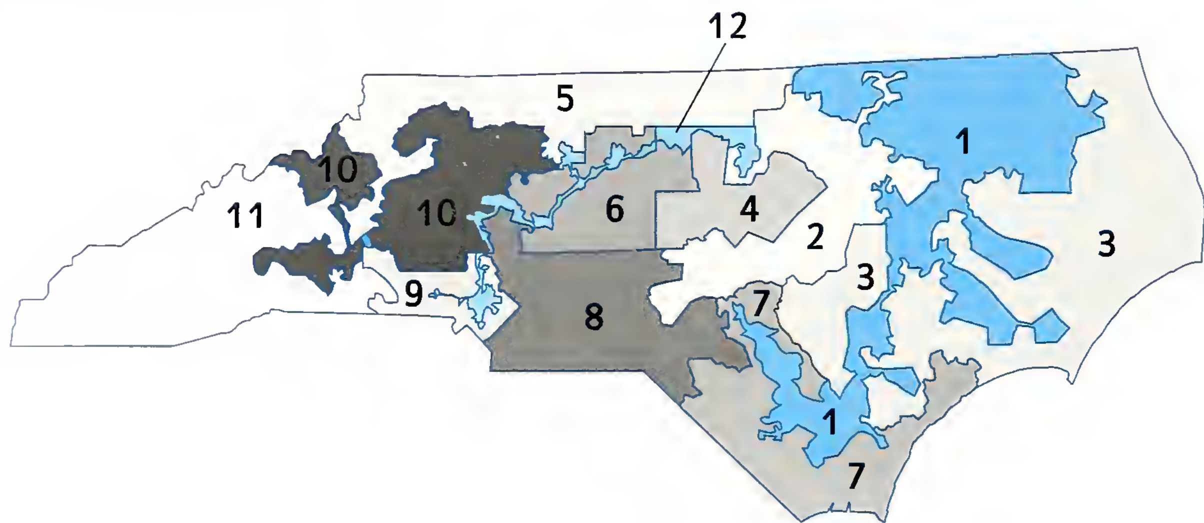
The two issues at the heart of such lawsuits are the extent to which African-Americans have been elected to office under the election system being challenged and whether voting is polarized along racial lines. If, for example, 30 percent of a county's population consists of African-Americans but none have ever been elected to the five-member board of commissioners, that is strong evidence that the method of election is discriminatory. If, in addition, statistical analysis shows that whites seldom vote for African-American candidates in that county—generally the case in North Carolina—then the court will need to consider requiring an election method that provides African-Americans with an opportunity to elect candidates without depending on white support. The leading U.S. Supreme Court decision setting out these Section 2 requirements, *Thornburg v. Gingles*,[38] involved North Carolina's multimember districts for electing members of the General Assembly.

Traditionally in North Carolina, most governing boards were elected at large. In cities, counties, and school districts that have significant African-American populations but a sparse record of electing African-Americans to the board, Section 2 lawsuits—or threats of Section 2 lawsuits—have been used to force a conversion to a different method of election. The courts' usual remedy has been to require the jurisdiction to switch to a system in which it is divided into sever-

Map 1. **The Original Districting Plan for Electing North Carolina's Representatives to the U.S. House, 1991 (following the 1990 census)**



Map 2. **The Second Districting Plan, 1992**



al districts and only the voters of each district vote for the seat representing that area—single-member districts. By creating districts with predominantly African-American populations, the court can give African-Americans a much better opportunity to elect candidates of their own choosing than they would have with an at-large election system.

Because of the outcomes in these cases, advice given to units of local government typically ran like this: If you can draw a district boundary for creating a district with an African-American majority, do so. Then draw the other districts around that district to fit. If you can draw two districts with African-American majorities, do so, and draw the remaining districts to fit. Following this advice, cities, counties, and school systems sometimes came up with oddly shaped districts (see Figure 1, page 11).

This common advice came into question—and the creation of the oddly shaped districts slowed down dramatically—when another North Carolina districting case came to the U.S. Supreme Court in the mid-1990s. That case, *Shaw v. Reno*,[39] looked at the intersection of the requirements of Section 2 of the Voting Rights Act and the Equal Protection Clause of the Fourteenth Amendment.

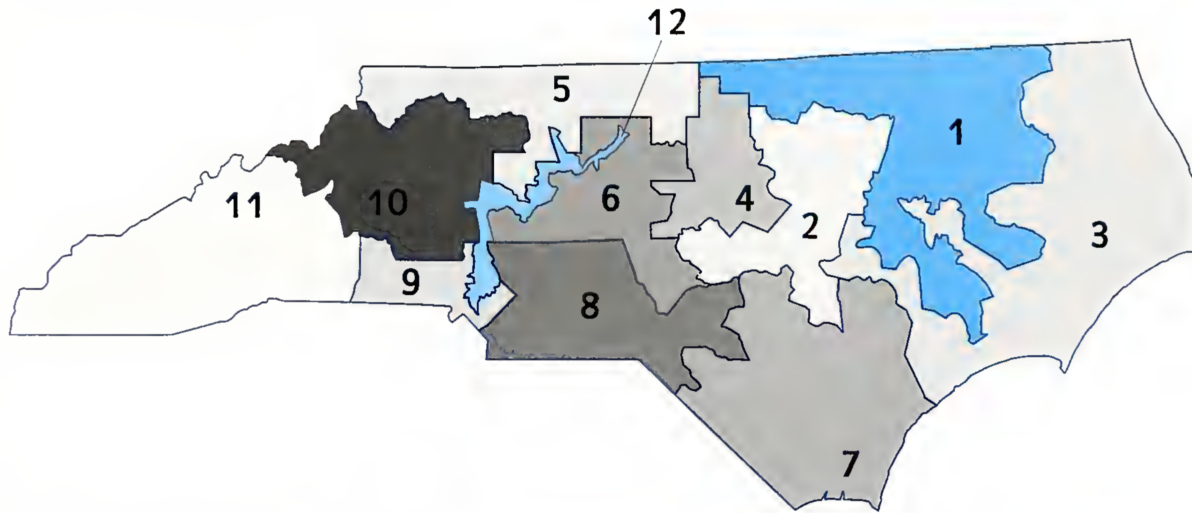
What happened in the *Shaw* case?

In 1991, following the national census of 1990, the General Assembly drew the districts for electing the state's twelve members of the U.S. House of Representatives, creating 11 that had white majorities and 1, district 1, that had an African-American majority (see Map 1). In so doing, the legislature was applying the advice described earlier, commonly given for complying with Section 2 of the Voting Rights Act.

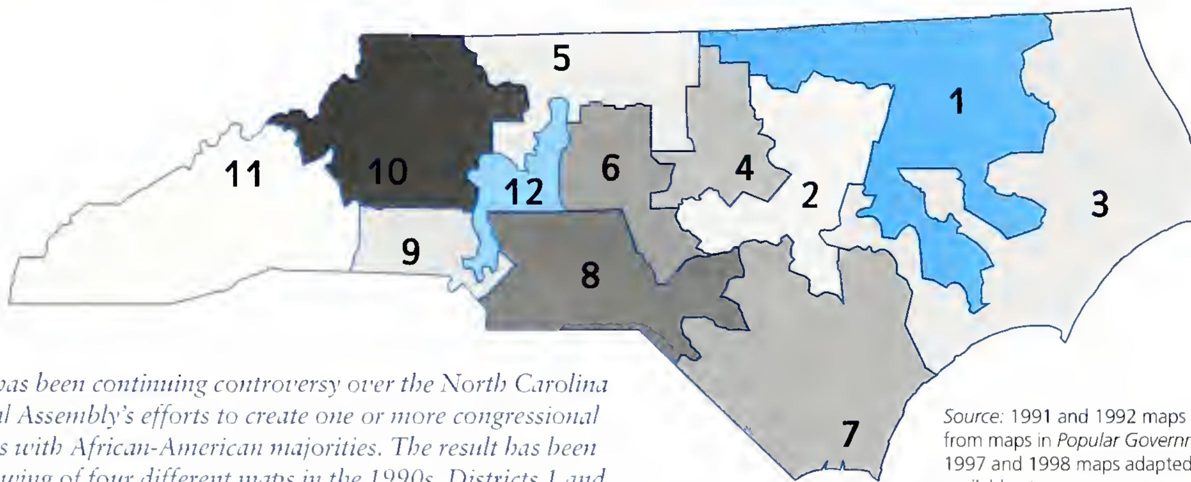
That districting plan was submitted for preclearance, and the Justice Department disapproved the plan. It would have been possible, the Justice Department said, to create two districts with African-American majorities, and the failure to do was a violation of Section 2.

So in 1992 the General Assembly adopted a second plan, creating two districts with African-American majorities, districts 1 and 12, both with very odd shapes (see Map 2). The Justice Department approved the new plan, but several white citizens sued, claiming that the General Assembly had made an unconstitutional use of race in drawing the lines. In *Shaw v. Reno* the U.S. Supreme Court held that the use of race in draw-

Map 3. **The Third Districting Plan, 1997**



Map 4. **The Fourth Districting Plan, 1998**



There has been continuing controversy over the North Carolina General Assembly's efforts to create one or more congressional districts with African-American majorities. The result has been the drawing of four different maps in the 1990s. Districts 1 and 12 have been the focus of much of the attention.

Source: 1991 and 1992 maps adapted from maps in *Popular Government* archives; 1997 and 1998 maps adapted from maps available at www.ncga.state.nc.us/Redistricting/Dist_Plans/distplanshome.html

ing district lines may in fact constitute a violation of the Equal Protection Clause of the Fourteenth Amendment, especially when, to achieve African-American majority districts, the shape of the districts must be drawn very oddly.

The matter came back to the Supreme Court in 1996, and in *Shaw v. Hunt*,[40] the Court held that the districting plan did in fact violate the Equal Protection Clause. As a result, in 1997 the General Assembly adopted yet another plan (its third), with one majority African-American district, district 1, and one district nearly evenly split but majority white, district 12 (see Map 3). The Justice Department approved the new plan, but in early 1998 a federal district court struck it down as violating the Equal Protection Clause and ordered the General Assembly to redraw the lines once again. The General Assembly did so (its fourth 1990s plan—see map 4), but it appealed the order striking down the 1997 plan. The Supreme Court sent the matter back to the federal district court to consider again, and in early 2000 the district court once more declared it unconstitutional. The state appealed, and in April 2001 the Supreme Court found the plan constitutional, holding that political considerations, not race, were dominant in drawing the plan.

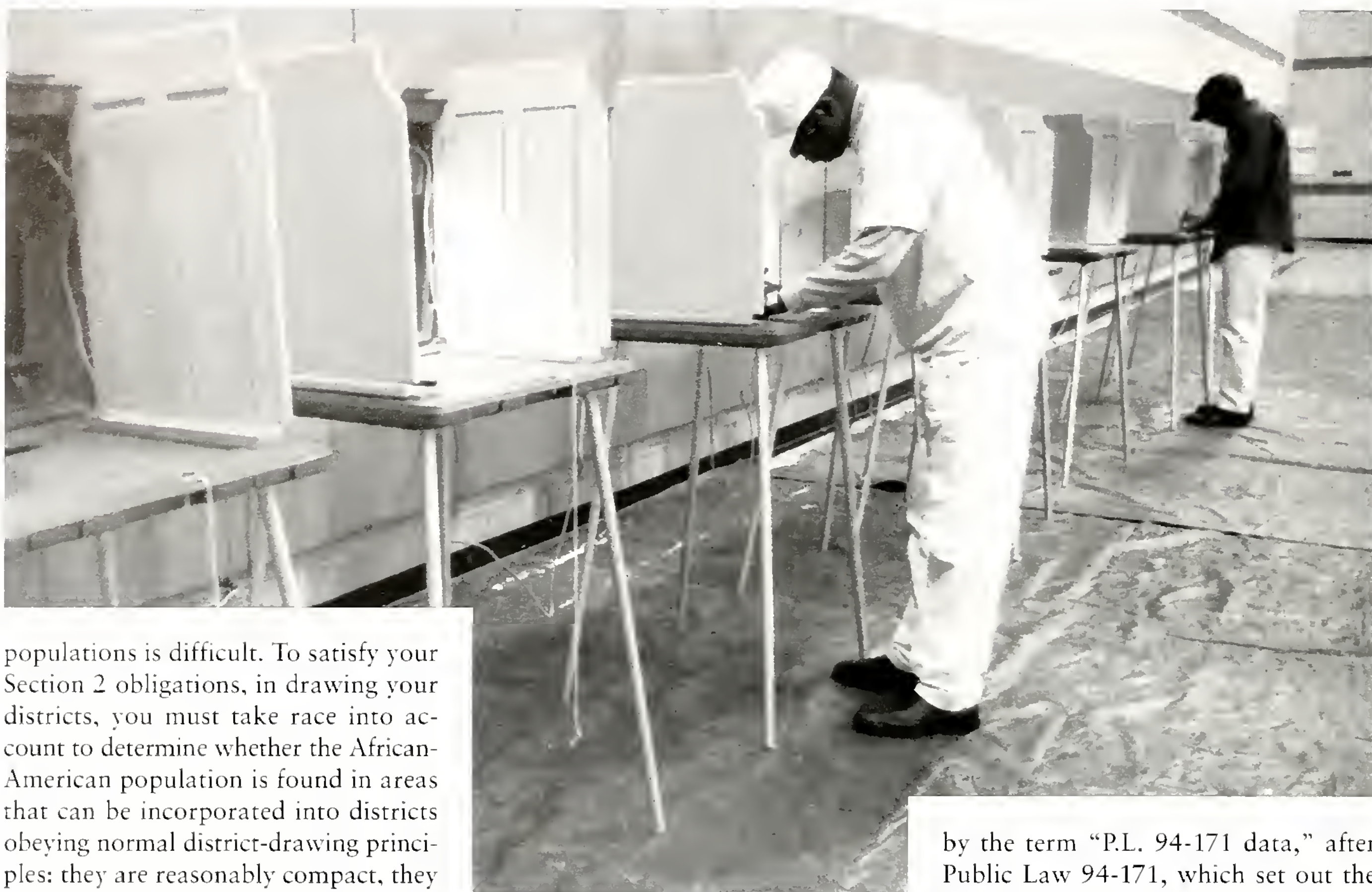
What do the *Shaw* decisions mean for you in drawing districts?

The *Shaw* decisions mean at least two things. First, there is a violation of the Equal Protection Clause if a board, in drawing the district lines, makes race the "dominant and controlling" consideration.[41] Second, the creation of very oddly shaped "majority-minority districts" (districts in which a minority group is the majority) will be considered as strong evidence of unlawful consideration of race. As the Supreme Court said,

> *[W]e believe that reapportionment is one area in which appearances do matter. A reapportionment plan that includes in one district individuals who belong to the same race, but who are otherwise widely separated by geographical and political boundaries, and who may have little in common with one another but the color of their skin, bears an uncomfortable resemblance to political apartheid.*[42]

What do you do?

The task for cities, counties, and school systems in areas with sizeable minority


NEWS & OBSERVER/JUDITH SIVIGLIA

populations is difficult. To satisfy your Section 2 obligations, in drawing your districts, you must take race into account to determine whether the African-American population is found in areas that can be incorporated into districts obeying normal district-drawing principles: they are reasonably compact, they incorporate natural dividing lines such as major roads, and they bring together people with common interests. If you can do that, it is probably lawful to take race into account. If you cannot, then you must not go further to try to draw majority-minority districts. Creating non-compact districts for the sake of achieving majority-minority districts is almost certainly, in the words of the Supreme Court, allowing race to become the dominant and controlling factor.

The task is especially great for cities, counties, and school systems that are subject to Section 5's preclearance requirements under the retrogression standard. If a jurisdiction has created majority-minority districts in the past, with less-than-compact design, how can it in 2001 both (1) avoid a *Shaw* problem by not drawing unusually shaped districts again and (2) avoid retrogression? Unfortunately, the answer is not clear.

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How do you use the census numbers?

The U.S. Bureau of the Census counted the nation's population in April 2000. It spent the following months sorting and analyzing the data that it had accumulated. By April 2001 the Census Bureau expects to have available the data that cities, counties, and school systems will need for redistricting. Those data go by the term "P.L. 94-171 data," after Public Law 94-171, which set out the information-reporting requirements. The bureau will produce paper maps showing the information.

The data can be used in conjunction with what are known as TIGER (Topologically Integrated Geographic Encoding and Referencing) files.[43] The TIGER files are not maps. They contain digital data describing geographic features such as railroads, rivers, lakes, political boundaries, and census statistical boundaries. A jurisdiction can purchase the relevant TIGER files from the bureau for a nominal price.

To use the TIGER files and the population data, a jurisdiction will need mapping or Geographic Information System software that can incorporate all the information. In larger jurisdictions, planning departments already may have software capable of analyzing the information. Other jurisdictions may wish to purchase it from commercial vendors. The National Conference of State Legislatures has identified seven vendors that have demonstrated their services for drawing districting plans. They can be found at http://www.tlc.state.tx.us/tlc/research/ncls/vendors.htm.

In small jurisdictions or in jurisdic-

tions where the population change has been small, it may be possible to rely totally on census data provided in paper form combined with paper maps. In more complex situations, the versatility of the software programs may be very helpful. Jurisdictions that purchase the software and undertake the manipulation of the data themselves must keep in mind the lessons of *Shaw* with respect to the use of racial data. The ease of manipulation—figuring the exact racial makeup and drawing practically any boundary desired—may result in unconstitutional considerations of race.

Finally, a potential resource exists at the General Assembly. As mentioned at the outset of this article, the legislature is responsible for redrawing the districts for elections to the state House of Representatives, the state Senate, and Congress. For those purposes it has purchased sophisticated hardware and software. In the 1990 redistricting, legislative staff assisted several local jurisdictions in drawing district boundaries, and they stand available again. A request for such assistance must be received by the staff from a member of the legislature, and it must be worked into available staff time. This capability may be a very valuable resource.

By what date must you have completed the redistricting?

Counties should have their new districts drawn in time for the beginning of candidate filing for county commissioner seats in January 2002. School systems generally have their elections at the same time as counties, so they also should have their new districts drawn by January 2002.

Cities have a special problem in that their candidate-filing period begins in July 2001.[44] Because drawing new districts and preclearing them (if necessary) by the candidate-filing deadline might not be possible, the General Assembly passed a statute permitting delay of the 2001 elections to 2002 if necessary and spelling out how that will work.[45]

Notes

1. Section 160A-101 of the North Carolina General Statutes for cities, Section 153A-58 for counties. Hereinafter the North Carolina General Statutes will be referred to as G.S.
2. Dusch v. Davis, 389 U.S. 112 (1967); Dallas County, Ala. v. Reese, 421 U.S. 477 (1975).
3. G.S. 153A-23(g).
4. G.S. 160A-23(b) for cities, G.S. 153A-22 for counties, and G.S. 115C-37(i) for school systems.
5. Technically, a local bill is one that affects fewer than fifteen counties, and a public bill is one that affects fifteen or more counties. For a discussion of local acts, *see* JOSEPH S. FERRELL, THE GENERAL ASSEMBLY OF NORTH CAROLINA: A HANDBOOK FOR LEGISLATORS 28–34 (7th ed., Chapel Hill: Inst. of Gov't, The Univ. of N.C. at Chapel Hill, 1997).
6. The statutes are G.S. 160A-101 through -111 for cities and G.S. 153A-58 through -64 for counties.
7. G.S. 160A-23(b) for cities, G.S. 153A-22 for counties, and G.S. 115C-37(i) for school systems.
8. G.S. 160A-23 for cities and G.S. 153A-23 for counties.
9. G.S. 115C-37(i).
10. G.S. 160A-23(b) for cities, G.S. 153A-22 for counties, and G.S. 115C-37(i) for school districts.
11. Baker v. Carr, 369 U.S. 186 (1962).
12. Reynolds v. Sims, 377 U.S. 533 (1964).
13. *Reynolds*, 377 U.S. at 555.
14. Avery v. Midland County, 390 U.S. 474 (1968).
15. *See* Daly v. Hunt, 93 F.3d 1212, 1220 (4th Cir. 1996) (involving county commission and school board districts for Mecklenburg County, N.C.); Chen v. City of Houston, 206 F.3d 502, 522 (5th Cir. 2000) (involving municipal election districts).
16. *Daly*, 93 F.3d at 1220 (internal quotation marks omitted), quoting *Reynolds*, 377 U.S. at 577.
17. G.S. 160A-23.1.
18. G.S. 153A-23(b).
19. G.S. 115C-37(i).
20. G.S. 160A-101(6) for cities, G.S. 153A-22(c) for counties, and G.S. 115C-37(i) for school systems.
21. Garza v. County of Los Angeles, 918 F.2d 763 (9th Cir. 1990); Davis v. Mann, 377 U.S. 678 (1964).
22. Daly v. Hunt, 93 F.3d 1212, 1227 (4th Cir. 1996).
23. G.S. 153A-22.
24. G.S. 153A-23(b).
25. G.S. 160A-23(a) and 163A-22 for cities and G.S. 153A-20 for counties.
26. G.S. 143-318.9 through -318.17.
27. G.S. 132-1 through -10.
28. News and Observer Publishing Co. v. Poole, 330 N.C. 465, 412 S.E.2d 7 (1992).
29. *See* David M. Lawrence, PUBLIC RECORDS LAW FOR NORTH CAROLINA LOCAL GOVERNMENTS 11–15 (Chapel Hill: Inst. of Gov't, The Univ. of N.C. at Chapel Hill, 1997).
30. Bush v. Vera, 517 U.S. 952, 964 (1996) (internal quotation marks omitted).
31. The county statute, G.S. 153A-22(c), specifically so provides: "No change in the boundaries of an electoral district may affect the unexpired term of office of a commissioner residing in the district and serving on the board on the effective date of the resolution." The city and school system statutes do not contain such an explicit provision, but there also is no authorization anywhere in the statute for boards to shorten members' terms.
32. 42 U.S.C. § 1973c.
33. It also is possible to seek preclearance in federal district court in Washington, D.C. Further, it is possible for a jurisdiction, such as a city, a county, or a school system, to "bail out," or remove itself, from the preclearance requirements of Section 5. Generally, to bail out, the jurisdiction must show the federal district court for the District of Columbia that, for the previous ten years, (1) it has not been found in violation of the Voting Rights Act, (2) it has not used a discriminatory procedure, (3) it has precleared all changes that were required to be precleared, and (4) it has taken positive steps to increase participation by minorities in the election process. The necessary showing is generally considered onerous and is seldom undertaken.
34. See Reno v. Bossier Parish School Bd., 528 U.S. 320 (2000), for a recent discussion by the Supreme Court of retrogression.
35. G.S. 120-30.9A through -30.9I.
36. 28 C.F.R. pt. 51.
37. 42 U.S.C. § 1973.
38. Thornburg v. Gingles, 478 U.S. 30 (1986).
39. Shaw v. Reno, 509 U.S. 630 (1993) ("Shaw I").
40. Shaw v. Hunt, 517 U.S. 899 (1996) ("Shaw II").
41. *Shaw II*, 517 U.S. at 905. *See also* Miller v. Johnson, 515 U.S. 900 (1995).
42. *Shaw I*, 509 U.S. at 647.
43. *TIGER Overview* (visited Jan. 14, 2001), available at http://www.census.gov/geo/www/tiger/overview.html.
44. G.S. 163-291 and -294.2.
45. G.S. 163-23.1.

ESSAY

The Public Policy Challenges of Payday Lending

Michael A. Stegman

For the same reasons that communities can neither grow nor renew themselves without access to capital markets, families without bank accounts or access to affordable credit are less likely than other Americans to have a cushion for emergencies, to save for a home, or to build retirement security. This is why matters of credit and consumer finance are an important area of public policy. This is also why policy makers should be concerned that, despite a booming national economy and the lowest unemployment rates in a generation, 10 percent of all families—including 25 percent of African-Americans and Hispanics and a quarter of all families with incomes under $20,000—are "unbanked."[1] But having a checking account is not the same as using credit wisely. Nationwide, and in North Carolina, many families who do have checking accounts frequently pay a high price when conventional banks are either unwilling or unable to meet their acute credit needs. For people who cannot or choose not to obtain credit from mainstream lenders, the growing network of "fringe banks"—check cashers, payday lenders, and pawnbrokers—can be both a blessing and a curse.

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Rebekah O'Connell

Consumer credit counselor at Triangle Family Services

"It'd be great if it was the middle class and it was just the plumber and all they need is $200 this one time to get them by. But that's just not the reality. These are people who are really not making it. . . . They're not fixing a blown tire or a pipe—they're paying the rent.

"[Payday lenders are] taking advantage of people in time of need. . . . We've got to get some controls on the interest rates. Three, four hundred percent? There ought to be a law."

Simply put, payday loans are high-interest, short-term loans, backed by postdated personal checks, that borrowers promise to repay out of their next paycheck.[2] In North Carolina, state law sets a ceiling of $300 on the amount that can be borrowed at any one time, limits fees to 15 percent of the amount borrowed (which works out to $45 on a $300 loan), and provides for a maximum term to maturity of thirty-one days.[3] In practice, according to state regulators, the vast majority of payday loans in North Carolina last only 8 to 14 days, which, given the 15 percent simple interest rate, translates to an average annual percentage rate (APR) of approximately 460 percent.[4]

North Carolina has become fertile ground for fringe bankers. Statewide some 200 licensed check-cashing companies operate more than 1,200 outlets. While not all check cashers in the state extend credit, at year-end 1999, some 136 companies with more than 1,000 offices did engage in payday lending, which translates to about 10 percent of all payday-lending outlets in the country.[5] In 1999, payday lenders in North Carolina originated more than 2.9 million transactions totaling more than $535 million, generating in excess of $80 million in fees.[6] And these numbers are only part of the story of how nonbank financial companies are filling a critical credit void, since they exclude the 300 or so licensed pawnbrokers in North Carolina that provide their own unique brand of consumer credit.[7]

JANET BELL

Borrower

"I have used a payday lender a couple of times. I think they are easier and quicker to deal with than going to a bank. Pawnshops seem to be shady places. The thought of it. . . . I don't want to give them anything of mine.

"My experience with payday lenders? I have only had good experiences, and the people are really nice. I do feel it could be a little less interest. . . . Will I use them in the future? Probably. . . . I can go to them if I get into a desperate type situation, so it's good to know they are there."

One way of putting this booming financial services industry in perspective is to note that there is one check-cashing outlet/payday lender in North Carolina for every two FDIC–insured banking offices.[8] Five counties—Cumberland, Edgecombe, Hoke, Vance, and Washington—have either the same number of banks as check cashers or more check cashers than banking offices. Fringe banks are also expanding more rapidly than conventional banks. The number of banking offices increased by less than 2 percent in 1999 (a net increase of 40). In contrast, the number of fringe banking outlets increased by 73 percent, or by 520 offices between late 1998 and January 2001. While much of this growth has been in the poorer regions of the state—163 percent growth in the Western economic development district and 125 percent in the Northeast—wealthier districts like the Research Triangle saw a 71 percent increase in the number of check cashers and payday lenders, including 82 percent growth in Wake County.

The Charlotte area also witnessed significant growth, with Mecklenburg County having 47 more fringe banking offices today than two years ago, bringing the grand total of fringe banks to 115 outlets in the heart of North Carolina's and the Southeast's banking capital. While there has been no systematic analysis of where fringe banks locate relative to mainstream banks within communities, our own research in Charlotte is instructive.[9] We found that check cashers and payday lenders are not scattered throughout the city, but are more likely to locate in high-minority and working-class neighborhoods. Relative to population, there are one-third as many bank-

ing offices and more than four times as many check-cashing offices in high-minority neighborhoods as in low-minority neighborhoods.[10] Because payday lenders target working families with bank accounts—you need a checking account in order to patronize a payday lender—they are most likely to locate in moderate-income neighborhoods rather than in the city's poorest communities. Eighty-five percent of all check cashers in Charlotte (compared with 55 percent of all households) are in working-class neighborhoods with median incomes of $20,000 to $40,000.[11]

The explosive growth of fringe banks in North Carolina appears to mirror national trends. Across the country an estimated 6,000 check-cashing centers cash more than 180 million checks a year with a face value of $55 billion.[12] Notwithstanding the fact that they are banned in nineteen states because of their high cost and potential for abuse,[13] the number of payday lenders has grown from just a few hundred outlets in the mid-1990s to approximately 10,000 today.[14] One investment banking firm "forecasts the market to expand to 25,000 stores by 2002, producing 180 million transactions, and $45 billion in loan volume that will generate $6.75 billion in fees annually."[15]

The most urgent policy and regulatory challenges posed by payday lending in North Carolina relate to the repeated use of such loans. Because of their high fees, after just a few renewals, "borrowers may find themselves owing many times the amount they originally borrowed."[16] The issue of repeat use is critical because the industry defends its high fee structure on the basis that payday loans are the only accessible source of occasional short-term credit for hard-pressed consumers. Because individual borrowers are not supposed to use payday loans on a continual basis, the industry argues that the APR is not a relevant measure of the cost of credit.[17] If many consumers use payday loans over longer periods, however, then the triple digit APRs charged by payday lenders may "go well beyond what is normal or fair, and, in some cases, particularly when the rollover usage pattern is taken into account, appear[] abusive."[18] That some families with fragile finances can become addicted to payday loans is con-

Steve Grow

North Carolina Association of Check Cashers

"The check-cashing business has identified a community need—people who have been disenfranchised by banks—and check cashers are filling it. The North Carolina statute that licensed and regulated us was something that we, the industry, fought to get passed, not something which we worked against. The law got a lot of riff-raff out of the industry.

"Outlets that offer payday lending are essentially offering short-term loans to people who cannot get the money in other ways. The payday cash advance service allows consumers to choose a short-term financial product for a short-term fee because of its time-limited nature. You could take a taxi from Raleigh to Cary—or you could take that same taxi from Raleigh to Seattle for exactly the same rate, but the total expense would be ridiculous. It would be much cheaper to fly. The same is true with cash advance. It would be silly for a cash advance customer to take a single cash advance for an entire year. We cannot always control consumer behavior."

Steve Grow is president of the North Carolina Association of Check Cashers and owner of three check-cashing outlets.

Otis Meacham

Office of the Commissioner of Banks

"It is safe to say that there is a genuine need [for payday lending]; otherwise we wouldn't have over 1,000 locations throughout the state.

"Say you have someone in your family who is ill and all of a sudden you have a $100 bill from the doctor and medicine that will cost another $100. What cost are you willing to pay to obtain that $200?

"You can't sit down and be by the side of every borrower. . . . What role do I have to say, 'No, you can't have that [payday loan] because you already have two of these outstanding, and we as a government agency will not let you go to the third.' Is that right? Is that the proper role of government? That's not for this agency or the Commisioner. That is a legislative item, not for us."

Otis Meacham is deputy commissioner of the North Carolina Office of the Commissioner of Banks.

firmed by the accompanying narratives (see pages 16–21) and by recent reports from regulatory agencies in Indiana and Illinois. Indiana found that 77 percent of payday loans are rollovers, with the average payday customer averaging more than ten loans per year.[19] The pattern of repeat usage is even greater in Illinois, where the typical customer averages more than one payday loan per month.[20]

While some might argue that the way to deal with such problems is for North Carolina to join the states that ban payday lending outright, I do not agree that this is necessarily the answer. The reality is that decent, hard-working families who end up with too much month left at the end of their money will go underground if necessary to get help. I was recently told by the owner of a check-cashing company in a state that prohibits payday lending that the neighborhood loan shark turns up in one of his busiest stores every Friday afternoon to extend credit and receive payments from customers who have just cashed their paychecks. "Everyone knows the rules of the game," says the proprietor. "The loan shark charges 20 percent for a two-week loan."

Because banning payday lending could force families underground in their desperate search for short-term credit, in its 1997 session, the North Carolina General Assembly decided to regulate rather than prohibit such activity. As indicated earlier, the North Carolina Check Cashers Act requires the licensing of check-cashing outlets and payday lenders, sets maximum fees and charges, and imposes disclosure requirements and other conditions for doing business in the state. To prevent the problems that have occurred in Illinois and Indiana—though we have documented that these provisions are not working as intended—the General Assembly has prohibited lenders from extending, renewing, or rolling over payday loans.[21]

The statute authorizing payday lending was "given an experimental period of existence—it expires on July 31, 2001, unless it is reauthorized or otherwise extended—in order to determine the practices of check cashing firms that offer this service and its effect upon the consuming public."[22] To help inform its collective judgment, the General Assembly has called upon the North Carolina Commissioner of Banks to prepare a report on payday lending, which should include "any evidence as to consumer complaints, unfair or deceptive trade practices, and the frequency of repeat use by individuals of postdated or delayed deposit checks."[23]

It is clear from our research that some hardworking people in North Carolina are becoming "hooked" on payday loans. Many are taking out repeated

back-to-back loans from the same payday lender, which is against the law. Others are borrowing from one payday lender to pay off another, which is permitted under North Carolina law. Both practices result in additional loan fees, which can soon exceed the original principal and leave the borrower in a deeper hole than when he or she began.

While there are no simple answers to the consumer protection challenges posed by payday lending, this modest project suggests that policy makers, regulators, and mainstream banks carefully consider four issues. First, the Banking Commission should examine the books of payday lenders on a regular basis, paying special attention to the issue of back-to-back transactions, including those at multiple locations. With respect to repeat usage, the current focus of the Banking Commission is limited to the extent to which individual borrowers are repeat customers of the same lender. Currently, examiners make no effort to determine whether individual borrowers are borrowing from one payday lender to pay off another, or whether they have multiple payday loans outstanding at any point in time. Given the explosive growth of the industry and the additional time it would take examiners properly to document the extent to which borrowers are engaged in back-to-back borrowing from multiple payday lenders, the General Assembly must ensure that the Banking Commission has sufficient examiners to do its work.

Second, while frequent examinations by the Banking Commission and stiffer penalties for violators can reduce the incidence of illegal back-to-back loans, these will not prevent consumers from borrowing simultaneously from two or more payday lenders, which violates the spirit of the law. This is why the General Assembly and the Banking Commission should look into how existing credit-reporting technology might be adapted for regulatory purposes. Many payday lenders already incorporate this tracking technology into their risk management systems, and the Banking Commission could require all licensed companies to report all payday loans to a specified reporting agency. Then, either by law or regulation, the state could decide how many outstanding payday loans an individual should be permitted to hold at any one time, as well as the minimum time that must elapse before an individual is eligible to take out another payday loan, from the same or a different lender.

Third, the General Assembly should make a bigger commitment to financial education. If nothing else, the collection of stories accompanying this article underscores the importance of having ready access to short-term credit and the consequences of not using that credit wisely. Too often, credit counseling begins when people are already in crisis. Through our educational system and community institutions, we all need to do a better job of helping families learn how to manage their finances, use credit more responsibly, and regardless of their race or income, obtain equal access to all available credit options. Because family money management is critical to many

BERNICE STEWART YON

Borrower

"Which payday lender did I use? I used five. I went because I was on disability and my check only comes at the end of the month. I told them I couldn't pay every two weeks. . . . I had to go to the other ones, and this is how I got hooked. I got arrangements with all of them. I owe about $1,000.

"It is a nightmare. I warn people if you don't have to mess with them, please don't. You can get hooked on them. . . . so I warn, if you don't have to, please don't."

Nick Burks

Borrower

"I was unemployed and needed quick money to pay a bill. I had heard of Advance America, where I could write a postdated check. . . . and go buy it back in two weeks for a small fee. Or what was a small fee back then. I thought, you know, free money.

"Right now I'm kind of stuck with them. I've got a check for $300 outstanding and I've been unable to roll it over or buy it back.

"I think it is definitely a good service for people, but not for their target audience, people who are short on money. Their rates can be so high that it is pretty much impossible not to get in a cycle there."

of the General Assembly's social and economic initiatives—Work First and family self-sufficiency, savings and asset building through individual development accounts, and helping more North Carolina residents buy their first home—the state should make financial education a greater priority.

Finally, this project suggests that North Carolina's banking community should examine the implications of payday lending. The prolific growth and profitability of such lending reflect the fact that mainstream financial institutions have failed to meet the demand for short-term credit by working people who already have banking relationships. Moral obligations aside, banks, thrifts, and credit unions have a real market opportunity to "reach out to these consumers and provide responsible services for their legitimate needs."[24]

Notes

1. For a fuller description of the unbanked, *see* Congressional Testimony of Professor Michael A. Stegman on H.R. 4490, The First Accounts Act of 2000, before the House Committee on Banking and Financial Services (June 27, 2000). The data come from the Federal Reserve System's 1998 Survey of Consumer Finances.

2. Memorandum for Chief Executive Officers from Richard M. Riccobono, Deputy Director, Office of Thrift Supervision, U.S. Department of the Treasury, Subject: Payday Lending, at 1 (Nov. 7, 2000).

3. N.C. Gen. Stat. § 53-275 *et seq.* (hereinafter G.S.). Article 22 of Chapter 53 is entitled "Check-Cashing [B]usinesses." All further references to the North Carolina law governing the check-cashing and payday-lending industry refer to this statute.

4. Telephone Interview with Otis Meacham, Deputy Comm'r of the N.C. Office of the Comm'r of Banks (Dec. 14, 2000).

5. *Id.*

6. *Id.*

7. Irwin Speizer, *Hock Heaven: They're Not High Finance, but Pawnshops Continue to Thrive as Lenders*, Business North Carolina, Apr. 1, 1997, at 47.

8. This figure and all of the following data on the number and location of check cashers and payday lenders in North Carolina are the results of the author's calculations from data obtained from the North Carolina Office of the Commissioner of Banks. Details are available from the author.

9. Anthony Kolb, Spatial Analysis of Bank and Check-Cashing Locations in Charlotte, N.C. (Dec. 30, 1999) (unpublished draft, Center for Community Capitalism, The Univ. of N.C. at Chapel Hill).

10. *Id.* We identified 3.8 banking offices and 6.7 check-cashing outlets per 10,000 households in Charlotte neighborhoods that are at least 70 percent African-American, compared with 12.5 banking offices and 1.6 check-cashing outlets per 10,000 households in neighborhoods that were less than 10 percent African-American.

11. *Id.*

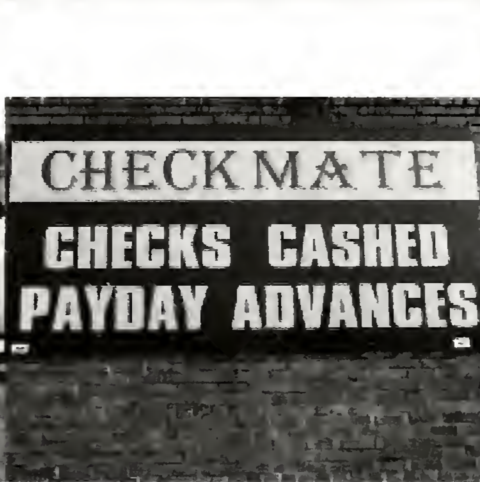
12. Michael A. Stegman, Savings for the Poor: The Hidden Benefits of Electronic Banking 63 (Washington, D.C., Brookings Institution Press, 1999).

13. Marcy Gordon, *Senator Condemns "Payday Loans,"* Associated Press Report, Dec. 15, 1999.

14. Donna Tanoue, Chairman, Federal Deposit Insurance Corporation, Remarks before the Seventh Annual Greenlining Economic Development Summit, June 13, 2000, at 2.

15. *Id.*

16. Memorandum for Chief Executive Officers from Riccobono, at 1.



17. *See, for example, Unregulated Payday Lending Pulls Vulnerable Consumers into Spiraling Debt*, REINVESTMENT ALERT (Woodstock Inst.), Mar. 2000, at 3.

18. Memorandum for Chief Executive Officers from Riccobono, at 2.

19. Cited in SHOW ME THE MONEY! A SURVEY OF PAYDAY LENDERS AND REVIEW OF PAYDAY LENDER LOBBYING IN STATE LEGISLATURES 8 (Washington, D.C.: Public Interest Research Groups & Consumer Federation of America, Feb. 2000).

20. *Id.*

21. Specifically the law provides that "a licensee shall not, for any consideration, renew or otherwise extend any postdated or delayed check or withhold such check from deposit for a period beyond the time set forth in the written agreement with the customer." G.S. 53-281. See first-person accounts of the problems caused by back-to-back renewals and rollovers in TOO MUCH MONEY AT THE END OF THE PAYCHECK (Durham: Community Reinvestment Ass'n of N.C.; Chapel Hill: Center for Community Capitalism, The Univ. of N.C. at Chapel Hill, Jan. 2001).

22. Declaratory Ruling—Issues under the North Carolina Check Cashers Act, in Correspondence from Hal D. Lingerfelt, Comm'r of Banks, to Jennie Dorsett, Exec. Director and General Counsel, N.C. Check Cashers Ass'n (Nov. 30, 1998).

23. *Id.*

24. Memorandum for Chief Executive Officers from Riccobono, at 1.

Citizen Participation in Local Government Budgeting

Maureen Berner

News & Observer / Mel Nathanson

Citizen participation in the governance process is widely encouraged by academics and professional organizations and is a popular conference topic. Key public policy decisions are made during the public budgeting process, so this would appear to be an important opportunity for meaningful citizen participation. Yet little is known about how and when citizens are involved in the budget process.[1]

Involving citizens in the governance process is rooted in the Jeffersonian tradition of American politics. Jefferson advocated locally based, bottom-up government that is responsive to citizens, and he viewed citizen apathy as dangerous to civic health. There is little disagreement that the public should have an opportunity to influence government action. Whether or not the public uses the opportunity, keeping that option available is important in a democracy. It is accepted in this article that, at least in theory, citizen participation is valued and beneficial to government.

What are governments trying to accomplish when they involve citizens? There are two main goals:

- To inform the public of government decisions
- To involve the public in government decision making

Many government officials stop at the first goal, using citizen involvement primarily as a way to educate the public. Making the additional effort of involving citizens in decision making, however,

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Table 1. **Study Respondents**

Population, 1997	Total	# Responding	% Responding
Cities			
Less than 1,000	237	14	6
1,000–4,999	194	72	37
5,000–9,999	47	32	68
10,000–24,999	35	24	69
25,000–49,999	9	5	56
50,000–99,999	8	8	100
100,000 and up	6	6	100
Total	**536**	**161**	**30**
Counties			
Less than 25,000	29	15	52
25,000–49,999	25	10	40
50,000–99,999	23	12	52
100,000–199,999	18	11	61
200,000 and up	5	5	100
Total	**100**	**53**	**53**

can provide officials with insights and information, leading to better public policy decisions.[2]

Although governments usually offer some avenues for citizen input, sometimes reluctantly, officials have little sense of how they might involve citizens and to what extent they should do so. Before governments try to increase citizen participation, they should understand what methods work well. One of the most important aspects of local governance is budgeting. In 1999 the Institute of Government and the North Carolina Local Government Budget Association cosponsored a survey of all 536 of North Carolina's municipalities and all 100 of its counties.[3] The survey sought answers to four broad questions about citizen participation in budgeting:

1. Do managers think it necessary to involve citizens in budgeting?
2. What are the most common methods that governments currently use to involve citizens in budgeting?
3. Do managers think that these methods are effective? Why or why not?
4. Are there particular practices that managers would recommend others' adopting or avoiding?

This article briefly describes current North Carolina law regarding citizen participation in budgeting. It then presents the survey results and discusses their implications for North Carolina officials, particularly budget staff and city and county managers.

Current North Carolina Law

Section 12 of the Local Government Budget and Fiscal Control Act (North Carolina General Statute § 159-12; hereinafter G.S.) includes several provisions for both informing citizens and seeking input from the public. The budget officer of a city or a county must file a copy of the proposed budget with the clerk of the governing board, who must ensure that any interested party has the opportunity to inspect the budget pending its adoption. The clerk also must publish notice that the budget is available for citizen review, and make it available to all news media in the county.

In terms of participation, communicating information in this way is passive. It gets information out to the public, but it does not provide a mechanism for obtaining citizen input.

The traditional way in which input is obtained is through public hearings. G.S. 159-12 states, "Before adopting the budget ordinance, the board shall hold a public hearing at which time any persons who wish to be heard on the budget may appear."[4] (Virtually all states have statutes with a similar provision.)[5] Further, the hearing must cover the entire budget. A workshop on the budget does not satisfy statutory requirements; neither does a hearing on a limited portion of the budget proposal.[6] As a result, jurisdictions tend to hold hearings at the end of the budget process.

State law does not dictate when the hearing must be held, or even the number of days that must pass between provision of notice of a hearing and the hearing itself. In keeping with the spirit of the law, however, governments should provide the public with reasonable notice—for example, notice five to ten days before the hearing.

State law also does not specify the number of days that must pass between the hearing and adoption of the budget.[7] It is not unusual for local governments to hold a public hearing and adopt a budget in the same evening.

Although North Carolina law does not specify the location, the time, or the manner of the hearing, the obvious purpose of making the budget available, giving notice, and holding a hearing is to provide an opportunity for public participation in the budget process. This purpose is best served when governments conduct hearings at a time and in a manner that is conducive to active participation. But when and how is that?

Although there seems to be widespread compliance with the public hearing requirement,[8] there has been little information available on whether managers think that public hearings are an effective way to involve the public. There also has been little more than anecdotal information on alternative efforts to involve the public and the effectiveness of those efforts.

Survey Results

Respondents

One hundred sixty-seven municipalities and 56 counties responded to the survey by mail, fax, or telephone, for response rates of 31 percent and 56 percent, re-

Table 2. **Extra Effort to Involve Citizens**

Population, 1997	# Responding	% Going Beyond State-Mandated Hearing
Cities		
Less than 1,000	14	29
1,000–4,999	72	24
5,000–9,999	32	44
10,000–24,999	24	42
25,000–49,999	5	40
50,000–99,999	8	50
100,000 and up	6	83
Total	**161**	**52**
Counties		
Less than 25,000	15	27
25,000–49,999	10	20
50,000–99,999	12	50
100,000–199,999	11	18
200,000 and up	5	20
Total	**53**	**29**

spectively.[9] Surveys were completed by city and county managers, town clerks, and budget or finance personnel.

Respondents included most of the large municipalities but few of the smallest (see Table 1). Thus the data do not form a representative sample of North Carolina cities, towns, and villages. (To simplify discussion, all municipalities are hereafter referred to as "cities.") In contrast, about half of the counties in each population range responded, although here too, the largest units were most likely to respond.

Views on the Need to Involve Citizens

Although citizen involvement is a hot topic in management literature these days, local governments in North Carolina are generally not making extensive efforts to involve residents in budgeting. Barely half of the cities responding to the survey and less than a third of the counties go beyond the single, mandated hearing to get citizen input (see Table 2).

In general, cities tend to seek input more than counties do. This result might be explained by the different types of services offered by the two forms of government. Counties provide funding for, among other things, social services, public health services, mental health services, and schools, and the boards overseeing these services may seek citizen input when they are preparing their own budget request for the county. For example, of the counties that responded, seventeen cited school boards as making special efforts to involve citizens. Social services boards, public health boards, and other boards also were mentioned. County government staff and board members may see less need for citizen input when they consider the overall budget because they may think that it already has been provided at the department level.

In explaining why they did or did not seek input from citizens, respondents indicated that the process was guided by the desires of the leadership. Of those who said that they did seek citizen input, the desire (as opposed to the obligation through policy) of the staff or the governing board or staff to seek public opinion seemed to provide some motivation. Almost three-quarters of responding cities cited staff desire, and almost two-thirds, governing board desire.

The pattern for counties was similar. The most often cited reason for extra effort to involve the public was board interest. Almost half of the counties also cited staff interest.

Although there is informal interest in hearing from citizens, boards clearly want to remain flexible in when and how they obtain input. Only 13 percent of the city respondents had a formal policy or requirement for citizen involvement beyond the single, state-mandated hearing. Medium to large cities were more likely to have such requirements than small cities. Only one county, a larger one, reported having such a policy or requirement.

The motivation to get the public involved does not come entirely from the board and the staff, however. About 40 percent of both city and county respondents cited citizen interest as a motivator. Interestingly, relatively few respondents cited tradition or interest-group pressures. (For a breakdown of all the responses by reason, see Table 3.)

Of those that did not seek extra citizen involvement, the most common reason cited, on both the city and the county

Table 3. **Reasons for Extra Effort to Involve Citizens**

	% Board Policy or Requirement	% Informal Board Interest	% Staff Desire to Hear Opinion	% Tradition	% Citizen Interest	% Interest-Group Pressure	% Other
Cities	13	62	72	32	43	13	17
Counties	7	67	47	20	40	20	33

Note: Fifty-three cities and fifteen counties responded Respondents could cite more than one reason.

Table 4. **Reasons for No Extra Effort to Involve Citizens**

	% Lack of Board Interest	% Lack of Staff Interest	% Lack of Time	% Lack of Financial Resources	% Lack of Personnel	% Process Gets Too Complicated	% Citizens Won't Respond	% Poor Response in Past	% Other
Cities	57	7	20	8	19	7	28	50	19
Counties	71	16	34	16	18	16	34	39	11

Note: One hundred five cities and thirty-eight counties responded. Respondents could cite more than one reason.

level, was lack of governing board interest. The second most common reason was poor response in the past, when attempts to get citizens involved did not seem very effective. At the county level, lack of board interest was a far more important factor than anything else, including poor past response: 71 percent of respondents cited lack of board interest, whereas only 39 percent cited poor past response. (For a breakdown of all the responses by reason, see Table 4.)

In larger cities, lack of board interest and poor past response were the primary motivations. The situation was slightly different in smaller cities. In addition to low board interest and poor past response, smaller cities seemed to be constrained by lack of resources—time, money, or personnel. These three factors also were cited by counties of all sizes.

Although staff interest seemed to be a big motivator *for* involving citizens, lack of staff interest did not seem to be a big motivator *for not* involving citizens, particularly in cities and small counties. Some staff, especially in counties and smaller cities, thought that citizen participation unduly complicated the budget process, but this did not seem to be a big factor for everyone. This finding should be interpreted with caution, however, because there may be a bias in reporting; that is, staff may have been unwilling to take responsibility for not wanting citizens involved.

When asked for reasons other than those already mentioned for not going beyond the single public hearing, coun-

Table 5. **Methods Currently Used by Cities to Involve Citizens**

		When in Budget Process Method Is Used				
Method	**# Respondents**	**% Beginning**	**% Early**	**% Middle**	**% Late**	**% End**
Legally mandated hearing	138	5	2	13	22	58
Other public hearings	37	38	35	16	30	5
Special open meetings (town meetings)	61	10	11	5	10	2
Opportunities to speak at regular meetings	102	50	46	55	51	44
Citizen advisory boards	31	52	48	29	13	10
Mail-in coupons	5	80	20	0	0	0
Coffeehouse conversations	20	65	55	50	40	25
Telephone surveys	5	60	0	40	0	0
Mail surveys	12	58	25	0	0	0
Fax surveys	3	100	0	0	0	0
Web sites/e-mail	9	78	22	11	11	11
Visits to local civic groups	27	33	44	56	19	19
Visits to neighborhood associations	10	30	50	30	10	0
Contact initiated by citizens	34	44	53	53	53	38
Other	21	—	—	—	—	—

Note: Respondents were asked to indicate when in the budget process the method cited was used. Respondents could indicate more than one time if it was used multiple times. The definitions for the times are as follows: *beginning*—at outset of budget process; *early*—while manager and staff are forming budget but before it has been presented; *middle*—shortly after budget is recommended to governing board but before it or committee begins budget briefings, work sessions, or meetings; *late*—while governing board or committee holds briefings, work sessions, or meetings on budget; *end*—after all briefings, work sessions, or meetings have been completed and just before board adoption of annual budget.

Table 6. **Methods Currently Used by Counties to Involve Citizens**

		When in Budget Process Method Is Used				
Method	# Respondents	% Beginning	% Early	% Middle	% Late	% End
Legally mandated hearing	36	0	3	28	36	33
Other public hearings	5	0	20	60	60	0
Special open meetings (town meetings)	16	31	44	56	38	13
Opportunities to speak at regular meetings	26	62	62	54	58	42
Citizen advisory boards	14	43	43	14	14	7
Mail-in coupons	1	100	0	0	0	0
Coffeehouse conversations	12	50	50	67	33	33
Telephone surveys	0	NA	NA	NA	NA	NA
Mail surveys	1	0	0	100	0	0
Fax surveys*	1	0	0	0	0	0
Web sites/e-mail	6	33	50	66	50	50
Visits to local civic groups	16	19	25	25	31	25
Visits to neighborhood associations	7	0	14	0	14	14
Contact initiated by citizens	20	40	45	50	60	50
Other	9	—	—	—	—	—

Note: Respondents were asked to indicate when in the budget process the method cited was used. Respondents could indicate more than one time if it was used multiple times. The definitions for the times are as follows: *beginning*—at outset of budget process; *early*—while manager and staff are forming budget but before it has been presented; *middle*—shortly after budget is recommended to governing board but before it or committee begins budget briefings, work sessions, or meetings; *late*—while governing board or committee holds briefings, work sessions, or meetings on budget; *end*—after all briefings, work sessions, or meetings have been completed and just before board adoption of annual budget. NA = not applicable.

*The respondent checking fax surveys did not indicate when in the process the method was used.

ties responded that the single hearing seemed sufficient. Some representative comments follow:

- "Tax/fee increases generate adequate citizen input."
- "[We] feel our process is open now—no need to change."
- "[It] seems that one hearing is sufficient for the public."

City responses were more varied, but several mentioned lack of citizen interest:

- "[There is] no citizen interest."
- "[There is a] lack of requests for additional hearings."
- "No one has ever suggested it."

Several city respondents took the time to note the important difference between efforts to inform the public and efforts to involve the public. For example: "Other entities had little result with surveys, work sessions, etc. [We are] considering use of Internet and other means to disseminate information. Emphasis [is] on providing information, not getting input."

Methods of Involving Citizens

Governments that go beyond the standard hearing to involve citizens in the budget process do so in a wide range of ways.

Among cities, some methods are more active than others. For example, almost all local governments provide opportunities for the public to speak at regular meetings. A large number of cities responding to this survey (61) hold special open meetings, such as town meetings. These methods, however, collect input only from those who show up and are willing to speak publicly. Public speaking can be very intimidating for the average citizen.

In contrast, some cities reach out to citizens, going outside the hearing rooms or the council chambers to probe community opinion. Some survey citizens by mail, telephone, or fax. Officials, usually managers accompanied by staff or department representatives, visit civic groups and neighborhood associations. Other cities use formal methods. For example, a surprisingly large number, thirty-one, have citizen advisory boards. Other cities, especially smaller jurisdictions, rely on informal methods, such as coffeehouse conversations. (For a breakdown of cities by method, see Table 5.)

In the "other" category, one city mentioned a finance committee composed of citizens and commissioners that makes recommendations to the board. A second city mentioned focus groups; a third, community meetings on the budget; a fourth, a neighborhood forum with representatives from twenty-four neighborhoods; and a fifth, employee meetings. In all these methods, staff or board members actively seek input from citizens. How-

Sample Responses to Questions on Methods

"What Methods Are Least Effective?"

"Public hearings. They are held so late in the process that it is difficult to adapt to suggestions received. Also, in my career, I have seen very few specific requests made at budget hearings. The general comment is, 'Don't raise taxes' or 'Cut taxes.'"

"Legal public hearing. The public doesn't participate."

"The public hearing. It's too late to effectively influence the process. Also few citizens express their concern or desires through this process. The public hearing participants are usually representatives of nonprofit organizations requesting funding."

"Public hearings. No one comes. If they do, it's too late."

"Legally mandated public hearing. Too structured, too orchestrated, input often in written format, late in process."

"What Methods Are Most Effective?"

"Public hearings at the beginning of the process—well advertised so everyone feels part of the solution, not just a problem."

"Other public hearings, early in the process. Because of timing, citizens are able to express their concerns and request at a time before board has set direction for staff."

"Public hearings, because the press makes it widely known."

"Hearings early on tend to focus on needs and to be rather positive, in contrast to hearings after budget submission, which usually consist of agencies begging for money."

ever, the majority of comments in the "other" category (11 of 20) described efforts to advertise meetings or provide information to citizens (not necessarily to obtain information from them), including a public kiosk, newsletters, posters, and local cable television broadcasts.

More traditional methods of involving the public, such as the legally mandated public hearing, most often take place at the very end of the budget process. In cities, more than half of all respondents reported that they hold their public hearing after all briefings, work sessions, or meetings have been completed and just before board adoption of the annual budget ordinance. Another 22 percent reported holding the budget hearing late in the process, after the manager had recommended a budget to the board and during the board's briefings, work sessions, or other meetings on the recommended budget. In contrast, the cities using less traditional methods, such as surveys, neighborhood meetings, or citizen advisory boards, reported holding public hearings in the early to middle stage of the process. (For a breakdown of these responses, see Table 5, page 26.)

The results for counties were similar (see Table 6, page 27). Counties reported relying on the traditional mandated public hearings for input, and the majority (69 percent) said they did so late in the budget process. Counties also reported relying on opportunities for citizens to speak at regular meetings and special open meetings, such as town meetings. County officials were active in visiting civic groups and using coffeehouse methods and citizen advisory boards. Counties were more likely to spread the timing of efforts across the budget process, but, as with cities, there was a tendency to use innovative methods earlier than traditional methods.

Among other ways of involving citizens, one county mentioned having citizens on its boards. Another mentioned an innovative speaker's bureau, consisting of budget and finance staff who speak to various community groups—a version of the "visits to community groups" mentioned earlier.

Again, on this question most respondents referred to ways of disseminating information rather than ways of directly involving people. For example, several respondents mentioned media contacts or press coverage.

Methods Seen as Least Effective

Ironically, even though public hearings are the most common method used, city and county officials alike see them as the least effective way to involve the public. While they considered methods such as special open meetings and opportunities to speak at regular meetings to be relatively ineffective (see Table 7), the clear target of their frustration is public hearings. (For some illustrative comments, see this page.)

The main criticism of public hearings concerns timing. Because most jurisdictions hold only the state-mandated hearing, and that hearing usually takes place late in the process, the public has little opportunity actually to influence results. The hearing takes on a perfunctory or symbolic function. Many of those who help manage the process acknowledge this fact.

Methods Seen as Most Effective

Surprisingly, public hearings also were seen as the most effective method to involve the public (for sample responses, see this page). The pro-hearing sentiment was not as clear as the anti-hearing sentiment, but hearings, open meetings, and opportunities to speak at regular meetings all were popular. Both cities and counties viewed methods of providing face-to-face input as effective. In addition, respondents felt strongly about a variety of other methods, from surveys to meetings with neighborhood associations and civic groups (see Table 8).

Recommended Practices

Asked what practices they would recommend others adopting or avoiding, most responded with recommendations of

Table 7. **Most Effective Methods**

Method	% Cities	% Counties
Public hearings (mandated or otherwise)	26	24
Special open meetings (town meetings)	15	18
Opportunities to speak at regular meetings	18	18
Citizen advisory boards	11	0
Mail-in coupons	1	0
Coffeehouse conversations	8	4
Surveys	12	0
Web sites/e-mail	0	6
Visits to local civic groups	8	6
Visits to neighborhood associations	5	0
Contact initiated by citizens	2	0
Other	6	6

Note: One hundred six cities and seventeen counties responded.

what to do. The responses spanned a wide variety of practices.

Although there was no specific practice to adopt or avoid, there was a clear theme concerning approach: get input early and often. Half of the positive recommendations from counties and about a third of the positive recommendations from cities noted the value of early input. Many of these recommendations also mentioned using the chosen method, such as hearings, multiple times.

Conclusions

Four main conclusions come from this survey. First, local government staff seem to support public participation, but, appropriately, staff take their cue from the governing board. As in most other matters in city and county government, the board determines the extent of public involvement in decision making.

Second, there is a difference between educating the public about decisions and bringing them into the decision-making process. Governments' attempts to elicit citizen participation can range from limited efforts to inform citizens, to aggressive efforts to involve them. Is summarizing the proposed budget in the local newspaper a form of citizen participation? In a way, yes, since it educates and informs citizens about government activities. However, most would argue that there is a different quality between that practice and establishing a citizen advisory board to make formal recommendations to the governing board.

Which is better? This question involves a judgment that is the responsibility of the governing board. To some officials, more limited forms of public participation make for better governance, and more extensive forms are inefficient and ineffective. Others consider involving citizens to be a fundamental duty and view opening up the process as an opportunity to improve decision making.

Third, for those looking to involve the public effectively, there does not seem to be a clearly preferred method. Rather, the method depends on the goal and the way in which the method is conducted. Public hearings were mentioned more than any other method as both the most and the least effective way to involve the public. How can this be so? If the goal is merely to inform the public, hearings may not be effective. If the goal is to involve the public in the decision, some hearings may work very well.

Although this survey did not ask for detailed information, community context may be important. In some communities a history of active public hearings may foster a sense of support for speaking out. In smaller communities, visiting local neighborhood groups may educate and involve citizens. In larger jurisdictions, surveys may be the best way to understand the opinions of a cross-section of the city's or county's population.

Finally, if governments want to involve the public, timing is vital, regardless of the method used. Those happy with their methods often mentioned the value of doing things early. Respondents expressed a high level of frustration with the use of public hearings, particularly because they most often take place at the end of the process, when little meaningful input can be given. If managers and governing

Table 8. **Least Effective Methods**

Method	% Cities	% Counties
Public hearings (mandated or otherwise)	61	57
Special open meetings (town meetings)	8	0
Opportunities to speak at regular meetings	9	0
Citizen advisory boards	2	7
Mail-in coupons	2	14
Coffeehouse conversations	7	14
Surveys	5	14
Web sites/e-mail	2	7
Visits to local civic groups	1	0
Visits to neighborhood associations	0	0
Contact initiated by citizens	2	0
Other	0	0

Note: Eighty-nine cities and fourteen counties responded

News & Observer / Gary Allen

boards wish to have citizens actively involved in the budget process, they must consider at what point in the process that input most effectively takes place. Meetings, surveys, and conversations, when conducted in a timely manner, afford the best opportunities for citizen input. They can tell people about the demands and the opportunities facing the city or the county in both the short term and the long term. They also allow officials to hear from citizens about preferences for services, taxes, and fees. The exchange is two-way. When this exchange begins early in the budget process, there is a greater likelihood that the information exchanged will be used and that both citizens and officials will be better informed about the other's position and more committed to the result.

Notes

1. Carol Ebdon, *The Relationship between Citizen Involvement in the Budget Process and City Structure and Culture*, 23 Public Productivity and Management Review 383, 383 (Mar. 2000). In 1998 the Government Finance Officers' Association published Recommended Budget Practices: A Framework for Improved State and Local Government Budgeting, the recommendations of the National Advisory Council on State and Local Budgeting. One of the recommendations called for improving stakeholders' access to the budgeting process, specifically suggesting that local governments develop mechanisms to identify stakeholders' concerns, needs, and priorities. Key stakeholders are citizens. Citizen participation has received wide attention in the public administration literature, particularly in journals targeting large audiences. For example, citizen participation and community governance was the focus of special issues of Public Management and PA [Public Administration] Times in early 1999.

2. William Simonsen & Mark Robbins, Citizen Participation in Resource Allocation at xiii (Boulder, Col.: Westview Press, 2000).

3. No funding was received from the North Carolina Local Government Budget Association. The author gratefully acknowledges the support of the UNC–CH Master of Public Administration (MPA) Program through the research assistance of MPA students Mary Blake, Caryn Ernst, Francesca O'Reilly, and Sonya Smith, and of the Institute of Government's Summer Law Clerk Program through the legal research assistance of Betsy Kane and Thomas Spiggle.

4. G.S. 159-12.

5. The exceptions are Arkansas, California, and Massachusetts. Maureen Berner & Sonya Smith, The State of the States: A Review of State Requirements for Citizen Participation in the Local Government Budget Process, 2001 (unpublished manuscript, Inst. of Gov't, The Univ. of N.C. at Chapel Hill, on file with first author).

6. A. John Vogt, *Budget Preparation and Enforcement*, in Municipal Government in North Carolina 287, 339 (David M. Lawrence & Warren Jake Wicker eds., 2d ed., Chapel Hill: Inst. of Gov't, The Univ. of N.C. at Chapel Hill, 1995).

7. However, ten days must pass between presentation of the budget to the board and adoption. G.S. 159-13.

8. In both this survey and one conducted in the early 1990s by Charles Coe and A. John Vogt, all local government respondents indicated that they held at least one public hearing. Charles Coe & A. John Vogt, *A Close Look at North Carolina City and County Budget Practices*, Popular Government, Summer 1993, at 16.

9. The source of six survey forms from municipalities could not be identified, but because the questions involved did not depend on geographic location, the results for those surveys have been included where possible in the analysis.

Strengthening Civic Education: Three Strategies for School Officials

Susan Leigh Flinspach

NEWS & OBSERVER / JOHN ROTTET

Community service, also known as service learning, is one of many cocurricular experiences that contribute to the civic education of young people. Above, high school students deliver Meals on Wheels to housebound residents.

Schools have a unique role, or at least a unique potential[,] . . . for only they can provide the thoughtful, sequential preparation needed to equip young people with the capacity to assume the responsibilities and enjoy the opportunities of adult citizenship.[1]

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Several recent reports about young Americans underscore the need for schools to focus greater attention on civic education. A 1999 report by the National Association of Secretaries of State found that today's youth have only a vague understanding of what it means to be a citizen, that they are skeptical and distrustful of politics and politicians, and that their voter turnout rate has declined steadily since 1972.[2] The U.S. Department of Education's National Assessment of Educational Progress (NAEP), also known as the Nation's Report Card, reported that only a quarter of the students tested in the 1998 civics assessment were "proficient"—that is, demonstrated solid academic performance in civics.[3] Just 20 percent of the students in the Southeast, which includes North Carolina, tested at the proficient level.[4] A 1999

News & Observer / Harry Lynch

Another kind of community service involves assisting with a Head Start class. Above, high school students set up cots for the children.

University of Texas report about civics-related educational policies asserts, "Although many state policymakers and educators give lip service to the importance of civic education in the schools, in reality state policies and school practices often fail to provide students with the civic education they deserve."[5]

The state of North Carolina and many local boards of education explicitly acknowledge the importance of civic education. The North Carolina Standard Course of Study sets goals for civic learning and participation. The mission statements of many school districts affirm that the preparation of young citizens is fundamental.

The North Carolina Supreme Court also has addressed the importance of preparation for citizenship, in its landmark *Leandro* decision. In that decision the court stated that, under the North Carolina Constitution, all children have a right to an opportunity for a sound, basic education. One of the four essential elements of a sound, basic education, the court wrote, is "sufficient fundamental knowledge of geography, history, and basic economic and political systems to enable the student to make informed choices with regard to issues that affect the student personally or affect the student's community, state, and nation . . . ."[6] The *Leandro* case indicates that preparing students for citizenship—helping them develop the ability to make informed judgments as citizens—should be a priority in North Carolina's schools.

Local school officials face a host of competing priorities, however, and they have limited resources to strengthen civic education in their districts. This article lays out three strategies to promote civic education that draw more on

the time and the commitment of school officials than on their system's financial resources. First, school officials can assist teachers with classroom lessons, offering students concrete examples of good citizenship and public service. Second, school officials can build support for activities that give students participatory experiences in civics. Third, school officials can make the education of young citizens a clear priority in their board policies and communicate that effectively to teachers and the community. Each of these actions bolsters civic education and thus helps build students' commitment to taking part in American democracy.

Modeling Civic Behavior for Students

Being a role model means influencing others through the power of example. In this sense, both school board members and administrators act as civic role models for the students. District and school administrators model good citizenship through their own civic participation and through their encouragement of democratic behavior in the schools. The directors of the Center for Civic Education, a nonprofit, nonpartisan educational corporation dedicated to the development of informed, responsible participation in civic life, state, "Classrooms and schools should be managed by adults who govern in accord with democratic values and principles, and who display traits of character, private and public, that are worthy of emulation."[7]

As part of the local government, school board members also are civic role models. They demonstrate how concerned citizens carry out the civic responsibilities of public office. Mary Ellen Maxwell, president of the National School Boards Association in 1999–2000, recognized that school board members have this influence: "School board members often are the most visible and accessible elected leaders in the community, and this gives us the opportunity—and an obligation—to be role models for community service and for active participation in government and civic life."[8] Through their example, individual board members demonstrate good citizenship to the community and its youth.

Organizations Supporting Civic Education

Organizations in North Carolina

Center for the Prevention of School Violence
Joanne McDaniel, Interim Director
Phone (919) 773-2846; e-mail joanne_mcdaniel@ncsu.edu; Web site www.ncsu.edu/cpsv

Civic Education Consortium
Debra Henzey, Executive Director
Phone (919) 962-8273; e-mail henzey@iogmail.iog.unc.edu; Web site www.civics.org

The Kenan Institute for Ethics at Duke University
Melanie Mitchell, Assistant Director
Phone (919) 660-3033; e-mail mmitchel@duke.edu; Web site kenan.ethics.duke.edu

Kids Voting North Carolina
Daintry O'Brien, Executive Director
Phone (336) 370-1776; e-mail kvnc@bellsouth.net; Web site www.kidsvotingusa.org

North Carolina Bar Association
Cathy Larsson, Assistant Director of Communications
Phone (919) 677-0561; e-mail Clarsson@mail.barlinc.org; Web site www.barlinc.org

North Carolina Character Education Partnership
Dawn Woody, Coordinator
Phone (888) 890-2180 or (919) 715-4737; e-mail dwoody@dpi.state.nc.us; Web site www.dpi.state.nc.us/nccep

North Carolina City and County Management Association
Jan Boyette, Civic Education Coordinator
Phone (919) 220-2552; e-mail j.boyette@gte.net; Web site www.ncmanagers.org/teachers/

National Organizations

The Center for Civic Education
Charles N. Quigley, Executive Director
Phone (818) 591-9321; e-mail cce@civiced.org; Web site www.civiced.org

Close Up Foundation
Stephen A. Janger, President and Chief Executive Officer
Phone (800) CLOSEUP; e-mail outreach@closeup.org; Web site www.closeup.org

As role models, school board members have direct opportunities to influence students' civic knowledge and dispositions. First, many board members participate in "ceremonial tasks,"[9] such as shaking hands at graduation or attending school assemblies that honor students. These actions not only make students feel special but also help them attach a face, a name, and a personality to their lessons about local government. Second, some board members take part in the instruction of students when teachers seek their assistance. They visit the classroom, allow students to interview them, and even permit students to "shadow" them (follow them around) for a day or two. For example, as described in an earlier article in *Popular Government*, Wake County school board members participated to

Table 1. **Attention to Citizenship in the Educational Policies of 14 North Carolina School Systems**

Policy Type	Doesn't Explicitly Address Citizenship	Affirms Importance of Citizenship	Gives Direction about Teaching Citizenship
No single policy on citizenship	3	1	1
Character education policy	1	1	1
Citizenship-type policy*	0	1	5

Note: The school systems included in this table are Asheboro City Schools, Caldwell County Schools, Catawba County Schools, Chapel Hill–Carrboro City Schools, Chatham County Schools, Cherokee County Schools, Durham Public Schools, Franklin County Schools, Lincoln County Schools, Stanly County Schools, Vance County Schools, Wake County Public School System, Wilson County Schools, and Winston-Salem/Forsyth County Schools.

*Policies entitled "Citizenship," "Citizenship Instruction," or "Citizenship and Character Education"

good effect in a civics unit at Leesville Road High School in Raleigh.[10] Especially when students are studying educational issues or the responsibilities of local government, school board members who serve as community resources for teachers are likely to make a favorable impression on students' civic dispositions.

Building Support for Participatory Activities in Civics

In a position paper on teaching citizenship, the National Council for the Social Studies, an association of social studies educators at the elementary, secondary, and postsecondary levels, affirmed, "Civic virtue must be lived, not just studied."[11] Students benefit from opportunities to use their civic knowledge and to practice their civic skills. Activities that build on the formal civics curriculum, whether they occur during the school day or after hours, enhance "students' understanding of citizenship by linking their civic knowledge to practical experience."[12]

In two recent studies, students and teachers identified many in-school and after-school activities that encourage students to practice the knowledge and the skills of citizenship. One study involved focus groups of students from Georgia and Texas and teachers from Atlanta, Minneapolis, and Seattle. These groups singled out mock presidential elections as students' most common co- or extra-curricular civic experience.[13] In the other study, teachers from fourteen school districts in seven states ranked the frequency of their schools' co- and extracurricular citizenship activities. The most common activities they named were student council; community service; voting education or registration; school clubs; speech or debate; Boys State and Girls State; mock trials; and two national programs, Close Up and *We the People*. The teachers also said that other activities dealing with diversity, academics, the environment, prevention of crime or violence, peer tutoring, mentoring, and mediation were important but less frequent civic experiences for their students.[14]

All these activities involve student participants and teacher sponsors who invest their time in building good citizenship. The National Council for the Social Studies advocates honoring the students who excel at these activities: "Teachers and schools should recognize students who display good character and civic virtue. Recognition programs should be established in schools and the community and featured by local and national media."[15] The Center for Civic Education and the Communitarian Network, a nonpartisan international association dedicated to strengthening civil society, recommend honoring the teachers also: "Teachers who devote time to the sponsorship of co-curricular activities allied to civic education should be recognized and appropriately rewarded for their endeavors."[16] Working alone or in collaboration with community groups, school officials can encourage schools to acknowledge participants in these activities, and they can support district-level rewards for outstanding students and teachers.

According to a recent study at the University of Texas, local school officials should look to their communities for assistance with civic activities. Community groups often are supportive of civic education, and some provide resources for services or programs that teach citizenship. The authors of the study concluded that

> *[c]ommunity and professional organizations appear to have positive potential for promoting civic education. The most positive involvement of these organizations is their support of extracurricular programs, activities, and services that, otherwise, likely would not be provided by the education bureaucracies.*[17]

The study found that some community groups furnished money, expertise, personnel, or equipment for mock elections or trials, student clubs, after-school programs, and field trips. Community partners also arranged opportunities for service learning, and some funded scholarships and other awards for teachers and students. The Parent-Teacher Association, the League of Women Voters, the local bar association, and the Rotary Club supported civic education activities in more than half of the fourteen school districts in the study. Other groups, including the American Legion, the Vet-

Controversial Issues: A Policy about Teaching Civic Skills

Lincoln County Schools

Training for effective citizenship is accepted as one of the major goals of our public schools. The instructional program of the Lincoln County School System, in order to achieve this purpose, places great emphasis upon teaching about our American heritage, the rights and privileges we enjoy as citizens, and the citizenship responsibilities that must be assumed in maintaining a democratic society.

One of our cherished rights is that of dissent through such channels as public and private debate, the ballot, the process of law—all with legal protection against unjust reprisals.

In preparing for effective citizenship, students must learn the techniques and skills of democratic dissent. They must have opportunities to hear, discuss, and study issues that are controversial. Teachers must be free to conduct such discussions without fear of reprisal so long as they maintain a high level of professional impartiality. Accordingly, it shall be the purpose of our schools to recognize the student's rights to the following:

1. To hear, discuss, and study at his/her level of maturity, and in the appropriate classes controversial issues which have political, economic, or social significance.
2. To have access to relevant information and materials.
3. To form and express opinions on controversial issues without jeopardizing his/her relationship with the teacher or the school.

Source: Policy IKB, Controversial Issues, in Lincoln County Schools, Board Policy Manual, available at http://www.lincoln.k12.nc.us/.

erans of Foreign Wars, the Kiwanis, local businesses, the police department, and the Chamber of Commerce, lent assistance to school-based civic projects in some of the districts studied.[18] By engaging community and professional organizations, school officials may find extra resources for activities that help students participate in civic life.

School officials also may find it advantageous to network with state and national organizations that promote civic education. In North Carolina the Civic Education Consortium is a statewide partnership of more than 200 organizations and individuals that seeks to build a new generation of knowledgeable, caring, and involved citizens. Cited in the *Washington Post* as "a model alliance that links schools with community leaders around important issues,"[19] the Consortium develops and promotes initiatives to revitalize civic education throughout the state. (For contact information for the Consortium and other North Carolina and national organizations that support civic education, see page 33.) The Consortium's Web site has more information about these and other groups and resources.

Developing Board Policy Promoting Civic Education

School board policies are statements that set forth the purposes and prescribe in general terms the organization and program of a school system. They create a framework within which the superintendent and the staff can discharge their assigned duties with positive direction. They tell what is wanted. They may also indicate why and how much.[20]

One of the purposes of school board policy is to provide clarity and guidance about the priorities of a school system. Although districts can address their priorities through other channels, board policy is important because it captures a board's thinking about a matter and sets the tone for the school system's response.

When citizenship is a local priority, it may enter into board policies on several matters, including board operations, personnel, community relations, student conduct, and the educational program. The board policies that govern the educational program are key to strengthening civic education.

School Board Policies in North Carolina

In their mission or philosophy statements, many school systems in North Carolina indicate that preparing students to be good citizens is a local priority. For instance:

- *The mission of the Richmond County Schools, in partnership with family and community, is to ensure a quality education in a safe environment enabling each student to become a life-long learner and productive citizen.*
- *The Cherokee County School System is committed to educating all students who attend its schools. . . . In a safe and nurturing atmosphere, students will develop a positive self-image, independent thinking skills, a system of values, and decision making abilities. Cherokee County Schools will prepare them to live as responsible, self-actualizing, and contributing citizens, thereby fulfilling the community's trust and enhancing its perception of the system.*[22]

Statements like these establish good citizenship as a local priority and set the stage for board policies that reinforce civic education.

When citizenship is a local priority, it

A Character Education Policy Including Citizenship

Durham Public Schools

The Durham Public Schools Board of Education believes that it is vital that the public schools support the efforts of families and our community to teach all young people certain fundamental, commonly agreed upon character traits. Support for character development will strengthen the Durham Public Schools' efforts to establish a safe and orderly environment where students will have optimum conditions for learning. The Board of Education further believes that everything a school does teaches values to students. The school system employees, then, should strive to teach the agreed upon character traits by example. These traits include the following:

1. **Citizenship** Serving a community by assuming the duties, rights, and privileges of belonging to the community
2. **Courage** Demonstrating the will to face challenging situations
3. **Fairness** Considering all points of view without self-interest or prejudice
4. **Honesty** Demonstrating truthfulness, fairness, and trustworthiness
5. **Kindness** Exhibiting gentleness, goodness of heart, compassion, friendliness
6. **Perseverance** Pursuing objectives with great determination and patience
7. **Respect** Acting with tolerance, courtesy, and dignity toward one another
8. **Responsibility** Accepting accountability for one's own words and actions; dependability in carrying out one's duties and obligations
9. **Self-Discipline** Demonstrating the will to gain control of one's behaviors.

The administration, and instructional staff, and site-based decision-making committees shall work together to integrate instruction that teaches and reinforces these character education goals into the curriculum and other activities of the Durham Public Schools. These efforts should focus on the following three (3) areas:

1. **Curriculum,** including the Standard Course of Study, extracurricular activities, and other curricular activities.
2. **School climate,** including rules and procedures, student behavior, modeling by staff and students, parent education, and other(s).
3. **Service learning,** including peer tutoring, volunteerism, community outreach, service projects, and other(s).

Source: Policy 3025, Character Education, in Durham Public Schools, Board of Education Policies, available at http://www.dps.durham.k12.nc.us/dps/Structure/board/BoardPolicies/Policy3000new/3025.html.

may enter into board policies on several matters, including board operations, personnel, community relations, student conduct, and the educational program. The board policies that govern the educational program are key to strengthening civic education. An analysis of current educational policies of a sample of North Carolina school systems illustrates what some districts do (see Table 1).

The three policy types represented in Table 1—no single policy, character education policy, and citizenship-type policy—reflect how the boards organize and label their policies dealing with civic education. The attention to citizenship in the policies varies from none to explicit direction about teaching citizenship. Of the 14 districts represented, 4 do not mention citizenship or civic education in their educational policies, and 3 affirm in their policies that good citizenship is an important product of a child's schooling but provide no further guidance on the subject. The remaining 7 affirm in policy that good citizenship is important and give some definition to its place in the educational program.

The policies from Lincoln County Schools and Durham Public Schools serve as examples of board direction on civic education. The policies of the Lincoln County Schools illustrate how a board can provide staff with considerable guidance about teaching civic education without having a policy dedicated to citizenship instruction or character education. Lincoln County board policies list "citizenship and civic responsibility" as the second goal of the instructional program, indicating that students should "acquire skills and knowledge necessary for effective citizenship."[23] Two other instructional policies address citizenship. The first policy, "Controversial Speakers," states, "When correctly handled, the use of controversial speakers becomes an invaluable component in accomplishing the goals of citizenship education."[24] This policy encourages teachers to build on the standard curriculum by inviting community resources into the classroom to help students learn citizenship skills related to controversy.

The other Lincoln County educational policy dealing with citizenship, "Controversial Issues" (see the sidebar, page 35) opens with an explanation of why the policy exists: to further the instructional program's goal of training for effective citizenship. There follows a sentence underscoring the importance of three components of the instructional program that teach effective citizenship: "our American heritage, the rights and privileges we enjoy as citizens, and the citizenship responsibilities that must be assumed in maintaining a democratic society."[25] The remainder of the statement focuses on the need for students to master democratic dissent, one skill of effective citizenship. This policy reinforces the importance of civic education for administrators and teachers, and it

Educational policies governing citizenship are justified, indeed vital, if a board considers civic education to be a "central purpose of education essential to the well-being of American democracy."

sets guidelines encouraging them to use controversy in a professional manner to teach citizenship skills.

The policies of the Durham Public Schools treat citizenship as a component of character education (see the sidebar, opposite). As observed by the directors of the Center for Civic Education, civic education and character education "have always gone hand in hand. Indeed, the basic reason for establishing and expanding public schooling was to foster those traits of public and private character necessary for our great experiment in self-government to succeed."[26]

The first sentence states the rationale for the Durham policy: that the schools must support family and community efforts to teach nine character traits, including citizenship. The policy defines citizenship, highlighting service and community. It specifies an integrative approach to teaching and reinforcing the character traits, rather than treating them as distinct subject matter. The policy lays out three areas—curriculum, school climate, and service learning—for implementation but leaves development of implementation strategies to the administration and the local school community.

Five of the school systems represented in Table 1 have a type of citizenship policy (citizenship, citizenship instruction, or citizenship and character education) that provides direction about civic education. All five policies include instructions about the use of patriotic symbols in the curriculum. They encourage students to develop an understanding of citizenship, although they differ on what that means. They also deal with local curricular decisions pertaining to citizenship. They specify who makes the local decisions (a curriculum committee, the schools, or the principals) and what the local curriculum consists of (strategies to promote good citizenship, a district curriculum, or instructional plans for the schools). Four of the policies discuss service learning. Related matters, such as student conduct policies, character traits, controversial issues and speakers, and teaching about religion, also appear in some of the policies. The five citizenship policies address pressing legal and administrative concerns about civic education.

National Recommendations for School Board Policies

The Center for Civic Education recently issued a position statement to guide the development of educational policy by states and school boards seeking to strengthen the preparation of young citizens in schools.[27] The position statement is part of the Center's national campaign to promote civic education, and the statement's four tenets establish citizenship as among the highest priorities of the public schools. The tenets suggest ways in which policy makers can address the rationale and the educational contents of a citizenship policy.

The first tenet of the Center for Civic Education's position statement proposes a rationale for policies governing citizenship instruction when the school board's intent is to strengthen civic education:

- *Education in civics and government should not be incidental to the schooling of American youth but a central purpose of education essential to the well-being of American democracy.*[28]

Educational policies governing citizenship are justified, indeed vital, if a board considers civic education to be a "central purpose of education essential to the well-being of American democracy." The tenet underscores the national importance of civic education. Some school boards prefer a rationale based on developing the local mission regarding citizenship. Alternatively, boards can use both local and national reasons for promoting civic education to explain why they have educational policies on citizenship instruction.

The other three tenets of the Center for Civic Education's position statement define a significant role for civic education in a district's instructional program:

- *Civics and government is a subject on a level with other subjects. Civics and government, like history and geography, is an integrative and interdisciplinary subject.*
- *Civics and government should be taught explicitly and systematically from kindergarten through twelfth grade whether as separate units and courses or as a part of courses in other subjects.*
- *Effective instruction in civics and government requires attention to the content of the discipline as well as to the essential skills, principles, and values required for full participation in and reasoned commitment to our democratic system.*[29]

As policy guidelines, the tenets establish civic education as a priority in the classroom from kindergarten through twelfth grade. They parallel the civic literacy requirements of the North Carolina Standard Course of Study and strongly encourage local curriculum development. They acknowledge that well-prepared teachers help students acquire a set of civic knowledge, skills, and dispositions that leads to responsible citizenship. The tenets direct greater administrator and teacher attention to civics curricula and the teaching of civic education. Citizenship policies reflecting these tenets can "create a framework within which the superintendent and the staff can discharge their assigned duties with positive direction" toward strengthening civic education.[30]

The report of the 1999 University of Texas study of state and local civic education policies also makes some general recommendations about citizenship policies and practices. One recommendation urges local school officials to adopt

board policies that "reaffirm for principals, teachers, parents, students, community leaders, and local citizens the centrality of civics in K–12 curricula and courses."[31] The study found that, in many districts, teachers were unaware that their school board had policies relating to civic education. Consequently the report also recommends that school officials ensure that their board's civics policies be communicated effectively to teachers. A third recommendation encourages local policy makers to support civic activities and also to communicate their importance to teachers.[32] The recommendations from this report highlight the importance of board policies that strengthen civic education and the need for local officials to inform their community and staff about the policies.

Conclusion

This article has presented three cost-effective strategies for promoting civic education at the school district level. In every school system in North Carolina, some teachers, and often some community groups, are instructing young people about citizenship. School officials can bolster the fragmented and largely unrecognized efforts of those educators and organizations by treating good citizenship as a priority. School officials build the context for learning. In a context supportive of civic education, students will be better prepared for their role as American citizens.

Notes

1. CENTER FOR CIVIC EDUCATION, CIVITAS: A FRAMEWORK FOR CIVIC EDUCATION 5 (Charles N. Quigley ed., Calabasas, Cal.: the Center, 1991).

2. NATIONAL ASS'N OF SECRETARIES OF STATE, NEW MILLENNIUM PROJECT—PHASE I, A NATIONWIDE STUDY OF 15–24 YEAR OLD YOUTH 5–10 (1999), available at http://www.nass.org.

3. ANTHONY D. LUTKUS ET AL., NAEP 1998 CIVICS REPORT CARD FOR THE NATION 23 (NCES 2000-457, Washington, D.C.: Nat'l Center for Educ. Statistics, 1999), available at www.ed.gov/nationsreportcard.

4. *Id.* at 23, 58. For a further discussion of this report, *see* Susan Leigh Flinspach & Jason Bradley Kay, *Modeling Good Citizenship for the Next Generation*, POPULAR GOVERNMENT, Winter 2001, at 17.

5. POLICY RESEARCH PROJECT ON CIVIC EDUCATION POLICIES AND PRACTICES, THE CIVIC EDUCATION OF AMERICAN YOUTH: FROM STATE POLICIES TO SCHOOL DISTRICT PRACTICES at xvii (Policy Research Project, Report No. 133, Lyndon B. Johnson School of Public Affairs, Univ. of Tex. at Austin, 1999), available at http://www. civiced.org/ceay_civicedpolicy report. html.

6. Leandro v. State of North Carolina, 346 N.C. 336, 488 S.E.2d 249 (1997). The court described the four elements as follows:

> A "sound basic education" is one that will provide the student with at least: (1) sufficient ability to read, write, and speak the English language and a sufficient knowledge of fundamental mathematics and physical science to enable the student to function in a complex and rapidly changing society; (2) sufficient fundamental knowledge of geography, history, and basic economic and political systems to enable the student to make informed choices with regard to issues that affect the student personally or affect the student's community, state, and nation; (3) sufficient academic and vocational skills to enable the student to successfully engage in post-secondary education or vocational training; and (4) sufficient academic and vocational skills to enable the student to compete on an equal basis with others in further formal education or gainful employment in contemporary society.

346 N.C. at 347, 488 S.E.2d at 255.

7. MARGARET STIMMANN BRANSON & CHARLES N. QUIGLEY, THE ROLE OF CIVIC EDUCATION 10 (A Policy Task Force Position Paper, Washington, D.C.: Communitarian Network, Sept. 1998), available at www.gwu. edu/~ccps/pop_civ.html.

8. Mary Ellen Maxwell, *School Board Members Can Inspire People to Get Involved in the Political Process*, SCHOOL BOARD NEWS, Mar. 7, 2000, at 2, 2.

9. James H. Svara, *Key Leadership Issues and the Future of Council-Manager Government*, in FACILITATIVE LEADERSHIP IN LOCAL GOVERNMENT: LESSONS FROM SUCCESSFUL MAYORS AND CHAIRPERSONS 216, 225 (James H. Svara & Assoc. eds., San Francisco: Jossey-Bass, 1994).

10. Flinspach & Kay, *Modeling Good Citizenship*, at 21–23.

11. NATIONAL COUNCIL FOR THE SOCIAL STUDIES, TASK FORCE ON CHARACTER EDUC. IN THE SOCIAL STUDIES, FOSTERING CIVIC VIRTUE: CHARACTER EDUCATION IN THE SOCIAL STUDIES 2 (Washington, D.C.: the Council, 1997), available at www.ncss.org/standards/ positions/character.html.

12. POLICY RESEARCH PROJECT, THE CIVIC EDUCATION OF AMERICAN YOUTH, at 189.

13. Carole L. Hahn & Judith Torney-Purta, *The IEA Civic Education Project: National and International Perspectives*, 65 SOCIAL EDUCATION 425, 427 (1999

14. POLICY RESEARCH PROJECT, THE CIVIC EDUCATION OF AMERICAN YOUTH, at 179–80. Boys State is a leadership program of the American Legion, and Girls State, the American Legion Auxiliary (see http://www.legion. org/bstate.htm). The Close Up Foundation, the nation's largest nonprofit, nonpartisan citizenship education organization, offers instructional programs in Washington, D.C. (see http://www.closeup.org/). *We the People* is an instructional program from the Center for Civic Education (see http://www.civiced.org/ programs.html).

15. NATIONAL COUNCIL FOR THE SOCIAL STUDIES, FOSTERING CIVIC VIRTUE, at 3.

16. BRANSON & QUIGLEY, THE ROLE OF CIVIC EDUCATION, at 19.

17. POLICY RESEARCH PROJECT, THE CIVIC EDUCATION OF AMERICAN YOUTH, at 204.

18. *Id.* at 178–91.

19. E. J. Dionne, Jr., *The Civics Deficit*, WASHINGTON POST, Nov. 30, 1999, at A29.

20. This definition was developed by the National School Boards Association and the American Association of School Administrators. *See* Nat'l School Boards Ass'n, *Policy Review and Development*, THE ADMINISTRATIVE ANGLE ON POLICY IMPLEMENTATION, No. 4, at 1 (1998).

21. The North Carolina School Boards Association offers general policy guidance through POLICIES TO LEAD THE SCHOOLS, available at http://www.ncsba.org/policy.html, or by calling (919) 841-4040.

22. The Richmond County Schools' mission statement is available at http://www. myschoolonline.com/site/0,1876,0-24566-33-1691,00.html. The Cherokee County Schools' philosophy statement is available from Cherokee County Schools, 14 Hickory Street, Murphy, NC 28906.

23. *Policy IB, Goals of the Instructional Program*, in LINCOLN COUNTY SCHOOLS, BOARD POLICY MANUAL, available at http:// www.lincoln.k12.nc.us/.

24. *Policy IKBA, Controversial Speakers*, in LINCOLN COUNTY SCHOOLS, BOARD POLICY MANUAL, available at http://www.lincoln. k12.nc.us/.

25. *Policy IKB, Controversial Issues*, in LINCOLN COUNTY SCHOOLS, BOARD POLICY MANUAL, available at http://www.lincoln. k12.nc.us/.

26. BRANSON & QUIGLEY, THE ROLE OF CIVIC EDUCATION, at 15.

27. POLICY RESEARCH PROJECT, THE CIVIC EDUCATION OF AMERICAN YOUTH, at 221. Also available at http://www.civiced.org/campaign _index.html.

28. *Id.*

29. *Id.*

30. National School Boards Ass'n, *Policy Review and Development*, at 1.

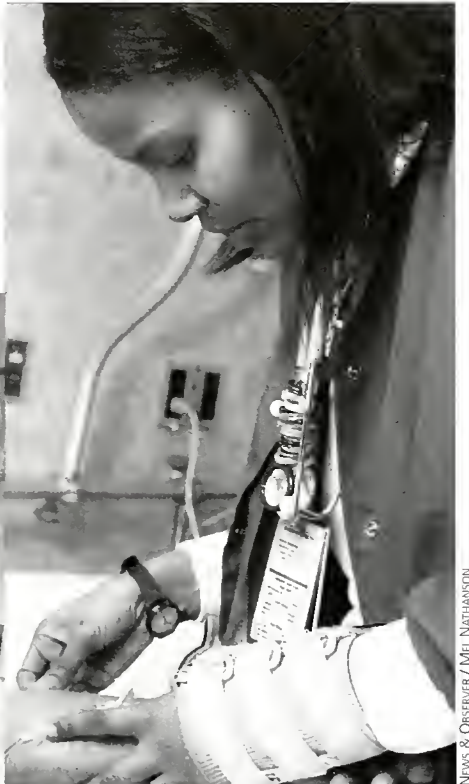
31. POLICY RESEARCH PROJECT, THE CIVIC EDUCATION OF AMERICAN YOUTH, at 111.

32. *Id.* at 111–12.

FROM THE MPA PROGRAM

Emergency Department Screening for Domestic Violence

Emily Gamble



NEWS & OBSERVER / MEL NATHANSON

To develop policies and programs to combat domestic violence, policy makers first must know who is affected and to what degree.[1] This article addresses one way to obtain more information on domestic violence—through health care screening, primarily in emergency departments. The article reports how emergency department screening was conducted in two programs and what steps can be taken to overcome some of the barriers to screening in the health care setting.

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Current Data Collection Systems

Although there has been an increased effort recently to collect data about domestic vio1lence, there is little consistency in the data being collected. One problem is that there is not an agreed-on definition of domestic violence. Studies have focused primarily on opposite-sex marital partners, but domestic violence also occurs in same-sex partnerships and between nonmarital partners (boyfriends, girlfriends, and ex-partners).

Another problem lies in the sources of data about domestic violence. Data are ordinarily limited to information obtained from the criminal justice system.[2] Criminal justice sources include the National Incident Based Reporting System and the National Crime Victimization Survey, among others.[3] Although these sources provide excellent data, many experts question whether they accurately reflect the prevalence of domestic violence. In 1980 the U.S. Department of Justice estimated that 43 percent of domestic violence incidents are never reported to the police and so never make it into the data systems.[4] More recent studies estimate that only 20 percent of incidents *are* reported to the police.[5] Therefore, considering sources of data outside the criminal justice system is important.

Data from health care sources may give policy makers a clearer picture of the impact of domestic violence because such data focus on the victim and his or her experiences.[6] Emergency departments may be the most promising source of data because, of the various health

care services provided to victims of domestic violence, treatment in emergency departments appears to be particularly prevalent.[7]

Screening in Health Care Settings

In an effort to find innovative ways to obtain domestic violence data from the health care community, in the mid-1990s the Centers for Disease Control and Prevention funded pilot projects in several states. The Massachusetts pilot program —Women Abuse Tracking in Clinics and Hospitals, better known as WATCH—focuses on data collection in emergency departments.[8] The largest program of its kind in the country, it also is one of the first to use "universal surveillance"—that is, screening for domestic violence of all females age twelve and older who come into a hospital emergency room.

Programs to screen for domestic violence in emergency departments (and public health prenatal care clinics) also have operated in North Carolina, including at the University of North Carolina (UNC) Hospitals. In the early 1990s, UNC Hospitals developed a program to screen all people age sixteen or older seeking care at the emergency room. The program, which had no internal or external funding, is no longer in place because key staff left UNC Hospitals and no other staff had the time or the mandate to take it on.[9] Nevertheless, the work done at UNC Hospitals as well as at WATCH is instructive about what is needed to make a program successful.

Screening of domestic violence victims in emergency departments has two distinct but closely related goals. The first, which is the focus of this article, is to document the occurrence of partner abuse and thus to create a more accurate picture of the phenomenon. The second is to offer referrals and resources to victims. Although these are different goals, one research oriented and the other care oriented, it is hard to separate them entirely. A better understanding of the incidence of domestic violence will ensure that public and private agencies dedicate sufficient resources to helping victims. But a program that only identifies victims and offers no referrals or resources misses the opportunity to help victims break the cycle of violence. Worse, the absence of help may reinforce victims' feelings of helplessness.

Barriers to Screening

On the basis of available literature and interviews with program personnel at both WATCH and UNC Hospitals, emergency department screening has the potential to provide excellent data on domestic violence. The experiences of both programs, however, reveal several barriers to complete and accurate screening.

Interviews with WATCH staff indicated that, of the 23 hospitals participating in the program, only 10 regularly provided reliable, usable data.[10] UNC Hospitals had a similar problem. During a two-week assessment of the program, 595 women came to the emergency department, but only 119 were screened.[11] Barriers included lack of time, insufficient administrative support, and inadequate community resources, as well as staff feelings of powerlessness and fears of offending.[12]

Another problem is that emergency department screening is relatively new, and there are few measurements of success. Any screening program must include, at a minimum, simple measures of success, such as increased victim identification. Once a program is operating and has met its initial measures of success, more extensive measures, such as the number of identified victims who are actually referred to resources, or the number of identified victims who make use of suggested resources, can be put in place.[13]

The literature on domestic violence screening by medical personnel has identified several factors depressing screening rates. In one study 71 percent of those interviewed cited lack of time, 55 percent a fear of offending, and 50 percent a feeling of powerlessness—that is, an inability to fix the problem, a lack of proper training, or a feeling that identification and intervention made no real difference. Further, 42 percent felt that they would lose control of the situation, and 39 percent felt that the situation was "too close for comfort"—that is, they were reluctant to ask about abuse inflicted on patients who were "similar to [them]" or had "similar characteristics." One health care provider in this study said, "I think that some physicians, and I do the same thing, if you are very busy and have lots of patients waiting, you just don't ask a question that you know will open a Pandora's Box. Even if the thought crosses your mind, you don't ask."[14]

The barriers identified in the literature were echoed in conversations with staff of WATCH and UNC Hospitals. Some emergency department staff did not screen for domestic violence because they did not know what to do if they identified it. Others questioned the utility of screening because they saw no "cure": despite their intervention the victim did not leave the abusive partner and, indeed, returned to the emergency department with additional injuries.[15]

Another barrier to an effective screening program is incomplete record keeping. In one study, 109 patients were interviewed, but the cause of injury was identified in only 50 cases. Failure to take a complete history from the patient, and failure to note the findings in the medical chart when a complete history was taken, were the major reasons for this loss of information.[16]

Possible Solutions

Structure of the Protocol

Since the barrier to domestic violence screening most often cited by health care providers is lack of time, it is imperative to make the process as "painless" as possible by keeping the screen short and concise. Early questionnaires that were developed consisted of 19 to 30+ questions. Most hospitals encourage a short "triage time"—that is, they urge that a medical professional quickly identify a patient's problem and decide on an appropriate course of action—so it is difficult to add more questions to the existing process.[17] Recognizing this limitation, researchers have developed screening tools that consist of one to four questions only. One such tool is the Personal Violence Screen (PVS), which takes an average of 20 seconds to use. It includes a basic question common in most screening instruments: "Have you been hit, kicked, punched, or otherwise hurt by someone within the past year? If so, by whom?" The remaining few questions focus on the victim's perception of

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his or her own safety, such as "Are you currently in a relationship in which you have felt afraid?" and "Is there a partner from a previous relationship who is making you feel unsafe now?"[18] Another study suggests using a question to determine if the cause of the visit to the emergency room is related to partner violence —for example, "Are you here today due to an injury or illness related to partner violence?"[19]

The possibility of violence may be obvious when the patient has a broken jaw or nose. However, many illnesses, including migraines, gastrointestinal disorders, and chronic pain symptoms, may be related to partner violence.[20] Consequently, it is important that screening protocols not rely only on staff observations of the patient. UNC Hospitals implemented a system in which triage nurses attempted to identify victims of abuse on the basis of the apparent presence of several risk factors—for example, injuries consistent with abuse; unusual markings and bruises; fearfulness of caregivers, including health professionals; withdrawn behavior; regular unscheduled emergency department use; and sleep disorders. When these nurses thought that a patient might be a victim of abuse, they questioned him or her directly. This triage screen was not effective. In an evaluation of it, all patients were asked the direct questions, regardless of whether the triage nurses suspected abuse. The evaluation revealed that the triage screen missed more than 80 percent of the cases that were identified through direct questions.[21] With a few short and direct questions, such as those on the PVS, medical personnel can begin to identify patients who have been the victims of domestic violence.

Without training on domestic violence, staff members may not realize its severity and prevalence or recognize the characteristics, the injuries, and the behaviors that indicate abuse.

Integration of the Program into the Emergency Department's Structure

In addition to keeping the screen short and simple, it is necessary to integrate the screening program into the structure of the emergency department and to make it adaptable to the department's changing needs and configurations. One study integrated the question "Is the patient a victim of domestic violence?" into the standard medical chart and found that the simple prompt nearly doubled the identification of domestic violence victims.[22] Another group of practitioners, noting that the modification of patient charts increased the identification of abuse in their emergency department, recommended that "chart modification . . . be considered by other [emergency departments] as an inexpensive and time-efficient means of increasing the identification of domestic violence."[23]

Education

One way to tackle the feelings of powerlessness described by medical personnel in dealing with domestic violence is increased education. There are three points at which education can occur.

Pre-implementation education. The first and most obvious need is for education before implementation of the screening program. Both WATCH and UNC Hospitals held pre-implementation training not only on the screening protocol but also on domestic violence in general.[24] Without training on domestic violence, staff members may not realize its severity and prevalence or recognize the characteristics, the injuries, and the behaviors that indicate abuse. In a questionnaire sent to dental hygienists and dentists (the face being the area most often targeted for abuse), nurses, physicians, psychologists, and social workers, on average, only 40 percent could recall any formal education on partner abuse.[25] To be effective, training must not only address issues that medical personnel have identified as areas of concern but also dispel myths about domestic violence, including that it happens only to certain types of people and that patients will be offended if they are asked about the issue.[26]

Pre-implementation training also should include presentations by representatives of local domestic violence organizations, criminal justice personnel (including hospital police if they exist), and hospital social workers. These will give medical providers a clearer picture

of the steps that may be taken if abuse is identified. Although it is not the role of medical staff to decide for the victim what to do, they can help point out available options and help the victim take the next step.[27] As part of this training, medical providers should be made aware of situations in which state law requires that they report abuse.[28]

In addition to front-line staff, staff who will be responsible for entering the information in the system's databases should participate in early training. Many hospital data systems are not set up to accommodate cause-of-injury data, so modifications to existing systems often must be made before implementation of a screening program.[29] All staff should be fully trained in the new system and in domestic violence.

Ongoing education. The experiences of groups implementing screening programs indicate that pre-implementation education is not enough to ensure a continuing high level of staff interest and participation. In a study of screening programs in the southwestern United States, researchers evaluated screening levels three months into a program and then twelve months into the program. They found, after an initial increase, a 9 percent decrease in screening.[30] This indicates that periodic training sessions and reinforcement of the methods and the goals of the screening protocol are necessary. WATCH, having encountered this problem, now is contracting with another agency to provide periodic training for personnel at the twenty-three hospitals participating in the program. This regular training ensures that new staff members are aware of the screening protocol, and it updates all personnel on any protocol changes. Additionally, training sessions provide an opportunity for feedback from front-line staff so that modifications to the protocol can be made as necessary.

Early professional education. Education on domestic violence also should be a part of the professional education of medical providers. The boards of medicine and of nursing, among others, can encourage inclusion of domestic violence education in early professional education. Such training would better equip medical personnel to recognize abuse and would provide health care educators with an opportunity to dispel myths and stereotypes about abuse. Those interviewed for this article felt that providing medical professionals with accurate information early in their professional training would facilitate efforts to implement a screening program.[31]

Administrator and Community Support

A final barrier to the success of a screening program is insufficient support inside and outside the organization. As with any program, support by the organization's senior personnel is essential to success. To build and sustain support, domestic violence education should be provided to hospital administrators as well as to front-line medical staff. Administrators may have had little training on domestic violence and may not appreciate that domestic violence is not limited by race or socioeconomic level. Consequently they may not recognize the importance of screening in the population served by their hospital.

Adequate support in the community also is essential to a successful screening program.[32] Emergency department staff must have readily available resources for patient referrals. If shelters or other agencies are not able to provide services to those identified as abused, hospital staff may conclude that screening is not worth their time and effort. Before setting up a screening protocol, an emergency department should identify and contact local community groups to act as partners in the program.

Conclusion

Protocols for addressing domestic violence, including emergency department screening, are endorsed by most major medical associations[33] and are mandated by the Joint Commission on Accreditation of Healthcare Organizations.[34] In assessing the importance of domestic violence protocols in the health care system, public health experts have noted that "early education, supportive education, effective referral, and ongoing support and follow-up for abused women . . . could eventually reduce the prevalence of abusive injury by up to 75%."[35] A simple screening process in the emergency department would create an important new source of data on domestic violence, which in combination with data from the criminal justice system and other sources would provide a clearer picture of the prevalence and the impact of domestic violence. Armed with this knowledge, policy makers would be in a better position to target programs and funding to combat the problem.

Notes

1. "A prerequisite for the scientific study . . . of injury is acquisition of data on which to base priorities and research." Fredrick P. Rivara et al., *Cost Estimates for Statewide Reporting of Injuries by E Coding Hospital Discharge Abstract Data Base Systems*, 105 PUBLIC HEALTH REPORTS 635, 635 (1990); *see also* GOVERNOR'S TASK FORCE ON DOMESTIC VIOLENCE, GOVERNOR'S CRIME COMM'N, FINAL REPORT (Raleigh, N.C.: the Commission, Jan. 1999) (recommending increased collection of data on domestic violence).

2. JAMES ZEPP, JUSTICE RESEARCH AND STATISTICS ASS'N, DOMESTIC AND SEXUAL VIOLENCE DATA COLLECTION: A REPORT TO CONGRESS UNDER THE VIOLENCE AGAINST WOMEN ACT, NCJ-161405 (Washington, D.C.: JRSA, July 1996).

3. Anna E. Waller et al., *Health Related Surveillance Data on Violence against Women: State and Local Sources*, 6 VIOLENCE AGAINST WOMEN 868 (Aug. 2000).

4. Judith McFarlane et al., *Assessing for Abuse: Self-Report vs. Nurse Interview*, 8 PUBLIC HEALTH NURSING 245 (1991).

5. JEFFREY FAGAN, CRIMINALIZATION OF DOMESTIC VIOLENCE: PROMISES AND LIMITS 29 (NIJ-157641, Washington, D.C.: Nat'l Inst. of Justice, Jan. 1996).

6. Waller et al., *Health Related Surveillance Data.*

7. Estimates of the prevalence of domestic violence in emergency department populations range from 17 percent to 37 percent. MICHAEL R. RAND, BUREAU OF JUSTICE STATISTICS, VIOLENCE-RELATED INJURIES TREATED IN HOSPITAL EMERGENCY DEPARTMENTS, NCH-156921, at 2 (Washington, D.C.: BJS, Aug. 1997); Geraldine D. Greany, *Is She a Battered Woman? A Guide for Emergency Response*, 84 AMERICAN JOURNAL OF NURSING 724 (1984).

8. WATCH has three goals: (1) to create a statewide data-collection system on domestic violence that uses both new data sources and existing data sources that have been modified to obtain additional information; (2) to create an emergency department data-collection system on domestic violence; and (3) to create a blueprint of the program that can be used elsewhere. The program works with 23 randomly selected hospitals. It provides the emergency department staff with training in identification and treatment of victims of domestic violence,

as well as in documentation of the cases. At the outset of the project, personnel worked with the hospitals to change or modify their coding systems to account for the variables that needed to be reported, and staff were trained in use of these modified systems. Data now are collected monthly from the participating hospitals and incorporated into the program database. Telephone Interviews with Rahel Mathews, Data Manager, & Carter Pratt, Director, WATCH (Jan. 7 & Feb. 11, 2000, respectively).

9. The program was a two-tiered system in which the patient was initially identified as a possible domestic violence victim on the basis of evidence of several risk factors; the patient then was asked specific questions by medical personnel to determine if there was a history of abuse. Interview with Anna E. Waller, Research Associate Professor, Department of Emergency Medicine, UNC Hospitals, in Chapel Hill, N.C. (Jan. 1, 2000).

10. Interview with Mathews, WATCH.

11. Despite this low screening rate, four cases of suspected abuse during that two-week period were confirmed. Before the screening protocol was used, an average of only two to three cases per month was documented in the emergency department at UNC Hospitals. Anna E. Waller et al., *Development and Validation of an Emergency Department Screening and Referral Protocol for Victims of Domestic Violence*, 27 ANNALS OF EMERGENCY MEDICINE 754 (1996).

12. Nancy K. Sugg & Thomas Inui, *Primary Care Physicians' Responses to Domestic Violence*, 267 *JAMA* 3157 (1992); David H. Gremillion & Elizabeth P. Kanof, *Overcoming Barriers to Physician Involvement in Identifying and Referring Victims of Domestic Violence*, 27 ANNALS OF EMERGENCY MEDICINE 769 (1996); Elizabeth A. Delahunta, *Hidden Trauma: The Mostly Missed Diagnosis of Domestic Violence*, 13 AMERICAN JOURNAL OF EMERGENCY MEDICINE 74 (1995).

13. Interviews with Waller, UNC Hospitals; Pratt, WATCH. Jacquelyn C. Campbell & Nancy Chescheir, What Works in Domestic Violence Health Interventions? Seminar Presentation at School of Public Health, The Univ. of N.C. at Chapel Hill (Feb. 21, 2000).

14. Sugg & Inui, *Primary Care Physicians' Responses*, at 3158.

15. Interview with Waller, UNC Hospitals.

16. Robert J. Schwartz et al., *The Quantity of Cause-of-Injury Information Documented on the Medical Record: An Appeal for Injury Prevention*, 2 ACADEMIC EMERGENCY MEDICINE 98 (1995).

17. Interview with Waller, UNC Hospitals; Waller et al., *Health Related Surveillance Data*.

18. Kim M. Feldhaus et al., *Accuracy of 3 Brief Screening Questions for Detecting Partner Violence in the Emergency Department*, 227 *JAMA* 1357, 1358 (1997).

19. As cited in *id.* at 1358.

20. Peggy E. Goodman & Jan Capps, *Not in My Practice: A Look at Pervasive Consequences of Domestic Violence*, 58 NORTH CAROLINA MEDICAL JOURNAL 310 (1997); Mary P. Koss & Lynette Heslet, *Somatic Consequences of Violence against Women*, 1 ARCHIVES OF FAMILY MEDICINE 53 (1992); Chris Raymond, *Campaign Alerts Physicians to Identify, Assist Victims of Domestic Violence*, 261 *JAMA* 963 (1989); Douglas A. Drossman et al., *Sexual and Physical Abuse in Women with Functional or Organic Gastrointestinal Disorders*, 113 ANNALS OF INTERNAL MEDICINE 828 (1990).

21. Interview with Waller, UNC Hospitals. A key factor influencing which patients were screened for abuse was the time available to the medical professionals and a perception that other health issues were of greater importance. According to one study, 71 percent of physicians considered that screening for domestic violence was "not a good investment of time." Gremillion & Kanof, *Overcoming Barriers*, at 771.

22. Lenora Olson et al., *Increasing Emergency Physician Recognition of Domestic Violence*, 27 ANNALS OF EMERGENCY MEDICINE 741, 744 (1996). In a prenatal care clinic, once a formalized system had been incorporated into the clinic's charts, the detection of domestic violence increased from 6.4 percent to 14.1 percent. Deborah K. Covington et al., *Assessing for Violence during Pregnancy Using a Systematic Approach*, 1 MATERNAL AND CHILD HEALTH JOURNAL 129 (1997).

23. Olson et al., *Increasing Emergency Physician Recognition*, at 745.

24. Overview of WATCH [handout, undated]; interview with Waller, UNC Hospitals.

25. Social workers and nurses had the greatest amount of education during professional development—45 percent and 43 percent respectively. Only 24 percent of physicians and 11 percent of dentists had had any training. Virginia P. Tilden et al., *Factors That Influence Clinicians' Assessment and Management of Family Violence*, 84 AMERICAN JOURNAL OF PUBLIC HEALTH 628, 630 (1994).

26. In one survey, of the 164 patients asked, 78 percent indicated that they favored regular screening, but only 7 percent remembered ever being asked. This suggests that although there may be an occasional case in which a patient is offended by the questions, the benefits of the screening outweigh the costs in this respect, and most patients understand that. Lawrence S. Friedman et al., *Inquiry about Victimization Experiences: A Survey of Patient Preferences and Physician Practices*, 152 ARCHIVES OF INTERNAL MEDICINE 1186 (1992).

27. One researcher put it well: "[T]he [physician's] referral should be made to help the victim assess her situation, and eventually make decisions." Diane Brashear, *The Role of the Physician in Identifying and Treating Abused Women*, 83 INDIANA MEDICINE 574, 574 (1990).

28. In North Carolina, medical staff are required to make a report to a county social services department any time they have cause to suspect that a child is abused, neglected, or dependent, or they have reasonable cause to believe that a disabled adult needs protective services. N.C. GEN. STAT. 7B-301; 108A-102. They also are required to report to the proper law enforcement authority incidents in which a patient appears to have been injured by a gun, a knife if they believe the injury involved a criminal act, or poison. In addition, medical personnel are required to report injuries involving grave bodily harm or illness that they believe were caused by a criminal act of violence. N.C. GEN. STAT. 90-21.20. Reporting of a case of domestic violence, in and of itself, is not required. Michael Easley, *Domestic Violence*, 27 ANNALS OF EMERGENCY MEDICINE 764 (1996); Ariella Hyman & Ronald A. Chez, *Mandatory Reporting of Domestic Violence by Health Care Providers: A Misguided Approach*, 5 WOMEN'S HEALTH ISSUES 208 (1995).

29. Interviews with Waller, UNC Hospitals; Pratt, WATCH; & Mathews, WATCH.

30. William H. Wiist & Judith McFarlane, *The Effectiveness of an Abuse Assessment Protocol in Public Health Prenatal Clinics*, 89 AMERICAN JOURNAL OF PUBLIC HEALTH 1217 (1999).

31. Interviews with Waller, UNC Hospitals; Pratt, WATCH; & Sue Hoenhaus, former emergency room nurse, UNC Hospitals, in Raleigh, N.C. (Feb. 7, 2000).

32. Interviews with Waller, UNC Hospitals; Pratt, WATCH; Hoenhaus, UNC Hospitals; & Sandra Martin, Associate Professor, School of Public Health, UNC–CH, in Chapel Hill, N.C. (Jan. 13, 2000).

33. The American Medical Association, the American College of Obstetricians and Gynecologists, and the American Academy of Family Physicians, among others, endorse screening. Council on Scientific Affairs, American Medical Ass'n, *Violence against Women: Relevance for Medical Practitioners*, 267 *JAMA* 3184 (1992); American College of Obstetricians and Gynecologists, *ACOG Technical Bulletin No. 209: Domestic Violence*, 51 INTERNATIONAL JOURNAL OF GYNECOLOGY AND OBSTETRICS 161 (1995); American College of Emergency Physicians, *Emergency Medicine and Domestic Violence*, 25 ANNALS OF EMERGENCY MEDICINE 442 (1995).

34. JOINT COMM'N ON ACCREDITATION OF HEALTHCARE ORGS., 1996 ACCREDITATION MANUAL FOR HOSPITALS 39–50 (Oakbrooke Terrace, Ill.: JCAHO, 1995).

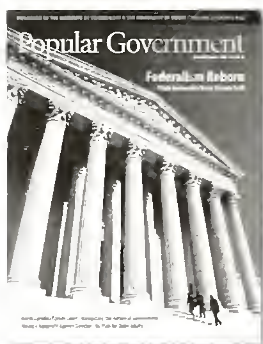
35. MARK L. ROSENBERG & MARY ANN FENLEY, VIOLENCE IN AMERICA: A PUBLIC HEALTH APPROACH 150 (New York: Oxford Univ. Press, 1991).

POINT
COUNTERPOINT

When *Can* a State Be Sued?

William Van Alstyne

In her Popular Government *article "When You Can't Sue the State: State Sovereign Immunity" (Summer 2000), Anita R. Brown-Graham described a series of recent decisions in which a sharply divided U.S. Supreme Court barred individuals from suing states for money damages for certain violations of federal law, such as laws prohibiting discrimination against employees because of their age. In the response that follows, William Van Alstyne argues that this barrier to relief is neither unduly*



*imposing nor novel. The debate over the significance of these decisions is likely to continue. In February 2001, in another case decided by a five-to-four vote (*Board of Trustees of University of Alabama v. Garrett*), the Supreme Court again barred an individual's suit for damages against a state entity, this time for a violation of the Americans with Disabilities Act.*

—Editor

Professor Anita Brown-Graham's welcome and comprehensive article ("When You Can't Sue the State") was first-rate. Even so, it may leave readers with a somewhat misleading impression of what has happened recently. If one rephrases the title merely to turn the question around ("When *Can* a State Be Sued?"), one will see that the U.S. Supreme Court's recent Eleventh Amendment decisions overall may do less in securing state immunity from suits brought under various federal statutes, in federal courts, than one might first suppose.

I

First, as Professor Brown-Graham acknowledged, with respect to all of the various state entities otherwise covered by the federal statutes touched on in her article, each remains subject to federal court suit by any *federal* enforcement agency authorized by Congress to pursue it, whether or not in federal court. That any such action may seek money damages (and not merely injunctive relief), moreover, does not affect the jurisdiction of the court.[1]

Second, as Professor Brown-Graham likewise acknowledged, even as to federal court enforcement actions brought by *private* parties (rather than by a federal agency such as the Equal Employment Opportunity Commission or the Department of Labor), private parties may still sue to halt any ongoing violations, merely substituting the state agency head (by name) as the defendant and shifting from seeking damages to demanding injunctive relief.[2]

Third, insofar as any of the federal statutes are grounded on the enforcement clause of the Thirteenth, Fourteenth, or Fifteenth Amendment, then even *private* actions against the state or state agency, seeking *money* damages (including punitive damages as well as attorney fees), may be brought in federal court, as provided by Congress. The Equal Pay Act of 1963 provides for money damages (actually, *double* liquidated damages plus attorney fees). As Professor Brown-Graham herself noticed, this act has been upheld in authorizing not merely effective injunctive relief but specified money damages as well. And so it is, equally, with any other act of Congress that can claim a *valid* basis in any of the enforcement clauses of these amendments.[3]

Fourth, insofar as some federal statutes are *not* based on any of the Civil War amendment enforcement clauses (and not all are), still, insofar as they *may* be tied to federal funds (as many assuredly are), the Supreme Court has held that Congress can make state or state agency acceptance of statutory provisions authorizing private actions for money damages to be brought against them in federal court *an express condition of funding eligibility*. Having thus accepted the bitter with the sweet (albeit under considerable real duress of otherwise being excluded from funding eligibility), the receiving state is bound by its waiver of immunity and liable to answer even to privately brought suits for money damages in federal court.[4]

Fifth, as acknowledged (but somewhat downplayed in the article), it *also* remains true that state officials may be sued *personally* in federal court, in privately brought actions seeking money damages from *them*, should they act in disregard of specific provisions in some federal acts. Why? Because neither state nor local officials acquire any personal immunity by force of the Eleventh Amendment.[5]

Sixth, of significance to many readers of *Popular Government*, most *local* government units (e.g., cities, counties, and school districts) generally receive *no* Eleventh Amendment immunity at all. So they have no shield to raise against private claims for money damages sought from them under the various applicable federal laws, whether or not in federal court.[6] None of the Supreme Court's recent decisions have effected any change in this respect.

The net effect of all these considerations may

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in fact be this: as with reports of Mark Twain's death, the *overall* effect of the Court's recent Eleventh Amendment decisions may have been considerably exaggerated. It is less than one might have supposed.

II

Nor are the principal recent Eleventh Amendment decisions nearly as novel or precedent-shattering as they have been made to seem by their critics (e.g., those quoted in Professor Brown-Graham's article). The point merits some emphasis in its own right.

More than a century ago, the Supreme Court noted that when the Constitution itself was under discussion, in the founding period, "[a]ny . . . power as that of authorizing the federal judiciary to entertain [money damages] suits by individuals against the States [without their consent], had been expressly disclaimed . . . by the great defenders of the Constitution."[7] And so the law generally stood for most of our constitutional history, right up until 1989.

Indeed, not until 1989, in *Pennsylvania v. Union Gas,*[8] did the Court presume to declare that, other than pursuant to acts of Congress derived from the Civil War amendments, private parties could generally sue states without their consent, in federal courts, for money damages, whenever Congress might think it suitable to treat states no differently than private parties in this respect. Readers of *Popular Government* may not now remember, but it was actually just *this* decision, *Union Gas,* that was "revisionist." A thin majority of justices in *Union Gas* presumed to overturn virtually two centuries of established Article III and Eleventh Amendment constitutional immunity previously acknowledged by the Court. In turn, it was merely just *this* decision, and not some more ancient precedent, that was repudiated by a bare majority of the Court itself, in 1996, in *Seminole Tribe v. Florida.*[9]

Essentially, then, except for this short interval (1989–96), the general position of the Supreme Court respecting the scope of Article III and Eleventh Amendment immunity of the states was pretty much as the Court has once again said it is, neither more nor less. And as we have seen in the course of this brief review, that immunity (such as it is) is effectively quite a bit less, as a practical matter, than it has been made to appear.

III

In fact, it may be more strongly arguable that in recent decades, Congress has presumed to burden state and local governments with more restrictions (and more affirmative duties) than historically Congress imagined it had any authority to do. And far from intervening against Congress's ever-expanding claims of power over the states in any general way, for the most part the Supreme Court has merely acquiesced.[10] In turn, as against this *general* trend, the overall effects of the Court's recent Tenth and Eleventh Amendment "immunity" decisions are rather puny countermeasures, such as they are. They are, in brief, far less like impassable roadblocks placed in Congress's pathway (as it presumes to sweep its way through and over the states by imposing ever more restrictions, costs, and liabilities upon them) than like mere "traffic bumps" along the federal juggernaut road.[11]

In February 2001 the U.S. Supreme Court ruled that individuals could not sue states for money damages for violations of the Americans with Disabilities Act. Earlier the Court ruled similarly regarding the Age Discrimination in Employment Act.

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Notes

1. In brief, even as the Supreme Court has said all along, the Eleventh Amendment provides no immunity from suits against the states in federal courts when they are brought by, or on behalf of, the national government as such.

2. *See, e.g., Ex parte* Young, 209 U.S. 123 (1908); Idaho v. Coeur d'Alene Tribe of Idaho, 521 U.S. 261 (1997).

3. As the Court itself has noted, these amendments (the Thirteenth, Fourteenth, and Fifteenth) were added to the Constitution in the aftermath of the Civil War. They were added, moreover, as new, express restrictions on the states as such. And each explicitly provided an express power in Congress—that is, a power to "enforce" these new restrictions on the states "by appropriate legislation." Each of these clauses (Section 2 of the Thirteenth Amendment, Section 5 of the Fourteenth Amendment, and Section 2 of the Fifteenth Amendment) is later in time than the Eleventh Amendment. That they were meant to, and did, empower Congress to provide redress through civil actions, including appropriate *federal* court actions for money damages (and not merely for injunctive relief), as Congress might decide to do, is surely exactly as one would logically suppose.

4. To be sure, as Professor Brown-Graham correctly indicated, the Court requires that Congress be forthright if it means to qualify a state's (or state agency's) eligibility for some category of federal aid by its willingness to answer to private parties in damages in federal court for failing to adhere to the terms of the statute. But this is merely a requirement of "plain statement" by Congress, nothing more.

5. Since the action neither is brought against the state as such nor seeks damages from the state [rather, from the personal savings and assets of the named individual defendant(s)], nothing in the Eleventh Amendment bars the action from proceeding in federal court.

6. More than a century ago, the Supreme Court held that cities ("municipal corporations") and counties (and frequently, school

districts) cannot invoke or "borrow" a state's Eleventh Amendment immunity to shield their assets from federal court civil actions brought against them by private parties. *See, e.g.*, Mount Healthy City School District Bd. v. Doyle, 429 U.S. 274 (1977); Lincoln County v. Luning, 133 U.S. 529 (1890).

7. Hans v. Louisiana, 134 U.S. 1, 12 (1890). *See also* Kimel v. Florida Bd. of Regents, 120 S. Ct. 631, 640 (2000), O'Connor, J., concurring ("[F]or over a century now, we have made clear that the Constitution does not provide for federal jurisdiction over suits against nonconsenting States").

8. Pennsylvania v. Union Gas, 491 U.S. 1 (1989).

9. Seminole Tribe v. Florida, 517 U.S. 44 (1996).

10. Here's but one example. The Fair Labor Standards Act, referred to in Professor Brown-Graham's article, was adopted in 1936 (during the New Deal), pursuant to the power vested in Congress to "regulate commerce . . . among the states." The act applied in a far-reaching manner, to be sure. It did so by decreeing the minimum wage to be paid not only by businesses engaged in *interstate* commerce (enterprises competing in national and foreign commerce) but also by more local (intrastate) commercial enterprises. Even so, Congress also carefully abstained from imposing any such demands on ordinary state and local government units as such. Congress readily recognized that these government units were *not* commercial entities, *nor were they conducting themselves as though they were*. In Congress's own understanding, that is, a state, or county, or city that merely devotes some fraction of state and local taxes to defray the expense of providing local parks or other local service (e.g., ordinary police and fire protection) was *not* "engaged in commerce" as such, according to any plausible or common understanding of that term. Nearly forty years later, however, in 1974, Congress brushed away its previous sense of self-restraint. Accordingly it abandoned its own previous understanding and presumed to treat the states as in no respect different from a mere for-profit, privately owned business enterprise, claiming a power to regulate them quite as much as it had already regulated ordinary business enterprises. This was a breathtaking step. At first, the Supreme Court balked [National League of Cities v. Usery, 426 U.S. 833 (1976)], only to reverse itself within a decade [Garcia v. San Antonio Metropolitan Transit Auth., 469 U.S. 28 (1985)], thus sanctioning a scope of congressional power over the states that even the New Deal Congress had never supposed it possessed.

11. As some readers of POPULAR GOVERNMENT may know, moreover, even these mere traffic bumps, such as they are, are now at risk. If there is replacement on the Court of a single vote, depending (of course) on whose it might be, they may be razed.

From Rigorous Researcher to Fine Art Photographer

Stevens H. Clarke

A gradual transformation, five years in the making, culminated in January 2001 when Stevens H. Clarke, professor, retired as a member of the Institute faculty and opened his first solo show as Steve Clarke, fine art photographer. The man known for his rigorous research into sensitive social issues like sentencing and recidivism now would be specializing in images of dancers and other performers.

While perhaps surprising on the surface, this redirection is not unusual or even unexpected to those at the Institute who know Clarke well. They speak of his "unique" or "rare" combination of talents. "What I find most intriguing about Steve," remarks book designer Daniel Soileau, "is the fact that his impressive work as a criminologist did not bar him from becoming an equally impressive artist/photographer." Michael R. Smith, director of the Institute, says Clarke has "brought a passion to his work that's consistent with the passion he brings to photography. He has great respect and compassion for the people he works with. When he talks with probation officers and jail officials, he's fully engaged with them. And he's recognized nationally as one of the leading evaluators of criminal justice programs. It comes from that same passion that drives all of what he does. He cares about it in the same way he cares about his photography."

Clarke himself says he has "always either been doing something in the arts or [been] unhappy because I haven't been." For a number of years, Clarke worked in community theater, until the theater's demands on his time became too great. His passion for performance is shared by his wife, Sheila Kerrigan, a writer, a teacher, and a theater director, who once toured as a mime. Photographing dancers, he finds, is somewhat like being part of a performance again.

A self-described "not very good" ballroom dancer, Clarke finds the action of dancers fascinating. "To them, what they do is routine," he says, "but to me it's like magic." He took up photography five years ago and began photographing dancers when a friend needed photographs of a performance. Although he has worked with a number of Triangle-area dancers, most of the subjects in his one-month solo show at Duke's Institute of the Arts Gallery are members of the dance department at UNC Greensboro, where he has an unpaid adjunct appointment.

Clarke also is intrigued by the problems of lighting, whether natural or artificial. He uses a Bronica 6x6 medium-format camera, does his own printing in a basement darkroom at home, and works with black-and-white silver gelatin prints more than color, preferring the abstract quality that can be achieved when light merges into dark. He has taken a few photography classes, but most of what he knows has come from trial and error and from studying the work of other photographers.

"I'm continually learning about it," he says. "Photography is complicated and difficult, frequently frustrating and humiliating, but also wonderfully exciting. It's an adventure, and I cannot tell you what a joy it is to me. I feel very, very lucky at my advanced age to be doing something that's this much fun."

Clarke came to the Institute in 1971, a few years after graduating from Columbia University's law school, to pursue his interest in criminal justice reform and crime prevention. He had majored in math as an undergraduate, however, and has always been interested in statistical, rather than legal, interpretations of public policies. "They [public policies] may sound good, but do they really give us the benefits we think they do, or are we just kidding ourselves?" he asks. Professor James C. Drennan, noting that Clarke was both a legal resource and a researcher, comments, "He has a strong commitment to helping people make decisions based on reliable, credible, factually supportable data. The

This photograph by Clarke of two dancers in midair captures their grace and beauty.

Institute works hard to have a reputation for neutrality, and he's enhanced that." For his part, Clarke says he is grateful to the Institute for being given the opportunity to "indulge that analytical side of myself."

"And my colleagues here are tremendously helpful," Clarke said recently, reflecting on the past and on what lies ahead. "You can get into a conversation in the hallway and learn more in five minutes than if you worked on your own for days." One person who has spent a lot of time "having interesting discussions about tricky legal issues" with Clarke is Professor Robert L. Farb. Farb says he was always impressed by "Steve's care in making sure our answer to a client's question was carefully thought through before we responded."

Over the years Clarke has focused his critical mind on the problems of delinquency, violence prevention, and the criminal justice system, including the courts, sentencing, prisons, probation, and parole. His widely used book, *Law of Sentencing, Probation, and Parole in North Carolina*, is considered an important legal reference.

"The best thing about working here is the clients, really getting to know people over time," Clarke says. "I still want to be able to talk to my clients." He welcomes calls from people interested in research issues concerning crime, violence, and alternative dispute resolution. Now an adjunct professor at the Institute, he will oversee a conference for sheriffs and another for public defender investigators in the coming months. Also, he will continue researching and writing about illicit drug use, alternative dispute resolution, and recidivism among juveniles who have gone through state training schools.

DAN SEARS, UNC PHOTO SERVICES

Stevens H. Clarke

"There's no telling where this [photography] will end up," Clarke adds. "It doesn't matter if it's any good or not. I try to do the best I can, but I don't really care. I think art is something we all have to participate in. Everybody of every age needs to have some kind of artistic outlet. It's necessary for our spiritual health." His office on the second floor of the Institute overflows with statistical analyses and reports, but a dance poster adorns one wall, a drawing he made is on another, and the image of a dancer, captured by Clarke in midair, floats on his computer screen. He laughs. "I used to say this was a hobby, but it doesn't seem to be that anymore."

—*Eleanor Howe*

Incredible Productivity amid Calm Orderliness

William A. Campbell

In his thirty-five years at the Institute, William A. Campbell has achieved much. Gladys Hall Coates Professor since 1991 and associate director of the Institute from 1990 to 1996, he also is a former editor of *Popular Government* and an expert on environmental protection and natural resources law, election law and procedure, real property law, and state and local taxation.

But Campbell has another distinction, one perhaps less well known outside the Institute: of all the faculty offices at the Institute, his is arguably "the neatest and most efficiently organized."

WILL OWENS

William A. Campbell

"This characteristic extends to the way he meets his faculty responsibilities," says Professor W. Jake Wicker, a long-time colleague. Well organized, reliable, and dependable, Campbell is notable for meeting deadlines. "Editors love him," Wicker adds.

Michael R. Smith, director of the Institute, concurs. "It's so true; his desk is always clean. Everything is in its place, he's calm and orderly, and yet there's this incredible stream of productivity that flows out of it. It's somewhat of a mystery to me how that happens," Smith says. "And he is so thorough and careful in the way he works. He understands the law and the work officials are doing, and he is very careful and intelligent in advising them on how those two pieces come together."

This year Campbell began a phased retirement, passing on some of his responsibilities at the Institute but taking up a new one, that of director of the Legislative Reporting Service, which publishes the Institute's daily bulletin of all legislative activities. Campbell describes his new position as "sort of like

Campbell is devoted to preserving the pristine quality of streams and other natural areas; pictured is the Black River, in Sampson County.

putting out a very specialized newspaper." The bulletin lists and summarizes all bills introduced that day, and tracks the legislative calendar, floor actions on particular bills, and any amendments or committee substitutions. It is distributed the next day to all state agencies and members of the General Assembly.

When the General Assembly is in session, Campbell will be working full-time from an office in Raleigh. When the legislature is recessed, he and his wife, Lynnette, hope to spend as much time as possible on or near the water. An amateur birder, Campbell likes trying to identify waterfowl, and for such activity he keeps a canoe at his vacation home at Smith Mountain Lake, Virginia. Further, he wants to explore some of the rivers and the inlets along the North Carolina coast, the cypress swamps in Merchants Mill Pond State Park, and the Florida Keys.

Campbell also is likely to remain closely involved with the Conservation Trust of North Carolina (CTNC) and its efforts to protect the state's streams, farmlands, and natural areas. A board member since the trust was created in 1991, he was president from 1993 to 1996, during its formative years. Campbell has been there to "advise and encourage" the CTNC, review its projects, and "try to make sure there's enough money to do" the projects, including helping to raise nearly $7.5 million in a recent campaign. He is especially proud of the trust's efforts to protect the views along the Blue Ridge Parkway by obtaining donations or buying conservation easements in areas threatened by development.

In the future, Campbell would like to help establish a regional land trust in northeastern North Carolina, to protect the significant number of natural areas around the Roanoke River and Albemarle Sound. CTNC does much of its work through local and regional land trusts, but there is currently no land trust in the northeast part of the state. Technically the area is covered by the Coastal Land Trust, based in Wilmington, but "that's a very large area it's trying to cover," Campbell explains. "With the Institute I've done a good bit of work in the northeast, and I think I have a number of friends there among lawyers and city and county managers. So I thought I might be helpful to the Conservation Trust in that region."

Campbell traces his interest in conservation to his days as a law student at Vanderbilt University, but his love of the water comes from canoeing the wild creeks and rivers of the Ozarks as a child. Southern Missouri, where he grew up in the 1950s, was poor, and so isolated that the closest urban center, Memphis, was a three-hour train ride away (or an all-day drive). But it was beautiful country, and it imprinted itself on his future.

For many years after coming to the Institute, Campbell taught a course in environmental law, where one of his students was Charles E. Roe, now the executive director of the CTNC. Roe describes his former professor as "an important mentor personally and an ally professionally. For years he's been someone I've turned to."

Another person who appreciates Campbell's "support and excellent advice" is Kay T. Spivey, director of human resources at the Institute. "All the words I can think of to describe people are just not adequate for Bill Campbell," she says. Still, she tries, coming up with "excellence, steadfast integrity, dedication, fairness, thoroughness, patience, and a subtle sense of humor."

In addition to overseeing the Legislative Reporting Service, Campbell expects to continue working with the Institute on legal and financial issues of waste management and on property mapping. But he will no longer work with local tax officials and registers of deeds. "In a way it's going to be a difficult break," he says, "because I've worked with these groups for so long, and I've made a lot of friends. I will miss the personal relationships, the friendships, the day-to-day consulting that I very much enjoyed."

Campbell's clients will likely miss him as much as he misses them. "He's really got a devoted clientele," says Professor Ben Loeb. "He gives them accurate information and good advice, and he's always available to them. Being able to get a lawyer on the phone whenever you want to is difficult for public officials. We simply will never completely replace him. I really hate to see him go."

—*Eleanor Howe*

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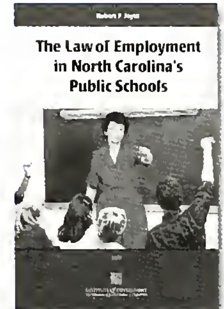

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