

**IN THE
SUPREME COURT OF VIRGINIA**

**In Re: Decennial Redistricting Pursuant to The Constitution of Virginia,
art. II, §§ 6 to 6-A, and Virginia Code § 30-399**

**WRITTEN COMMENT ON BEHALF OF
THE VIRGINIA STATE CONFERENCE OF THE NAACP**

December 17, 2021

Respectfully submitted,

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INTRODUCTION

The Virginia State Conference of the NAACP (“Virginia NAACP”) submits this written comment and accompanying proposed maps to help inform the work of Sean P. Trende and Bernard N. Grofman, Special Masters appointed by the Supreme Court of Virginia under Article II, Sections 6 and 6-A of the Constitution of Virginia and Code § 30-399(F), for the development of proposed redistricting maps for the Virginia House of Delegates, the Senate of Virginia, and Virginia’s representatives to the United States House of Representatives.

Virginia NAACP, founded in 1935, is the oldest and largest civil rights organization in the Commonwealth. It oversees more than one hundred NAACP local branches, youth councils, and college chapters. Virginia NAACP’s core mission is to secure the political, educational, social, and economic equality of all persons, without discrimination based on race. To further this mission, Virginia NAACP has been actively involved in the 2021 redistricting cycle by educating the public, organizing its members, and vigorously participating in the Virginia Redistricting Commission’s public processes. Virginia NAACP now submits this written comment prepared in consultation with its members, local branch leaders, and legal counsel.

As described herein, to create an equitable and constitutional redistricting plan, the mapmakers must consider the lingering legacy of slavery and continued

racial discrimination against Virginians of color and Black Virginians in particular. Simply put, Virginia has a long and reprehensible history of racism and racial discrimination, the effects of which persist to this day. Multiple federal courts have recognized and relied upon this history in invalidating past redistricting plans.

Virginia NAACP thus respectfully requests that the Court and Special Masters consider this written comment and recommendations when evaluating and making revisions to the initial maps presented on December 7, 2021, including and especially our statistical analysis of the Special Masters' initial maps and the contours of the Virginia NAACP-proposed district maps, discussed below and attached as appendices.¹ Our proposed maps were generated in close collaboration and consultation with Virginia NAACP local branch leaders and members, and are designed to best represent the Black communities of interest located in these districts, while satisfying all other legal criteria.

Virginia NAACP further requests that the Court and Special Masters hold additional public hearings after presenting the next, revised versions of the December 7, 2021 maps, before voting on any map's adoption. It is crucial that the communities where opportunities hinge on the contours of these maps are able to provide feedback on the final versions of any maps before their adoption. And it is

¹ Virginia NAACP has also provided shapefiles for its proposed districts to the Clerk of the Supreme Court of Virginia in order to enable the Special Masters to fully take these into consideration, and request that the Special Masters obtain these shapefiles from the Clerk if they have not already been transmitted.

particularly important that the Court hear and consider the views of Black communities and other communities of color who have long been disenfranchised, discriminated against, and excluded from meaningful participation in Virginia's redistricting process.

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

1. Virginia has a long history of racial discrimination in redistricting, voting, and in all aspects of its laws and society. The ongoing effects of this history must be considered in drawing redistricting plans to ensure that Black Virginians and other communities of color have an equal opportunity to participate fully in the political process.
2. The federal Voting Rights Act requires that districts be drawn in a way that does not dilute the voting power of Black Virginians and other communities of color, including by considering the extent of racially polarized voting in specific regions throughout the Commonwealth, which in turn requires an exacting and district-specific analysis.
3. Virginia law further requires that districts be drawn to preserve communities of interest, which includes Black communities of interest and other communities of color, and to create crossover coalition districts—districts that enable Black and other voters of color to vote

cohesively together and with white voters to elect their candidates of choice—wherever possible.

4. The Special Masters’ use of American Community Survey (“ACS”) data in conducting their analysis of whether Black voters would have the ability to elect candidates of choice in specific districts is flawed, because **ACS data routinely and often significantly undercounts Black voting age population (“BVAP”)**, as reflected in the full 2020 Census count. *See infra* Section III. It is also unnecessary to use ACS data to determine Black citizen voting age population (“BCVAP”) because the percentage of non-citizen BVAP is relatively low throughout the Commonwealth. This flaw has led the Special Masters to, in some cases, overestimate Black voting strength in specific districts, rendering these districts less effective in electing candidates of choice than asserted. *See infra* Section III. **Recommendation: The Special Masters and the Supreme Court of Virginia must use 2020 Census data when determining Black voters’ ability to elect candidates of choice under their proposed redistricting plans.**
5. In order to fully analyze and accurately predict whether Black voters in a specific proposed district would have the ability to elect candidates of choice, it is necessary to conduct a precinct reconstruction analysis to

determine how the new district would have performed in past reference elections. However, it is unclear from the Special Masters' memorandum whether they have done this analysis, and, if so, which elections were used as a reference. **Recommendation: The Special Masters must conduct a precinct reconstruction analysis when determining the ability of Black voters and other voters of color to elect candidates of choice in their proposed districts, and publicize this analysis, including which elections were used in conducting this analysis.**

6. Virginia NAACP's proposed district maps, discussed below and attached as appendices, better represent the Black communities of interest in each region, can more consistently be relied on to elect Black voters' candidates of choice as required by the federal Voting Rights Act and Virginia law, and are generally more compact and with a lower population deviation than the corresponding Special Masters' maps. *See infra* Section III; Appendix D. **Recommendation: The Special Masters should adjust their initial district lines to more closely represent the Black communities of interest in each region as reflected in the Virginia NAACP-proposed maps.**

7. All Virginians, and in particular Black Virginians and other communities of color, must be given the opportunity to provide feedback on the final versions of any maps before their adoption.

Recommendation: The Special Masters and the Supreme Court of Virginia should hold additional public hearings on the revised versions of the initial Special Masters maps, and any future revised versions, before their adoption by the Court.

I. HISTORY OF RACIAL DISCRIMINATION

Virginia has a long history of racial oppression, including direct and indirect efforts to disenfranchise Black Virginians and other communities of color and to prevent them from building and exercising political power. Virginia’s infamous history of targeting Black voters for mass disenfranchisement² continued even after the Jim Crow era, with discriminatory voting practices and policies extending into recent decades. Black Virginians and other communities of color continue to face racial discrimination that prevents them from participating fully and equally in the political process. Racial gerrymandering and vote dilution in redistricting plans have

² See, e.g., J. Douglas Smith, *Managing White Supremacy: Race, Politics, and Citizenship in Jim Crow Virginia*, 24-28 (2002) (describing the 1901 Virginia Constitutional Convention and legal efforts to disenfranchise Black voters at the turn of the 20th century); Matt Ford, *The Racist Roots of Virginia's Felon Disenfranchisement*, THE ATLANTIC (Apr. 27, 2016), <https://www.theatlantic.com/politics/archive/2016/04/virginia-felon-disenfranchisement/480072/> (last visited Dec. 8, 2021); Daniel S. Goldman, *The Modern-Day Literacy Test: Felon Disenfranchisement and Race Discrimination*, 57 STAN. L. REV. 611, 616 (2004) (“Starting with Mississippi in 1890, every state in the Deep South either adopted a new constitution or rewrote an existing constitution through ‘disenfranchising conventions.’ The purpose of these conventions was clear: ‘Discrimination!’ exclaimed Carter Glass, a delegate to the Virginia Convention of 1906. ‘Why that is precisely what we propose; that exactly is what this convention was elected for.’”).

extended this legacy and exacerbated racial disparities in Virginia’s democratic process. *See infra* Subsection B. The U.S. Supreme Court’s decision in *Shelby County v. Holder*, 570 U.S. 529 (2013), invalidated Section 4(b) of the Voting Rights Act of 1965 (“Voting Rights Act”), which had required Virginia to obtain preclearance for changes to its voting laws, enabling discriminatory voting changes to be implemented.

A. Virginia Has Long Used Discriminatory Voting Laws to Disenfranchise Black Voters.

Both before and after passage of the Voting Rights Act, Black communities and other communities of color have faced legal obstacles and outright hostility when attempting to participate in Virginia’s electoral process, as evidenced by a range of discriminatory voting measures enacted in a sustained effort to disenfranchise Black voters.

During Reconstruction, Black Virginians accessed the polls in large numbers.³ In 1867, 105,832 Black voters were registered to vote in Virginia and, of those registered, 93,145 (88%) voted on October 22, 1867.⁴ Between 1869 and 1890, about 100 Black men served in the Virginia General Assembly.⁵ Hundreds more Black men were elected to office in city and county governments, as well as

³ Recognizing the African American members elected to the Virginia General Assembly during Reconstruction, S.J. Res. 89, Va. 2012 Regular Sess. (Va. 2012).

⁴ *Id.*

⁵ *Id.*

other federal governmental offices.⁶ At the end of Reconstruction, Virginia responded to this largely successful Black voter turnout by enacting discriminatory voting laws to disenfranchise Black voters.

After the 1901 Constitutional Convention, Virginia passed numerous measures designed explicitly to reserve the franchise for white voters and to ensure exclusive political power for white communities.⁷ For example, in reliance on a racially biased criminal justice system, the Commonwealth disenfranchised voters with felony convictions⁸; until the 1970s, Virginia imposed literacy tests demanding extensive memorization of the Constitution⁹; and the Commonwealth enacted a poll tax, requiring yearly payments and three years' payment up front for first-time voters.¹⁰ Virginia's multiple, deliberate efforts to disenfranchise Black voters worked: the literacy tests alone ensured that, of the roughly 147,000 Black Virginians of voting age in 1901, only 21,000 (14%) were able to remain on the

⁶ *Id.*

⁷ Many delegates to the 1901 Virginia Constitutional Convention openly discussed adopting suffrage restrictions, such as literacy tests and grandfather clauses, to eliminate the Black electorate. *See* Smith, *supra* note 2, at 25-26. State senator Carter Glass, whose leadership at the convention launched his very successful Virginia political career, proclaimed that "there stands out the uncontroverted fact that the article of suffrage which the Convention will to-day adopt does not necessarily deprive a single white man of the ballot, but will inevitably cut from the existing electorate four-fifths of the negro voters... This was the purpose of this Convention; that will be the achievement." *Id.* at 26.

⁸ Ford, *supra* note 2.

⁹ *See* Smith v. Bd. of Supervisors of Brunswick Cnty., 801 F.Supp. 1513, 1517 (E.D.N.Y. 1992) ("Until 1974, Virginia required proof of literacy in order to vote." (citing Virginia v. United States, 386 F.Supp. 1319 (D.D.C.1974)); Smith, *supra* note 2, at 25 (describing how the constitutional convention "adopted a number of literacy, understanding, and grandfather clauses that left open the possibility that generous registrars might allow illiterate whites to register while denying the privilege to black aspirants").

¹⁰ Marie Albiges, *The poll tax kept black Virginians from voting. Half a century later, its finally being stripped from the books*, THE VIRGINIAN-PILOT (Feb. 2020) <https://www.pilotonline.com/government/virginia/vp-nw-poll-tax-20200221-dclwpj7hkreftgwqzyvj3xibvq-story.html>.

voter rolls in 1902.¹¹ By 1905, the poll tax halved that number.¹² In part because of these racist voting restrictions, Virginia did not elect another Black representative at either the state or federal level until 1967.¹³

While literacy tests became unlawful with the Voting Rights Act and poll taxes were ruled unconstitutional,¹⁴ Virginia continues to disenfranchise voters with felony convictions.¹⁵ Because of the over-policing of Black communities¹⁶ and the racially discriminatory nature of the criminal justice system,¹⁷ as expected, this practice disproportionately disenfranchises Black Virginians. Despite the restoration of voting rights of almost 200,000 Virginians since 2016,¹⁸ as of 2020, more than one in seven—over 14%—of Black Virginians remain disenfranchised due to a felony conviction.¹⁹

¹¹ Smith, *supra* note 2, at 26.

¹² See Ford, *supra* note 2, at 14.

¹³ *African American Legislators in Virginia*, VIRGINIA GENERAL ASSEMBLY DR. MARTIN LUTHER KING JR. MEMORIAL COMMISSION, http://mlkcommission.dls.virginia.gov/lincoln/african_americans.html.

¹⁴ See Albiges, *supra* note 10.

¹⁵ Va. Const. art. II, § 1.

¹⁶ See e.g., Ned Oliver, *New Data Shows Virginia Police Are More Likely To Stop and Search Black Drivers*, VIRGINIA MERCURY (May 19, 2021), <https://www.virginiamercury.com/2021/05/19/new-data-shows-virginia-police-are-more-likely-to-stop-and-search-black-drivers/> (last visited Dec. 8, 2021) (“Black drivers in Virginia are almost two times more likely than white drivers to be pulled over by police and three times more likely to have their vehicles searched, according to data collected under the state’s new Community Policing Act.”).

¹⁷ The Sentencing Project, *Report to the United Nations on Racial Disparities in the U.S. Criminal Justice System* (Apr. 19 2018), <https://www.sentencingproject.org/publications/un-report-on-racial-disparities>.

¹⁸ Chris Uggen, Ryan Larson, Sarah Shannon, and Arleth Pulido-Nava, *Locked Out 2020: Estimates of People Denied Voting Rights Due to a Felony Conviction*, The Sentencing Project (Oct. 30, 2020), <https://www.sentencingproject.org/publications/locked-out-2020-estimates-of-people-denied-voting-rights-due-to-a-felony-conviction/>.

¹⁹ *Id.*

Until 2020,²⁰ the Commonwealth further diluted the effect of votes by voters of Black and Brown communities through “prison gerrymandering,” a redistricting practice in which the state counts incarcerated individuals at the location of their correctional facility instead of their home address. As of 2017, 53% of incarcerated Virginians were Black, a rate almost three times the state’s 20% Black population.²¹ This practice artificially inflated the total population numbers in the overwhelmingly white, rural communities where Virginia’s correctional facilities are predominantly located, while simultaneously deflating the population of the communities from which these incarcerated individuals came and are likely to return, reducing the number of representatives in all levels of government from Black and Brown communities.²²

Until 2013, the Voting Rights Act’s preclearance requirement provided some protection for Black Virginians and other voters of color from discriminatory voting laws. Between 1982 and 2006, the U.S. Department of Justice (“DOJ”) blocked 15 voting changes Virginia submitted for preclearance on the basis that they would have had a discriminatory impact on voters of color.²³ But in 2013, soon after the

²⁰ The Virginia General Assembly passed a law in 2020 mandating that incarcerated Virginians be counted at their home addresses for purposes of redistricting. See Va. Code § 24.2-304.04(9).

²¹ *Incarceration Trends in Virginia*, VERA INSTITUTE FOR JUSTICE (2019), .

²² Virginia Public Access Project, *End of “Prison Gerrymandering” Saps Rural Virginia*, (April 14, 2021) <https://www.vpap.org/visuals/visual/transfer-clout-rural-to-urban/>; Virginia Public Access Project, *Prison Policy Shifts Population from Rural to Urban*, https://www.vpap.org/visuals/visual/prisons_population_losers/ (Aug. 28, 2021).

²³ Jeremy Duda, *Supreme Court ruling on Voting Rights Act opened floodgates for new restrictions*, VIRGINIA MERCURY (Oct. 7, 2020) <https://www.virginiamercury.com/2020/10/07/supreme-court-ruling-on-voting-rights-act-opened-floodgates-for-new-restrictions/>.

Supreme Court struck down the preclearance coverage formula in *Shelby County v. Holder*, Virginia purged almost 40,000 voters from its voter rolls, many of whom were later revealed to have been eligible voters removed in error.²⁴ Because Black Americans are statistically more likely to share a name with another person than white Americans,²⁵ eligible Black voters are more likely to be incorrectly purged from voter rolls than their white counterparts.²⁶ Additionally, in 2013, Virginia enacted an unduly restrictive voter identification (“ID”) law, eliminating the use of utility bills, pay stubs, bank statements, government checks, and Social Security cards as acceptable identification, and allowing only drivers licenses, voter ID cards, student IDs, or concealed handgun permits.²⁷ It has been widely shown that restrictive voter ID laws cause disproportionate burdens on voters of color, who are less likely than white voters to possess the required forms of ID and less likely to be

²⁴ Tomas Lopez, ‘*Shelby County*’: *One Year Later*, THE BRENNAN CENTER FOR JUSTICE (June 24, 2014) <https://www.brennancenter.org/our-work/research-reports/shelby-county-one-year-later>; Jim Nolan, *Chesterfield registrar delays purge of voter rolls*, Richmond Times-Dispatch (Oct. 9, 2013), http://www.timesdispatch.com/news/local/chesterfield/chesterfield-registrar-delays-purge-of-voter-rolls/article_162e36b5-0be7-5dc8-af9f-48876a167b43.html.

²⁵ Many Black Americans share a common last name not because of a shared bloodline, but because of the continuing legacy of American slavery. Enslaved Black Americans were stripped of their own names and forced to take on those of their enslavers, which often persist today. See Lolly Bowean, *The unspoken history hidden behind a surname*, CHICAGO TRIBUNE (Dec. 26, 2017) <https://www.chicagotribune.com/opinion/commentary/ct-perspec-surname-names-history-heritage-1227-20171221-story.html> (“[D]uring slavery, African-Americans were assigned names by their owners...so that they could be identified as that white family’s property.”). See also, Jonathan Brater et. al., *Purges: A Growing Threat to the Right to Vote*, THE BRENNAN CENTER FOR JUSTICE, 7 n. 1 (2018) https://www.brennancenter.org/sites/default/files/2019-08/Report_Purges_Growing_Threat.pdf (indicating that Black Americans are more likely to have a common last name with another registered voter than whites and so more likely to be mistakenly purged from the voter rolls).

²⁶ See Brater, *supra* note 25.

²⁷ Morgan Whitaker, *Virginia Governor signs strict voter ID law*, MSNBC (March 26, 2013) <https://www.msnbc.com/politicsnation/virginia-governor-signs-strict-voter-id-law-msna20231>. Note: This law is no longer in effect.

able to afford to obtain them.²⁸ Together with new restrictions on third-party voter registration,²⁹ these changes contributed to Virginia being ranked as one of the most difficult and costly states to vote in as recently as 2018.³⁰

B. Virginia Continues to Disenfranchise Black Voters Using District Maps that Dilute the Black Vote.

After the 2010 Census, Black Virginians saw the concerns of their communities largely ignored by mapmakers who sought to dilute Black voting strength across the Commonwealth. These mapmakers did so both by “packing” Black voters into a smaller number of districts and by “cracking” Black voters across multiple districts. “Packing” dilutes the Black vote by districting the majority of Black voters into a single district or a small number of districts, thus decreasing the number of representatives preferred by Black voters that could be elected. “Cracking” dilutes the Black vote by doing just the opposite: splitting Black voters into many districts, resulting in a Black voting age population in each of those districts that is too small for Black voters to elect a candidate of their choice. Indeed, courts have relied on evidence of these discriminatory practices in invalidating Virginia’s redistricting plans *three times* since the last census.

²⁸ See generally, Vann R. Newkirk II, *Voter Suppression is Warping Democracy*, THE ATLANTIC (July 17, 2018) <https://www.theatlantic.com/politics/archive/2018/07/poll-prri-voter-suppression/565355/>.

²⁹ See Lopez, *supra* note 24.

³⁰ See Quan Li, Michael J. PomanteII, and Scot Schraufnagel, *Cost of Voting in the American States*, 17 ELECTION LAW JOURNAL: RULES, POLITICS, AND POLICY 234 (2018).

1. *A Federal Court Held that Virginia’s 2011 Congressional Maps Violated the United States Constitution by Packing Black Voters to Dilute Their Electoral Power.*

In 2011, the divided state legislature deadlocked on a congressional plan—disagreeing mainly on the creation of majority-minority districts—with the Virginia State Senate and Virginia House of Delegates approving competing redistricting plans.³¹ These plans were ultimately passed under a unified legislature in 2012.³²

However, the enacted plan, despite being precleared by the DOJ,³³ packed Black voters unconstitutionally into the Third Congressional District, a district originally created in 1992 after the DOJ directed the Virginia legislature to draw a Black-majority district, following the 1990 census, in order to ensure fair representation for Black voters in Virginia.³⁴ Since its creation, the Third District had been represented by Representative Bobby Scott, who was, at the time, the only Black member of Virginia’s U.S. congressional delegation.³⁵ Despite the consistent

³¹ Page Winfield Cunningham, *State House, Senate OK rival maps on redistricting*, WASHINGTON TIMES (June 9, 2011) <https://www.washingtontimes.com/news/2011/jun/9/state-house-senate-ok-rival-maps-on-redistricting/>.

³² Anita Kumar, *Bob McDonnell signs Va. Congressional redistrict bill into law*, THE WASHINGTON POST (January 25, 2012) https://www.washingtonpost.com/blogs/virginia-politics/post/bob-mcdonnell-signs-va-congressional-redistricting-bill-into-law/2012/01/25/gIQADxR00Q_blog.html.

³³ Letter from Thomas E. Perez to The Honorable E. Duncan Getchell, Jr. (Mar. 14, 2012), <https://redistricting.ils.edu/wp-content/uploads/VA-preclear-20120314-congress.pdf>

³⁴ *3rd District, A Brief History*, Virginia Public Access Project (Sep. 1, 2015), <https://www.vpap.org/updates/1996-3rd-district-brief-history/>. The original version of this district had already been found to unconstitutionally pack Black voters in 1997, with the court ordering the legislature to redraw the district from 61.6% to 50.5% BVAP. *See Moon v. Meadows*, 952 F.Supp. 1141 (E.D. Va. 1997); Geoffrey Skelley, *Virginia’s Redistricting History: What’s Past Is Prologue*, SABATO’S CRYSTAL BALL, UVA CENTER FOR POLITICS, (June 18, 2015), <https://centerforpolitics.org/crystalball/articles/virginias-redistricting-history-whats-past-is-prologue/>

³⁵ Lyle Denniston, *No Delay of a New Virginia Federal Districting Map*, SCOTUSBLOG (Feb. 2, 2016), <https://www.scotusblog.com/2016/02/no-delay-of-new-virginia-federal-districting-map/>.

reelection of Rep. Scott, the 2012 plan increased the BVAP from 53.1% to over 56.3%.³⁶

In *Page v. Virginia State Bd. Of Elections*, 58 F. Supp. 3d 533 (E.D. Va. 2014), Black voters filed suit in 2013 challenging the 2012 plan, alleging that they had been packed into the Third District diluting their vote and constituting an unconstitutional racial gerrymander in violation of the Equal Protection Clause of the Fourteenth Amendment. The U.S. District Court for the Eastern District of Virginia agreed, striking down Virginia’s 2012 congressional map, finding that (1) the plan unconstitutionally packed Black voters in a single district; (2) race predominated the legislature’s drawing of the Third District; and (3) the redistricting plan’s 55% BVAP “floor” as applied to the Third District was not narrowly tailored to achieve non-retrogression in compliance with the Voting Rights Act. *Id.* at 545-53.³⁷ The court considered direct evidence of legislative intent, including statements made by the author of the 2012 map, as well as circumstantial evidence, including the Third

³⁶ *Page v. Virginia State Bd. Of Elections*, 58 F. Supp. 3d 533, 537 (E.D. Va. 2014).

³⁷ Defendants appealed to the Supreme Court of the United States, which, on March 30, 2015, remanded the case back to the trial court for reconsideration in light of its March 25, 2015 decision in *Alabama Legislative Black Caucus v. Alabama*, 575 U.S. 254 (2015). *Cantor v. Personhuballah*, 575 U.S. 931 (2015). In the *Alabama* case, the Court ruled 5 to 4 on a number of legal standards for determining whether race predominated in a redistricting plan, including that racial gerrymandering must be considered on a district-by-district basis, not statewide. *See generally Alabama Legislative Black Caucus*, 575 U.S. 254. On remand, the Eastern District of Virginia again ruled that an unconstitutional racial gerrymander had occurred in the drawing of Virginia’s Third Congressional District, holding that race predominated in the creation of its boundary lines and that the legislature had no justification that satisfied strict scrutiny. *Page v. Virginia State Bd. Of Elections*, No. 3:13cv678, 2015 WL 3604029, *19 (E.D. Va. Jun. 5, 2015). The court ordered that the Third District be redrawn in light of this ruling. *Id.* at *18.

District's shape, non-contiguousness, and splits in political subdivisions. *Id.* at 541-47.

Although the challenged map remained in effect for the 2014 election, the court ordered the legislature to draw new districts for later elections in order to ensure fair representation for Black Virginians.³⁸ When the legislature then failed to do so, a panel of federal judges was assigned to redraw the map.³⁹ The new map centered the Third District in Hampton Roads and added Richmond and Petersburg to the Fourth District.⁴⁰ This redrawing dispersed the concentration of Black voters more fairly across the Third and Fourth Districts, increasing the overall influence of Black voters and enabling Black voters to elect a candidate of their choice in the Fourth District in 2016.⁴¹ These remedial maps were later upheld in *Personhuballah v. Alcorn*, 155 F. Supp. 3d 552 (E.D. Va. 2016), where the court held that the “unpacking” of the Third District from 56.3% to 45.3% BVAP did not lead to Black voters losing their ability to elect candidates of their choice.⁴²

³⁸ *Id.* at 554-55. See also Rachel Weiner, Matt Zapposky, and Laura Vozzella, *Court declares Virginia's congressional map unconstitutional*, THE WASHINGTON POST (Oct. 7, 2014), https://www.washingtonpost.com/local/virginia-politics/court-throws-out-virginia-congressional-map/2014/10/07/97fb866a-4e56-11e4-8c24-487e92bc997b_story.html.

³⁹ Simon Pathé, *Judges Select New Virginia Congressional Map, Roll Call* (Jan. 7, 2016), <https://www.rollcall.com/2016/01/07/judges-select-new-virginia-congressional-map/>

⁴⁰ Andrew Cain, *Judges impose new Va. congressional map, redrawing 3rd, 4th Districts*, RICHMOND TIMES-DISPATCH (Jan. 7, 2016), https://web.archive.org/web/20201118180914/https://richmond.com/news/local/government-politics/judges-impose-new-va-congressional-map-redrawing-3rd-4th-districts/article_0ad5053b-6818-5d7e-b96e-c9ce02ad45cb.html (last visited Dec. 7, 2021).

⁴¹ Virginia Results, NEW YORK TIMES (Nov. 11, 2016), <https://www.nytimes.com/elections/2016/results/virginia> (last visited Nov. 17, 2011).

⁴² *Personhuballah v. Alcorn*, 155 F. Supp. 3d 552, 565 (E.D. Va. 2016), *stay denied Wittman v. Personhuballah*, 577 U.S. 1125 (2016), *appeal dismissed*, 578 U.S. 539 (2016).

2. *A Federal Court Held that Virginia’s 2011 General Assembly Maps Violated the United States Constitution by Packing Black Voters to Dilute Their Electoral Power.*

During the same cycle, the 2011 General Assembly redistricting plan redrew the boundaries for twelve House of Delegates districts, packing Black voters into these districts such that each district had a BVAP of at least 55%.⁴³ In *Bethune-Hill v. Virginia State Board of Elections*, 141 F.Supp. 3d 505, 523-24 (E.D. Va. 2015), Black voters from each district sued the Board of Elections in 2014, alleging that the new maps diluted their voting power and were racially gerrymandered in violation of the Equal Protection Clause of the Fourteenth Amendment.⁴⁴

The U.S. District Court for the Eastern District of Virginia once again struck down Virginia’s maps as racially discriminatory.⁴⁵ The Court held that the Commonwealth used an “arbitrarily applied . . . mechanical 55% racial threshold” to compress Black voters into only a few districts and thus limited Black Virginians’ electoral power.⁴⁶ An expert report submitted on behalf of plaintiffs conducted an analysis of the racial composition and voting patterns of the challenged districts and found that the districts did not require a BVAP of 55% or higher in order to elect

⁴³ *Bethune-Hill v. Virginia State Bd. Of Elections*, 141 F.Supp.3d 505, 523-24 (E.D. Va. 2015). The plan was subsequently precleared by the DOJ, <https://redistricting.lls.edu/wp-content/uploads/VA-preclean-20110617-state-leg.pdf>, and went into effect.

⁴⁴ *Id.*

⁴⁵ *Bethune-Hill v. Va. State Bd. of Elect.*, 326 F. Supp. 3d 128, 180 (E.D. Va. 2018).

⁴⁶ *Id.*

minority voter-preferred candidates.⁴⁷ The Commonwealth’s plan also “substantially reduce[d] geographic compactness” among the challenged districts and resulted in the split of counties and cities.⁴⁸

The Eastern District decision followed a Supreme Court order to engage in a “holistic analysis” of the use of race in Virginia’s redistricting⁴⁹ rather than simply accept the Commonwealth’s argument that legislators believed that the twelve districts needed to contain a BVAP of at least 55% to remain Black opportunity districts.⁵⁰ The Supreme Court additionally held that Plaintiffs were not required to establish, as a threshold matter, that the challenged districts were inconsistent with traditional redistricting principles.⁵¹ Rather, a variety of direct and circumstantial evidence could sufficiently show race improperly predominated in a redistricting plan, even if a district otherwise complied with traditional redistricting principles.

⁴⁷ *Bethune-Hill v. Va. State Bd. of Elections*, Report of Dr. Stephen Daniel Ansolabehere, No. 113CV00949, 2015 WL 6673859 (Mar. 11, 2015), ¶10.

⁴⁸ *Id.*

⁴⁹ *Bethune-Hill v. Va. State Bd. of Elections*, 137 S. Ct. 788, 800 (2018). The district court had initially held that the plaintiffs did not establish that race was the predominant factor in the creation of eleven of the twelve challenged districts. *Bethune-Hill v. Virginia State Bd. of Elections*, 141 F.Supp.3d 505, 510-11 (E.D. Va. 2015). The court additionally held that, although race was the predominant factor in the creation of one of the districts, House District 75, the use of race was nevertheless constitutional, as the “General Assembly was pursuing a compelling state interest, namely, actual compliance with federal antidiscrimination law, and...used race in a manner narrowly tailored to achieve that interest.” *Id.* at 511. Plaintiffs appealed to the Supreme Court. On March 1, 2017, the Supreme Court issued a ruling, holding that the district court had employed an incorrect legal standard in determining that race did not predominate in eleven of the twelve districts. *Bethune-Hill*, 137 S. Ct. at 796-801 (2017). The Court, however, agreed with the district court that the twelfth district was constitutional, writing that a state need merely show that it had “good reasons to believe it must use race in order to satisfy the Voting Rights Act” to meet strict scrutiny. *Id.* at 801. The Court remanded the case and instructed the district court to re-evaluate the eleven districts under the correct legal standard. In June 2018, a three-judge panel ruled 2-1 that the eleven challenged House districts were unconstitutionally racially gerrymandered and ordered the General Assembly to draw a remedial map by October 30, 2018. The new plan went into effect in time for the 2019 elections.

⁵⁰ *Bethune-Hill*, 141 F.Supp.3d at 519.

⁵¹ *Bethune-Hill*, 137 S. Ct. at 797-800.

“The ultimate object of inquiry is . . . the legislature’s predominant motive for the design of the district as a whole.”⁵²

3. *Federal Courts Have Held that Recent Local Redistricting Plans in Virginia Violated the Voting Rights Act.*

Applying these same principles, courts have likewise struck down Virginia’s local redistricting plans. For example, just this year, the U.S. District Court for the Eastern District of Virginia struck down Virginia Beach’s City Council plan because its discriminatory impact on voters of color combined with other aspects of societal discrimination to “den[y voters of color] equal access to the electoral and political process, in contravention of Section 2 of the Voting Rights Act.”⁵³ The court noted that voters of color struggled to elect their preferred candidates⁵⁴ despite making up a sufficiently large and cohesive community,⁵⁵ in part because white voters consistently voted against Black candidates of choice.⁵⁶

C. Racial Inequality Persists in Virginia, and the Commonwealth’s Politicians Continue to Win Elections Through Appeals to Racial Prejudice.

Beyond discriminatory voting laws and racial gerrymanders, Virginians of color continue to struggle with racial inequality and discrimination in a range of other ways. The Governor’s Commission to Examine Racial Inequity in Virginia

⁵² *Id.* at 800.

⁵³ *Holloway v. Virginia Beach*, 2021 WL 1226554, 59 (E.D. Va. 2021).

⁵⁴ *See id.* at 6.

⁵⁵ *See id.* at 24.

⁵⁶ *See id.* at 39-40.

Law, established by Governor Ralph S. Northam,⁵⁷ issued a 2020 report laying out in great detail the continuing and devastating effects of Virginia’s “history of racial inequities and racially-discriminatory laws” in the areas of housing, education, criminal justice, health, and environmental justice, among other aspects of society.⁵⁸ Courts consider “the extent to which minorities . . . bear the effects of discrimination in education, employment, and health,” as evidence of continued barriers to “the ability to participate effectively in the political process” for voters of color.⁵⁹ Persistent racial disparities throughout nearly all aspects of society combine to weaken Black electoral strength in Virginia.

Nationwide, Black American households, which amount to more than 13% of the country, hold just 4% of the nation’s wealth.⁶⁰ Meanwhile, median white household wealth is almost eight times that of Black households.⁶¹ This persistent inequality of opportunity translates to education as well, where Black students are more likely to attend underfunded schools, have poorer educational opportunities,

⁵⁷ Commonwealth of Virginia Office of the Governor, Executive Order Number Thirty-Two (June 4, 2019), <https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-32-Establishment-of-the-Commission-to-Examine-Racial-Inequity-in-Virginia-Law.pdf>

⁵⁸ Report from The Commission to Examine Racial Inequity in Virginia Law, *Identifying and addressing the vestiges of inequity and inequality in Virginia’s laws* (Nov. 15, 2020), <https://www.governor.virginia.gov/media/governorvirginiagov/governor-of-virginia/pdf/2020-Commission-Report--Inequity-and-Inequality-in-Virginia-Law.pdf>

⁵⁹ S. Rep. No. 97-417, at 28-29 (1981); *see also Thornburg v. Gingles*, 478 U.S. 30, 44-45 (1986).

⁶⁰ *See id.*

⁶¹ *See* Emily Moss, et.al., *The Black-white wealth gap left Black households more vulnerable*, THE BROOKINGS INSTITUTION (Dec. 8, 2020) <https://www.brookings.edu/blog/up-front/2020/12/08/the-black-white-wealth-gap-left-black-households-more-vulnerable/>.

and face discriminatory disciplinary enforcement while in school.⁶² These trends have only worsened during the pandemic.⁶³ Black Americans are more likely than white Americans to have “poor health” and have the highest cancer mortality rate of any racial or ethnic group.⁶⁴ Compounding this factor, Black Americans are less likely to be insured or have adequate access to insurance coverage.⁶⁵

Unfortunately, the hardships faced by Black Virginians largely parallel these national trends. Since the 1970s, Virginia’s Black communities have trailed the Commonwealth’s median wealth by about 30%.⁶⁶ Virginia’s schools are increasingly segregated,⁶⁷ and continued racial discrimination has caused disproportionately negative health outcomes for Black Virginians.⁶⁸ Ingrained poverty due, in part, to limited educational opportunities and low-wage employment make it difficult to impossible to take time off from work to vote and overcome other

⁶² See Emma Dorn, et. al., COVID-19 and student learning in the United States: The hurt could last a lifetime, MCKINSEY & COMPANY (June 1, 2020), <https://www.mckinsey.com/industries/education/our-insights/covid-19-and-student-learning-in-the-united-states-the-hurt-could-last-a-lifetime>; see also Talk of the Nation, Black Students More Likely to Be Disciplined, NPR (Mar 12, 2012) <https://www.npr.org/2012/03/12/148460543/black-students-more-likely-to-be-disciplined>.

⁶³ See Dorn, *supra* note 62.

⁶⁴ See Sofia Carratala & Connor Maxwell, *Health Disparities by Race and Ethnicity*, CENTER FOR AMERICAN PROGRESS (May 7, 2020) <https://www.americanprogress.org/article/health-disparities-race-ethnicity/>

⁶⁵ See *id.*

⁶⁶ See Katherine Hafner, *Virginia’s racial income gap closed more before the Civil Rights era than it has since*, THE VIRGINIA-PILOT (Sept. 15, 2020) <https://www.pilotonline.com/news/vp-nw-racial-income-gap-virginia-20200915-b5t4cl7p6fa7hkdtufpwrnj34e-story.html>.

⁶⁷ See Brian McNeill, *School segregation by race and poverty is deepening in Virginia, report finds*, VCUNews (Nov. 11, 2020) https://news.vcu.edu/article/School_segregation_by_race_and_poverty_is_deepening_in_Virginia.

⁶⁸ See Virginia Health Equity Report, VIRGINIA DEPT. OF HEALTH, 22 (2012) <https://www.vdh.virginia.gov/content/uploads/sites/76/2016/06/Health-Equity-Report-2012.pdf>.

obstacles to voting. Together, these factors make it far more difficult for Black voters to participate in Virginia's democracy.

Racial animus sadly remains a factor in Virginia's elections. The use of racist imagery and language in Virginia's campaigns over the last few years is well documented,⁶⁹ but the 2021 General Assembly races were notably awash with racist ad campaigns and "dog whistles" meant to rile up white resentment towards people of color.

Specifically, in 2021, several Black members of the General Assembly were targeted with ad campaigns utilizing racist imagery. Mailers evoked the history of Black lynching by depicting each representative as a puppet hung from ropes held by House Speaker Nancy Pelosi, with Congresswoman Alexandria Ocasio-Cortez standing over her shoulder.⁷⁰ One representative, Alex Askew, was even shown with the hue of his face artificially darkened and an image of his face set ablaze.⁷¹ When these mailers were called out for trading in lynching imagery, only one white opponent in these three races even acknowledged the mailers' existence.⁷² These racist tactics continue to affect election results and diminish electoral opportunity

⁶⁹ See generally, Holloway, 2021 WL 1226554 at *22-26.

⁷⁰ *Black state lawmakers decry flyers showing them as puppets*, ASSOCIATED PRESS (Oct. 6, 2021) <https://apnews.com/article/virginia-richmond-race-and-ethnicity-racial-injustice-2f1f7529c4757e7f3c2d74a66f6260bf>.

⁷¹ Julie Carey & NBC Washington Staff, *Virginia GOP Campaign Flyers Show Ropes Around Black Male Delegates*, NBC WASHINGTON (Oct. 5, 2021) <https://www.nbcwashington.com/news/local/northern-virginia/virginia-gop-campaign-flyers-show-ropes-around-black-male-delegates/2822167/>.

⁷² See ASSOCIATED PRESS, *supra* note 70.

for Black voters. Each of the candidates in the campaigns that used these racist tactics succeeded. In all three General Assembly races, the white challenger unseated the Black incumbent.

None of these systems operates independently. Rather, they intersect and reinforce each other such that Virginia’s democracy continues to be disproportionately inaccessible to Black voters. Whatever recent softening has occurred in Virginia’s historically harsh voting landscape, the burdens experienced by voters of color in Virginia persist.

II. LEGAL STANDARDS

Redistricting is fundamentally about ensuring that voters, and their communities, are adequately and fairly represented. The legal structures that guide this process reflect that goal. In its Redistricting Appointment Order, the Court instructed Special Masters Trende and Grofman to “fully comply with federal and state law” in drawing maps.⁷³ As explained in this Section, these laws impose rigorous redistricting requirements. First, the federal Voting Rights Act serves as a “stern and powerful remedy” against the denial or dilution of the vote of Black and other voters of color. *See Briscoe v. Bell*, 432 U.S. 404, 410 (1977). Second, Virginia’s own laws offer even greater protection: in the last year, Virginians

⁷³ Redistricting Appointment Order, In Re: Decennial Redistricting Pursuant to The Constitution of Virginia, art. II, §§ 6 to 6-A, and Virginia Code § 30-399 (Nov. 19, 2021), https://www.vacourts.gov/courts/scv/districting/redistricting_appointment_order_2021_1119.pdf

amended the Constitution and passed two new laws that expand on the federal Voting Rights Act’s already-robust protections. Finally, new legislative maps must not abridge the rights afforded to Virginians by the Constitution of the United States, especially those enshrined in the Equal Protection Clause of the Fourteenth Amendment. To comply with these stringent legal standards, the Commonwealth must adopt maps that preserve, secure, and empower the voting rights of the people it has for so long disenfranchised.

A. Under Section 2 of the Voting Rights Act, Virginia Must Not Dilute the Voting Power of Black Voters in Regions of the State That Exhibit Racially Polarized Voting

Under Section 2 of the Voting Rights Act, a state cannot pass any voting law that causes “a denial or abridgement of the right of any citizen . . . to vote on account of race or color.” 52 U.S.C. § 10301(a). A state violates the Voting Rights Act when it draws maps that cause voters of color to “have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.” *Id.* § 10301(b). In essence, the law aims to proscribe any “electoral law, practice, or structure [that] interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by [minority] and white voters to elect their preferred representatives.” *Thornburg v. Gingles*, 478 U.S. 30, 47 (1986); *Holloway*, 531 F. Supp. 3d at 1044.

Among other things, Section 2 prohibits “vote dilution,” which occurs when an electoral practice—including the lines drawn in redistricting—combines with social and historical conditions to result in a weakening of the voting strength of a racial or language minority group. Any state with a significant racial minority population, such as Virginia, must conduct a vote dilution analysis as part of its redistricting process to ensure compliance with the Voting Rights Act. In short, Virginia must ensure it is neither “packing” Black voters into “excessive majorit[ies]” in too few districts, or “cracking” Black voters into “ineffective minorit[ies]” across many districts. *Gingles*, 478 U.S. at 46 n.11.

In *Gingles*, the Supreme Court instituted a two-step framework to analyze whether a particular redistricting plan would illegally dilute minority voting power. 478 U.S. 30. It first outlined three preconditions that, together, establish both the existence of “racially polarized voting,” the phenomenon at the heart of vote dilution, and the possibility of drawing an effective district (*i.e.*, a “majority-minority” district, a district with fifty-percent-plus-one minority voting age population) that would afford racial minority voters the opportunity to elect candidates of choice despite the presence of extreme or maximum racially polarized voting. *Id.* at 50-51; *see also Collins v. City of Norfolk*, 816 F.2d 932, 936 (4th Cir. 1987). These preconditions are established where a racial minority group is both sufficiently compact that it could constitute a majority in a given district and

politically cohesive enough that this district would elect candidates of their choice, but where the white majority votes sufficiently as a political bloc such that voters of color are usually unable to elect candidates of choice. *Gingles*, 478 U.S. at 50-51. If those conditions are met, one must next determine if, “*based on the totality of circumstances, . . . the political processes leading to . . . election in the State . . . are not equally open to participation*” by the electoral minority (emphasis added). 52 U.S.C. § 10301(b). If established, there exists a Section 2 vote dilution violation.

This framework has significant implications for Virginia’s current redistricting process. The effect of racially polarized voting is particularly dangerous to voters of color because it “deprives . . . [them] of their preferred representative . . . and allows . . . elected [officials] to ignore [their] interests without fear of political consequences.” *Gingles*, 478 U.S. at 48 n. 14 (quotations omitted). To be sure, Virginia exhibits significant racially polarized voting only in certain of its regions.⁷⁴ In some districts, Black voting age population must approach or exceed fifty percent in order for Black voters to have an equal ability to elect candidates of their choice; in other districts, a lower percentage of Black voting age population may be effective in electing candidates of choice. It is therefore imperative that the

⁷⁴ For example, Dr. Stephen Ansolabehere, in his 2015 expert report for *Bethune-Hill v. Virginia State Board of Elections*, found diversity in voting bloc habits even among only twelve challenged Virginia House of Delegates districts. Of the twelve, six exhibited significant racially polarized voting behavior, four lacked significant racially polarized voting, and two exhibited low levels of White cohesion and therefore moderate levels of racially polarized voting. Report of Stephen Ansolabehere, at ¶ 10.

Court and Special Masters consider potential vote dilution under the Section 2 framework on a region-to-region and district-to-district basis, in order to create effective Black opportunity districts without unnecessarily packing Black voters into fewer districts.

Additionally, the “totality of the circumstances” prong of Section 2 requires Virginia to **carefully** consider its own history of racial discrimination, and to draw maps that account for the continuing effects of that history on political participation by racial minority voters. This inquiry may include past legalized discrimination; evidence of racial disparities in education, employment and health; racial appeals in campaigns; the responsiveness of elected officials to the interests of the Black community; and the frequency with which Black and other candidates of color are elected to office, among other factors. *Gingles*, 478 U.S. at 36–37 (quoting S. Rep. No. 97–417, at 28–29).

In *Gingles* itself, for example, North Carolina drew maps that made Black voters the minority in several multimember districts, effectively “submerging [Black Voters] in a white majority.” *Id.* at 46. The Supreme Court held that these maps violated the Voting Rights Act. *Id.* at 80. In reaching this holding, the Court noted several factors which helped perpetuate the state’s unequal and discriminatory political system, including North Carolina’s “legacy of official discrimination” in voting, education, housing, employment, and healthcare. *Id.* at 80. The Court

likewise noted that state politicians continued to appeal to racial prejudice on the campaign trail, and that North Carolinians often voted along racial lines. *Id.* Making matters worse, rather than countering this unequal environment, the state’s voting maps “acted in concert” with these factors, causing a political process “not equally open” to Black North Carolinians. *Id.*

Many of the discriminatory hallmarks identified by the *Gingles* Court persist in Virginia today. Here, as in *Gingles*, the Commonwealth has a legacy of discrimination in voting, education, housing, employment, and healthcare.⁷⁵ Here, as in *Gingles*, modern politicians appeal to racial prejudice to win elections. Virginia must therefore do today what North Carolina failed to do in *Gingles*: it must take these factors into account and draw districts that provide Black voters and other voters of color an equal opportunity to participate in its political process and elect candidates of their choice. This is especially true in the regions of the state in which voting is significantly racially polarized, and thus where the Voting Rights Act mandates such consideration. In sum, Virginia’s final maps must scrupulously avoid packing and cracking Black voters. They must empower—not dilute—the Black vote.

⁷⁵ See *infra* Section I.C. See also Report from The Commission to Examine Racial Inequity in Virginia Law, *Identifying and addressing the vestiges of inequity and inequality in Virginia’s laws* (Nov. 15, 2020), <https://www.governor.virginia.gov/media/governorvirginiagov/governor-of-virginia/pdf/2020-Commission-Report--Inequity-and-Inequality-in-Virginia-Law.pdf>.

B. Virginia State Law Provides Even Greater Protection for Black Voters than the Voting Rights Act.

While federal law requires vigilant protection of the voting rights of people of color, Virginia law requires even more. Indeed, just last year, the people of Virginia amended the Commonwealth’s Constitution to require districts that “provide, where practicable, opportunities for racial and ethnic communities to elect candidates of their choice.” Va. Const. art. II, § 6. And since passing that amendment, the people have enacted two laws expanding and reaffirming legal protections for voters of color: Va. Code § 24.2-304.04 (the “Statutory Criteria”) and Va. Code § 24.2-126 (the “Voting Rights Act of Virginia”).

1. The Voting Rights Act of Virginia Reaffirms and Extends the Protections Guaranteed Under Federal Law.

Earlier this year, the Commonwealth passed the Voting Rights Act of Virginia. Va. Code § 24.2-126. This statute reaffirms the protections of the federal Voting Rights Act. It bars any voting law that “that results in a denial or abridgement of the right of any citizen of the United States to vote based on race or color[.]” *Id.* It goes farther with respect to local redistricting, prohibiting any map for a local governing body or elected school board that causes “retrogression in the position of members of a racial or ethnic group with respect to their effective exercise of the electoral franchise.” *Id.* Va. Code § 24.2-129(C). This was an essential element of

redistricting in Virginia under the preclearance regime of the Voting Rights Act prior to the 2013 *Shelby County v. Holder* decision.

While not directly applicable to the statewide redistricting plans at issue here, Va. Code § 24.2-129 demonstrates a clear intent under Virginia law to ensure continued, fair, and adequate representation for communities of color by preventing the diminishment of already established electoral gains made by these communities. Any new maps should follow this same principle and ensure continued, adequate representation for communities of color. As evidenced herein, the road to something approaching adequate representation for Black Virginians has been long and hard, and it is essential that any new maps do not erase what gains have been made.

2. *The Statutory Criteria Expand the Federal Voting Rights Act's Already-Robust Protections by Explicitly Barring the Packing and Cracking of Minority Voters, and by Securing Black Voters' Right to Form Coalitional Districts.*

In 2020, Virginia passed the Statutory Criteria, a statute updating its redistricting process. Va. Code § 24.2-304.04. The Statutory Criteria establish nine requirements for voting districts, three of which relate to Virginia NAACP's interests here.

First, mirroring the federal Voting Rights Act, Va. Code § 24.2-304.04(3) states that “no district shall be drawn that results in a denial or abridgement of the right of any citizen to vote on account of race or color[.]” It likewise bars the Commonwealth from drawing districts “in a way that results in a denial or

abridgement of the rights of any racial . . . minority group to participate in the political process and to elect representatives of their choice.” *Id.*

But this part of the Statutory Criteria also goes further than the federal Voting Rights Act—it explicitly prohibits the packing and cracking of communities of color. It bars the Commonwealth from “dispers[ing] [communities of color] into districts in which they constitute an ineffective minority of voters,” and from “concentrate[ing] [people of color] into districts where they constitute an excessive majority.” Va. Code § 24.2-304.04(3). This requirement directly mirrors the Supreme Court’s reasoning in *Gingles*, where the Court used the same language to explain that the Voting Rights Act prohibits the packing and cracking of Black Voters.⁷⁶ In other words, the Statutory Criteria makes explicit and affirmative what the text of the Voting Rights Act left implicit: The Commonwealth cannot dilute the Black vote by packing too many Black voters into one district or by separating them into multiple districts.

Second, Va. Code § 24.2-304.04(4) bars the Commonwealth from “dilut[ing] or diminish[ing] [voters’ of color] ability to elect candidates of choice either alone or in coalition with others.” This provision expands legal protection for “coalitional districts”—districts which enable racial minority voters to vote cohesively together

⁷⁶ See *Thornburg*, 478 U.S.at 46 n. 11 (“Dilution of racial minority group voting strength may be caused by the dispersal of blacks into districts in which they constitute an ineffective minority of voters or from the concentration of blacks into districts where they constitute an excessive majority.”).

with other voters of color in sufficient numbers so as to elect their preferred candidates—to also include districts which enable voters of color to vote cohesively together with white “crossover” voters in sufficient numbers so as to elect their preferred candidates. This means that many more Black and other racial minority opportunity districts can be created in Virginia—and indeed that they must be created where failing to do so would have the effect of diluting or diminishing the ability of voters of color to elect candidates of their choice. *See also* Special Masters Mem. (“SM Mem.”) at 27 (“The Statutory Criteria do require that we draw districts where minority groups are able to elect their candidates of choice, either alone or in coalition with other groups.”).

Thus, in Virginia, Black and other voters of color have a protected right to coalesce not only together with other voters of color, but also with white voters with whom they vote cohesively, in order to form districts in which they can elect their preferred candidates.⁷⁷ In drawing new district lines, the Commonwealth cannot impair Black Virginians’ ability to form and preserve such coalitions.

⁷⁷ The Statutory Criteria, thus, appear to go beyond the plurality opinion in *Bartlett v. Strickland*, which construed the Voting Rights Act as not applying to claims for the creation of “crossover” districts comprised of voters of color and white voters who “cross over” to vote cohesively with those voters of color. 556 U.S. 1, 13 (2009). *See also* Special Masters Mem. at 27 (“The Statutory Criteria do require that we draw districts where minority groups are able to elect their candidates of choice, either alone or in coalition with other groups. This follows the approach of a majority of federal circuits, which require such coalition districts.” (citing *Campos v. City of Baytown*, 840 F.2d 1240 (5th Cir.), *reh’g denied*, 849 F.2d 943 (1988), *cert. denied*, 492 U.S. 905 (1989). *But see* *Nixon v. Kent County*, 76 F.3d 1381 (6th Cir. 1996) (en banc) (concluding that coalition districts are not required by the VRA)).

Third, under Va. Code § 24.2-304.04 (4), “[d]istricts shall be drawn to preserve communities of interest.” A community of interest (“COI”) is “a neighborhood or any geographically defined group of people living in an area who share similar social, cultural, and economic interests.” *Id.*

Here, too, the Statutory Criteria may in certain instances go beyond the federal Voting Rights Act in providing additional protections for the Black and other communities of color that so often comprise local communities of interest. The Supreme Court has interpreted the Voting Rights Act to require that a state “take[s] [COIs] into account[.]” *League of United Latin American Citizens (“LULAC”) v. Perry*, 548 U.S. 399, 434 (2006) (quotation omitted). But under the Statutory Criteria, districts “*shall*” be drawn to preserve COIs. Va. Code § 24.2-304.04 (4) (emphasis added), thus requiring their preservation where possible. Centering COIs in this way supports district cohesion and a sense of shared interests and identity among voters, and reflects a concern for ensuring that Virginians are represented by individuals who actually speak for their community and understand their community’s needs.

Special Masters Trende and Grofman correctly note in their Memorandum that COIs can be defined by factors such as “media, public trans[it], . . . and

institutions such as schools and churches.”⁷⁸ But under federal and state law, other factors define COIs as well. Indeed, under the Statutory Criteria, a community of interest includes people “who share similar social, cultural, and economic interests.” Va. Code § 24.2-304.04 (4). This language fits federal court precedent defining COIs “by economic, social, cultural, and historical ties.” *Backus v. South Carolina*, 857 F. Supp. 2d 553, 562 (D. S.C. 2012).⁷⁹

Applying these broader factors, federal courts have recognized COIs using more than just geography, topography, media markets, public transit systems, schools, and churches. For example, in *Diaz v. Silver*, a federal court recognized an Asian-American COI in two separate New York neighborhoods, Sunset Park and Chinatown. 978 F. Supp. 96, 123-24 (E.D. N.Y. 1997). The court noted that these neighborhoods’ voters “work together, attend the same health clinics, . . . shop in the same stores[,] . . . and speak the same dialect.” *Id.* at 124. The same community organizations likewise serve both neighborhoods. *Id.* at 102. While the court struck down the district containing this COI on other grounds, the state redrew maps that

⁷⁸ Special Masters’ Memorandum to the Chief Justice and Justices of the Supreme Court of Virginia (Dec. 7, 2021), https://www.vacourts.gov/courts/scv/districting/memorandum_re_va_redistricting_2021.pdf.

⁷⁹ See also *Bethune-Hill v. Virginia State Bd. of Elections*, 326 F. Supp. 3d 128, 142 (E.D. Va. 2018) (“[A] district that is drawn with some consideration of communities of interest links voters who share . . . social . . . [and] economic interests.”); *Graham v. Thornburgh*, 207 F. Supp. 2d 1280, 1286 (D. Kan. 2002) (When identifying communities of interest, “common social, cultural, racial, ethnic, and economic interests should be considered.”); *King v. State Bd. of Elections*, 979 F. Supp. 619, 625 n. 4 (N.D. Ill. 1997) (the Voting Rights Act permits states to consider the “preservation of cultural, social, and economic communities of interest”) (quotation omitted).

preserved the COI—maps the Supreme Court summarily affirmed. *Diaz v. Silver*, 55 U.S. 801 (1997), *aff’d mem.*⁸⁰

Diaz shows that a state can preserve a COI centered around a community of color without having race predominate redistricting in a way that violates the Equal Protection Clause, *see infra* Subsection C. In *Diaz*, the state no doubt considered race: it drew a district containing a COI with voters “mostly of Chinese background.” *Diaz*, 978 F. Supp. at 124. But the state also considered other social, cultural, and economic factors, including the industries in which the COI’s voters worked, the stores in which they shopped, and their common dialect. *Id.* Applying this holistic approach, a state can preserve a minority COI without letting race necessarily predominate.

Similarly, in *Rodango v. Illinois State Bd. of Elections*, a federal court held that race did not predominate Illinois’ decision to increase Black voting power by drawing a district that joined two majority-Black residential areas into one COI. 836 F. Supp. 2d 759, 761-65 (N.D. Ill. 2011). There, the court noted that these areas’ voters work in similar industries, have similar recreational activities, use similar social services, and have family ties. *Id.* at 764. Thus, even though the state

⁸⁰ *See also Favors v. Cuomo*, 39 F. Supp. 3d 276, 295 (E.D. N.Y. 2014) (noting that the Court “ultimately adopted a map that included districts that maintained the integrity of . . . [the] Asian–American communities [recognized as COIs in *Diaz*]”).

recognized a COI that merged two majority-Black areas, race did not predominate. *Id.* at 766-70.

These same principles apply to Virginia's Black communities of interest. Thus, just like the communities of interest in *Diaz* and *Radogno*, Virginia's Black communities of interest must be preserved.

C. The Special Masters' Use of Race to Ensure Compliance with the Voting Rights Act After Drawing Their Initial Maps Is Constitutional

The Equal Protection Clause of the Fourteenth Amendment prohibits Virginia from "separat[ing] its citizens into different voting districts on the basis of race" without sufficient justification. *Bethune-Hill*, 137 S. Ct. at 797; *Miller v. Johnson*, 515 U.S. 900, 911 (1995). Strict scrutiny is triggered whenever "circumstantial evidence of a district's shape and demographics or more direct evidence going to legislative purpose, that race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district." *Bethune-Hill*, 137 S. Ct. at 797. This can include evidence that a state's use of race in drawing district lines predominated over or conflicted with other traditional redistricting principles. See *id.* at 797-99.

Nevertheless, as correctly highlighted in Special Masters Trende and Grofman's Memorandum of December 7, 2021, "[t]he U.S. Supreme Court has assumed, without deciding, that compliance with the [Voting Rights Act] reflects a

compelling governmental interest” and that “when the [Voting Rights Act] preconditions established in *Thornburg v Gingles* . . . are met and the totality of the circumstances would demand race-conscious drawing, the 14th Amendment would allow it.”⁸¹ Thus, race may—and indeed must—be considered for the drawing of districts in the Virginia jurisdictions that exhibit racially polarized voting, insofar as it is used to protect voters from vote dilution. Additionally, preserving communities of interest—a requirement under Virginia law, *see infra* Subsection B.ii.—is a traditional redistricting principle that, while often correlated with race, can be accomplished without allowing race to predominate. *See, e.g., Diaz*, 978 F. Supp. at 124; *Rodango*, 836 F. Supp. at 761-70; *see also infra* notes 83, 84.

Special Masters Trende and Grofman’s use of race in their map-drawing process appears to be entirely consistent with Supreme Court precedent, and will continue to be as they continue to ensure compliance with the Voting Rights Act and the preservation of communities of interest in accordance with this and other public comments.

Underlying all of these laws is one touchstone principle: in drawing voting maps, Virginia must actively counter its pervasive record of racial discrimination and disenfranchisement, and in particular that of Black voters. Virginia’s recent

⁸¹ *Supra* note 78.

failures to draw a permissible map compound on its lengthy history of racial inequality and show that, rather than facing this discriminatory past, the Commonwealth continues to ignore it or, worse, embrace it. Virginia’s long and shameful record of denying, diluting, and devaluing the Black vote must end—and federal and state law require that it does.

III. ANALYSIS OF SPECIAL MASTERS INITIAL DISTRICT MAPS AND VIRGINIA NAACP PROPOSED DISTRICTS

Virginia NAACP has worked with our counsel to analyze the initial maps and accompanying memorandum presented to the Court by the Special Masters on December 7, 2021. While many of the Special Masters’ proposed districts appear to continue to provide Black voters with equal opportunities to elect their candidates of choice, others do not. The primary factor underlying many of our concerns is that the Special Masters needlessly relied upon ACS estimates in constructing their districts instead of the more accurate complete-count 2020 Census data, despite the relatively small Black non-citizen population across the Commonwealth.⁸² That error has led the Special Masters to overestimate—and thereby dilute—Black voting strength in a number of districts, as more fully laid out below.

The Special Masters also acknowledge in the brief overview of both their

⁸² The total Black population of Virginia is 97.2 percent citizen and 2.8 percent non-citizen. The Black VAP is 96.8 percent citizen and 3.2 percent non-citizen. *See* Citizen Voting Age Population (CVAP) Special Tabulation from the 2015-2019 5-Year American Community Survey (ACS), available at <https://www.census.gov/programs-surveys/decennial-census/about/voting-rights/cvap.2019.html>.

proposed House of Delegates and Senate plans that “we do not have as many minority-majority districts as the existing plans.” SM Mem. at 26, 41. The Special Masters contend that “this is the incorrect inquiry under both Virginia and federal law.” *Id.* Their conclusion is partially correct.

Fewer majority-minority districts can be indicative of a reduction in the ability of Black voters to have equal opportunities to elect candidates of their choice. This standard, known as “retrogression,” has been well established in the Voting Rights Act since its enactment in 1965. Retrogression, or backsliding, simply means that the voting change “will make members of such a group worse off than they had been before the change.” 28 C.F.R. § 51.54(b); *Beer v. United States*, 425 U.S. 130, 140-42 (1976). Our analysis of the Special Masters’ proposed House of Delegates and Senate districts takes into consideration both whether those proposed districts make Black voters worse off than they are under the existing plan, and whether those districts provide them with equal opportunities to elect their candidates of choice.

Virginia NAACP has also worked closely with NAACP local branch leaders and community members from across the Commonwealth over the past several months in generating our proposed district maps for the Virginia House, Senate, and US congressional delegation. These maps are designed to best represent the Black communities of interest in each region and proposed district, as reflected by input from members of those communities, as well as to best protect the ability of Black

voters to elect candidates of their choice in each district. We also took great care in ensuring our proposed districts satisfy Virginia’s other redistricting criteria—and many cases do a better job of this than the Special Masters’ maps. *See* Appendix D.

We chose not to propose statewide maps, but rather to focus on the areas with the largest Black communities of interest and thus the highest concentration of Black voters. This should not be seen as an endorsement of districts not addressed herein, but rather an effort to focus the attention of the Court and Special Masters on the areas of greatest importance to maintaining Black political representation in the House of Delegates, the Senate, and Virginia’s US congressional delegation, as required by the federal Voting Rights Act and Virginia law.

A. State House Districts

Our focus is on the six regions of the Commonwealth where Black voters currently have the ability to elect or influence House districts: Hampton/Newport News; Norfolk/Portsmouth; Richmond/Petersburg; Fredericksburg; Dale City/Quantico; and northern Virginia. *See* Appendix A, NAACP-Proposed Maps of House of Delegates Districts.

1. Hampton/Newport News

The Hampton/Newport News area has two proposed districts, HD 85 and HD 87, with significant Black populations. According to the 2020 Census,⁸³ proposed

⁸³ For all references to Black VAP herein, *see* 2020 Census State Redistricting Data (Public Law 94-171) Summary File—Virginia Prepared by the U.S. Census Bureau, 2021.

HD 85 has a BVAP of 44.48 percent and proposed HD 87 has a BVAP of 56.57 percent, slightly lower than the 2019 CVAP estimates provided by the Special Masters. *See* SM Mem. at 45. Although we have shown that two compact majority-Black House of Delegate districts can be drawn in this area (our proposed districts HD 92 and 95), it appears the two districts proposed by the Special Masters continue to provide Black voters with equal opportunities to elect their candidates of choice. The most significant difference between the Special Masters’ proposed map and ours is that their proposed HD 87 does not include the area around Langley Air Force Base.

2. *Norfolk/Portsmouth*

In the Norfolk/Portsmouth area, the Special Masters have combined much of the Black community of interest in our proposed HDs 79 and 80 into a single district, their proposed HD 88. That choice has a cascading effect on all of the districts in the region, resulting in fewer Black opportunity-to-elect districts statewide. The Special Masters’ proposed House of Delegates districts also are less compact than our proposed districts, using the Reock and Polsby Popper metrics employed by the Special Masters.⁸⁴ In addition, the Special Masters’ decision to “maintain[] ignorance about the residence of incumbents,” SM Mem. at 10, resulted in the elimination of the cores of two Black ability-to-elect districts, and places two Black

⁸⁴ *See* Appendix D, Figure 2.

incumbents in the same district, Special Master proposed HD 88. The substantial, but unneeded, changes made by the Special Masters in this area strongly support our recommendation to use the proposed House of Delegates districts we have drawn.

3. Richmond/Petersburg

In the Richmond/Petersburg area, the Special Masters' and our plans propose four House of Delegates districts drawn around Black communities of interest. The Special Masters' proposed HD 82 is significantly different from what we have recommended. In our proposed HD 63, we have shown that a majority-Black district (50.31 percent BVAP) can be readily drawn from the core of Petersburg to include the Black community of interest extending northwards toward the area just outside of Chester. In contrast, the Special Masters' proposed HD 82, this greater community of interest is split and the BVAP is reduced to 45.51 percent. Their proposed HD 82 includes rural areas east, west, and south of Petersburg that are predominately non-Hispanic white, with little in common with the Black community of interest in and around Petersburg. Given the presence of racially polarized voting that is generally present in the rural areas of Virginia, it appears that Special Masters' proposed HD 82 may be insufficient to allow Black voters to continue to be able to elect their candidates of choice. Of the Special Masters' remaining proposed House of Delegates districts in and around Richmond/Petersburg, proposed HD 79 is the

only majority-Black district with a BVAP of 57.7 percent. The other two proposed districts, HD 80 and 81, have BVAPs of 46.84 percent and 47.91 percent.

We recommend using our proposed districts in this region (our proposed HDs 63, 70, 71 and 74) because they are more compact and preserve core Black communities of interest while maintaining a BVAP in each exceeding 50 percent, except for our proposed HD 71 in Richmond, which has a BVAP of 44.54 percent.

4. Fredericksburg

In Fredericksburg, we have proposed a House of Delegates district, HD 28, which maintains more of the Black community of interest to improve Black voters' ability to influence the election with a BVAP of 21.89 percent. The Special Masters' district in this area, proposed HD 65, is less compact and includes areas to the north and east of Fredericksburg, resulting in a BVAP of just 17.26 percent. We are concerned about the Special Masters' unnecessary dilution of Black voting power in a district that for the first time elected a Black candidate of choice in close elections in 2019 and again in 2021.

Directly to the north, we propose the creation of a new influence district around a Black community of interest which has increased dramatically in population over the past decade, with our proposed HD 88 increasing in BVAP from 9.89 percent in 2010 to 23.09 percent in 2020. This is a compact district that runs

along I-95 and unifies the Black community of interest between Fredericksburg and Quantico.

5. Dale City/Quantico

In the Dale City and Quantico region, we have proposed preserving the core Black community of interest within three districts (our HD 2, 51, 52) while the Special Masters' plan splits it among four (SMs' HD 19, 23, 24, 25). While the BVAP in our proposed House of Delegates districts in the Dale City and Quantico region are comparable to those in the Special Masters' plan, our districts are far more compact, and center more closely around the core of the Black community of interest.

6. Northern Virginia

Finally, in northern Virginia, Special Masters' proposed HD 3 and our proposed HD 49 are very similar. Generally, the BVAP in the remaining northern Virginia districts is the same between the two plans despite substantial differences in their configurations. The differences do not appear to be significant because there are no influence districts in which the BVAP exceeds 30 percent.

In South Alexandria, we propose a new influence district, HD 44, around a Black community of interest that has increased significantly in population over the past decade, up from just 15.36 percent BVAP in 2010 to 24.46 percent in 2020.

B. State Senate Districts

Among the six regions of Virginia described by the Special Masters in their proposed State Senate redistricting plan, there are two regions that are the focus of our comments and our proposed districts: “Southside and Richmond” (Special Master SDs 8-17) and “Hampton Roads” (Special Master SDs 18-24). *See* SM Mem. at 21-22; Appendix B, NAACP-Proposed Maps of Senate Districts.

1. Southside and Richmond

We have significant concerns with the Special Masters’ proposed districts in the Southside and Richmond areas. Those proposed districts unnecessarily dilute the voting power of the geographically compact and politically cohesive Black community of interest in and around Petersburg and Richmond. That result is concealed by the Special Masters’ use of less reliable Black CVAP data drawn from the 2019 five-year ACS estimates, which in this region in particular severely overestimate Black population compared to the actual BVAP reported in the 2020 decennial Census data.

For example, the Special Masters describe their proposed SD 13 as a majority-Black district with an overestimated Black CVAP of 51.85 percent, *id.* at 29, when in fact their proposed district has a BVAP of just 48.37 percent according to the 2020 Census. Similarly, the Special Masters describe their proposed SD 14 as a strong Black ability to elect district with an overestimated Black CVAP of 45.97 percent,

id., while 2020 Census data reveals a BVAP of just 37.97 percent. The Special Masters' proposed SD 15 likewise uses an overestimated Black CVAP of 42.97 percent, compared to 2020 Census data identifying a BVAP of only 36.73 percent. The Special Masters needlessly rely upon ACS estimates for these districts instead of more accurate complete-count 2020 Census data, despite the relatively small Black non-citizen population. That error has led the Special Masters to dilute Black voting strength by choosing to create three lower-performing Black opportunity districts instead of the two strong majority-Black districts.

The Special Masters' proposal also does not respect natural boundaries, needlessly splitting proposed SD 14 across the James River. Their proposed SD 13 unnecessarily crosses the James River to include Charles City, Highland Springs, and Montpelier to comply with equal population requirements. In the process, their proposed SD 13 joins together unrelated communities and splits the Black community of interest in Petersburg with their proposed SD 12. The combination of unrelated communities with little in common, spread out over a vast distance in SD 13, makes it more difficult for Black voters to elect their candidates of choice than under the existing Senate Districts and in our proposed districts.

In contrast, we recommend creating two effectively performing districts (our proposed SD 9 and SD 16), in the Southside and Richmond area, that have a BVAP of just over 50 percent according to 2020 Census data. Unlike the Special Masters'

proposed districts, our proposal respects the natural boundary that the James River forms between districts.

2. Hampton Roads

Turning to the Hampton Roads region, we begin by observing that the Special Masters' proposed SD 23 generally appears to provide Black voters with the ability to elect their candidates of choice. The Special Masters' use of ACS data overestimates Black CVAP at 50.95 percent, compared to BVAP of 47.57 percent reported in the 2020 Census. It appears that by including the core Black community of interest in Hampton and Newport News, the Special Masters' proposed SD 23 preserves this community of interest and will provide Black voters with an equal opportunity to elect their candidate of choice.

However, the same is not clear with respect to the other three proposed districts in this area, Special Masters' proposed SDs 17, 18, and 21. The use of Black CVAP overestimates Black voting power in all three districts, although only marginally for proposed SD 17. Comparing the ACS estimates with 2020 Census data reveals: proposed SD 17 has an estimated CVAP of 41.84 percent and a VAP of 40.31 percent; proposed SD 18 has an estimated CVAP of 44.79 percent and a VAP of 42.59 percent; and proposed SD 21 has an estimated CVAP of 44.33 percent, and a VAP of 40.55 percent. In summary, none of the three proposed Senate Districts in this region has a BVAP greater than 42.59 percent. That raises

considerable questions about the ability of Black voters to elect their candidates of choice, taking into consideration higher levels of racially polarized voting in the area.

Our proposed districts for this region (our SDs 5 and 18) preserve Black communities of interest in two Senate Districts that maintain the ability to elect of Black voters.

C. Congressional Districts

The Special Masters acknowledge that under the current congressional districting plan, there are two districts in which Black voters have an equal opportunity to elect their candidates of choice, CD 3 and CD 4. *See* SM Mem. at 14-15, 17. The Special Masters’ proposed plan represents that it maintains CD 3 and CD 4 as “ability to elect” districts for Black voters, drawing districts in which “Black voters represent 44.5% and 45.26% of the populations, respectively.” *Id.* at 17. According to the Special Masters, the percentages of Black voters are “sufficient to elect a Black candidate of choice in both districts” and parallel the “minority proportions” under the existing districting plan drawn by the federal court. *Id.*

The Special Masters have dramatically altered the boundaries of CD 3 in their proposed plan. They began by deviating from the existing boundaries drawn by Dr. Grofman and adopted by the federal court to create what they describe as “a compact district comprised of the four major cities in the Hampton Roads area: Norfolk,

Newport News, Hampton and Portsmouth. We then split the City of Chesapeake roughly at the Hampton Roads Beltway in order to maintain the district's compactness while achieving population equality.” *Id.* They acknowledge that their choices “left few options for the 2nd District,” which was redrawn to incorporate much of the existing Black community of interest in Isle of Wight County in the current CD 3. *Id.*

The Special Masters have overemphasized compactness and preserving the integrity of the four major cities in Hampton Roads, with the latter priority not present in the existing CD 3. They propose eliminating the CD 3 remedial district drawn by Dr. Grofman and imposed by the federal court in *Personhuballah v. Alcorn*, unnecessarily removing the western half of the district. Furthermore, they ignore the greater weight that Virginia law places on providing Black voters with equal opportunities to elect, Va. Code § 24.2-304.04, and preserving existing communities of interest, including those currently in the western portion of CD 3. Va. Code § 24.2-304.04(5). In the process, the Special Masters acknowledge that their changes have not improved the compactness of CD 2, and indeed have caused that district to “lose[] functional contiguity in the cities of Suffolk and Chesapeake....” SM Mem. at 14.

It is unnecessary to deviate from *Personhuballah*'s remedial CD 3 by adding into the district Navy Station Norfolk and neighborhoods in northern Norfolk such

as Algonquin Park, Bel-Aire, Camelia Shores, East Ocean View, Larrymore Lawns, North Camelia Acres, Oceanair, Suburban Acres, and Willoughby Terrace. Instead, the Special Masters should continue to follow *Personhuballah*'s inclusion of the Black community of interest from the existing CD 3 including: Deanes, Driver, Huntersville, Magnolia, Oakland, Red Top, and communities in the Quaker Neck and Sandy Bottom areas of Portsmouth County; Isle of Wight County; and the Independent City of Franklin. See Appendix C, NAACP-Proposed Maps of US Congressional Districts.

Under the *Personhuballah* remedial plan, the Black community of interest in the areas removed under the proposed CD 3 have had an equal opportunity to elect their candidate of choice. Joining with other Black voters in the Hampton Roads area, those voters have secured representation to address their common needs including depressed socio-economic status and disparities in educational and employment opportunities. The Black community of interest in CD 3 has worked together to form a politically cohesive group of voters with common ties that would be severed under the Special Masters' proposed CD 3. Regardless of the similar demographics, the proposed changes to *Personhuballah*'s remedial CD 3 would make it more difficult for Black voters to elect their candidates of choice because it would effectively remove the western portion of the Black community of interest and replace it with a large group of voters who have had no ties to CD 3. The

unnecessary changes to CD 3 would make it more expensive and difficult for a Black candidate of choice to be elected because of the costs of reaching out to an entirely new constituency.

We strongly recommend that the Special Masters maintain, to the greatest extent possible, the contours of *Personhuballah's* remedial CD 3. Our proposed CD 3 illustrates the viability of continuing to include the entire Black community of interest in the district, while preserving the cores of both districts in the Hampton Roads region (CD 2 and CD 3).

CD 4, which currently provides Black voters with equal opportunities to elect their candidate of choice, appears to continue to have those opportunities under the Special Masters' plan. We nevertheless recommend that the Special Masters consider our alternative, which has some differences in the neighborhoods and communities proposed for CD 4, particularly around Richmond City and Henrico Counties, that better represent the greater Black community of interest in CD 4.

CONCLUSION

For the reasons stated herein, the Virginia State Conference of the NAACP respectfully requests that the Special Masters and the Supreme Court of Virginia carefully consider this written comment, including and especially our analysis of the Special Masters' initial district maps and our proposed districts, and adjust future maps to be considered by this Court accordingly.

Respectfully submitted,

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DATE: December 17, 2021

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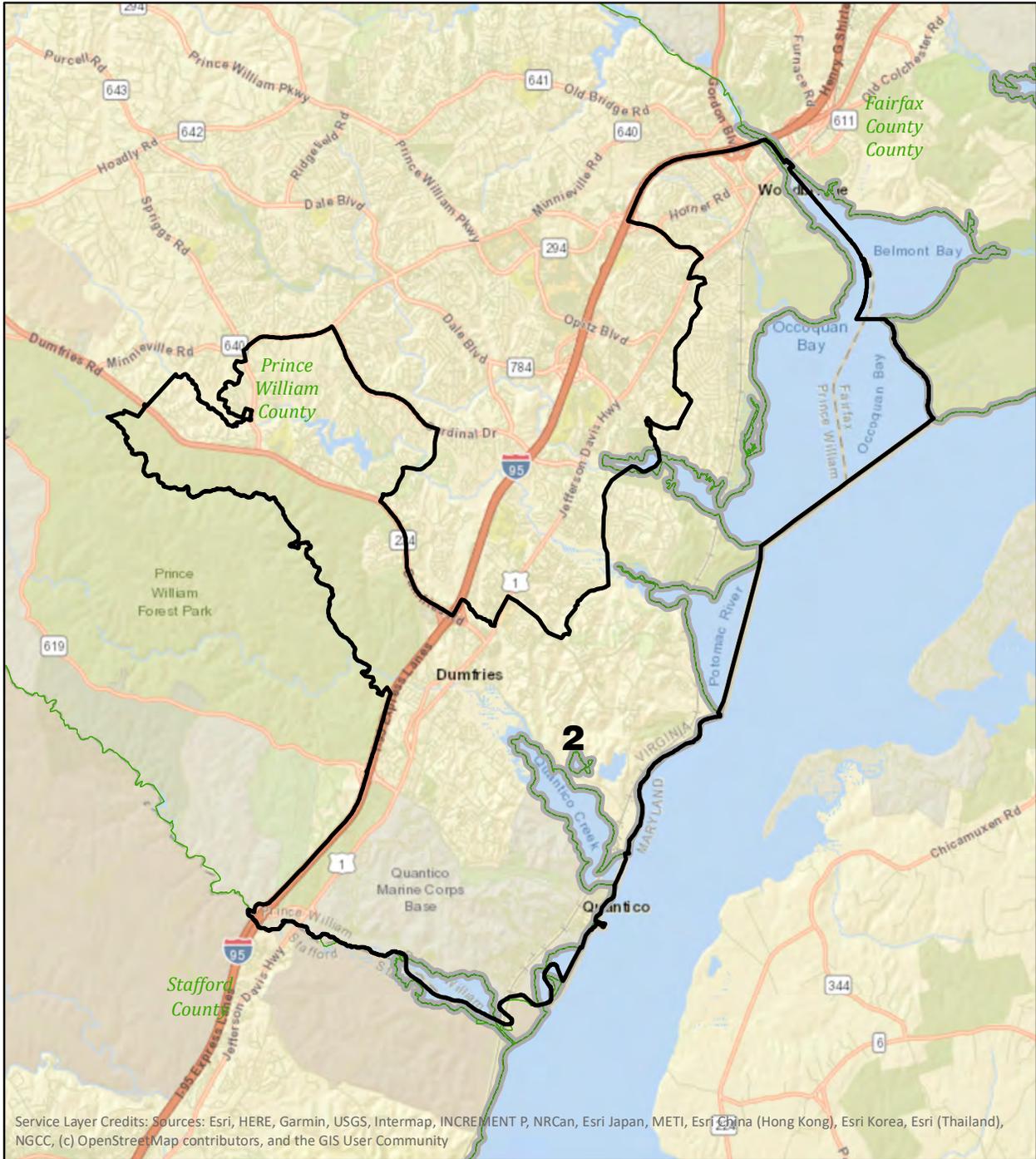
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Appendix A

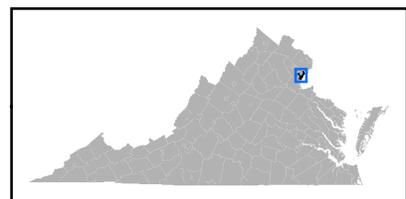
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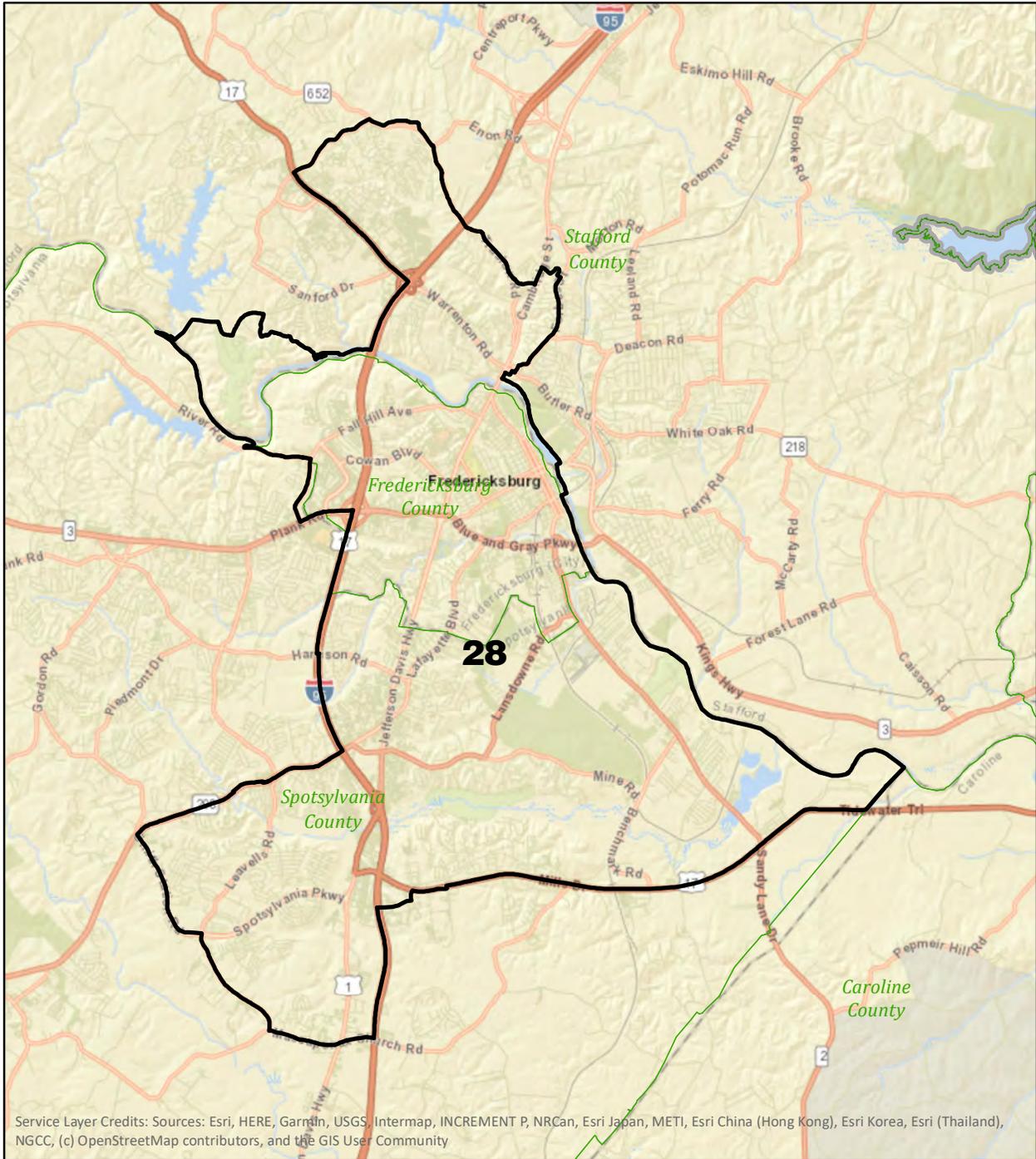
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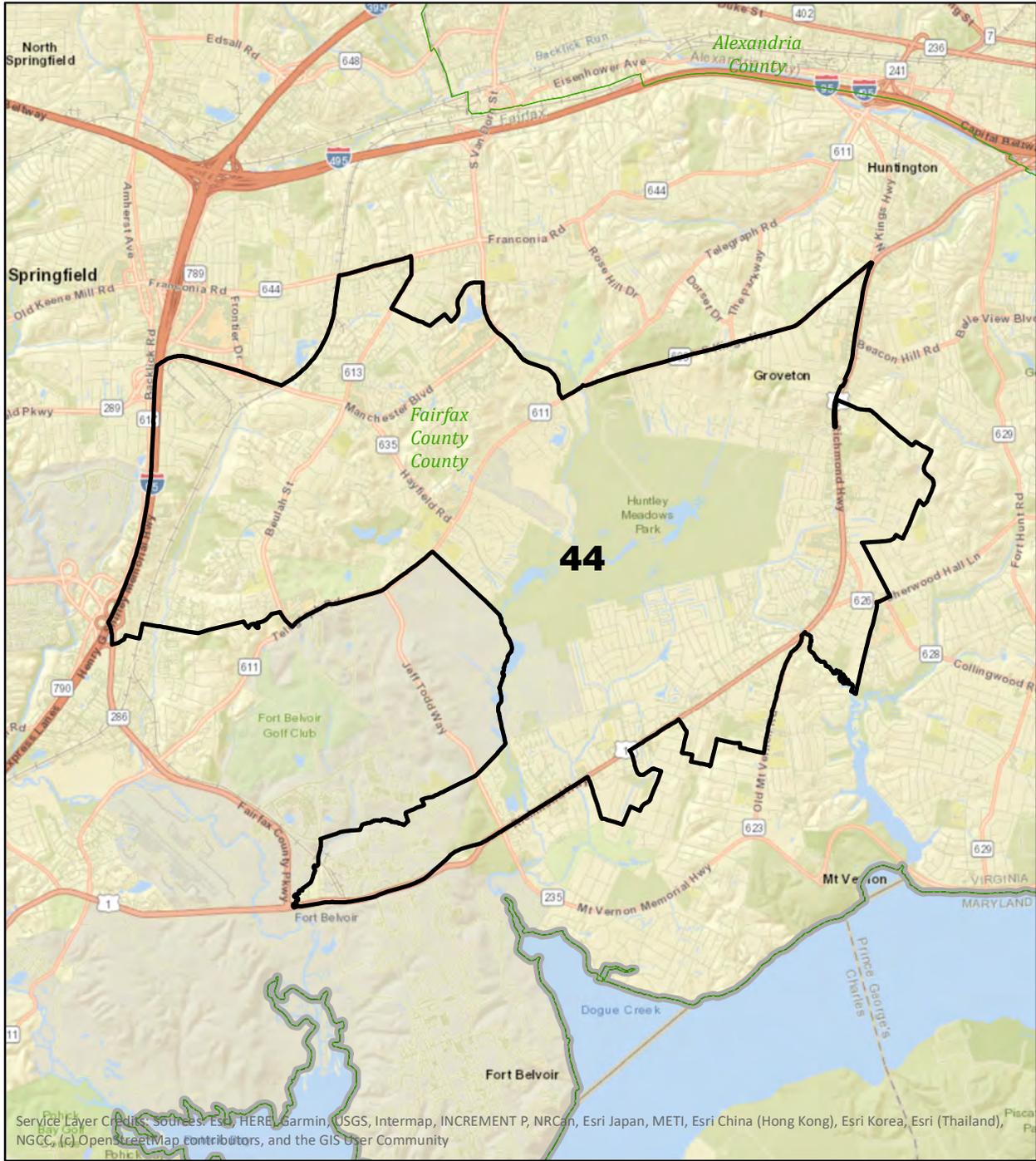
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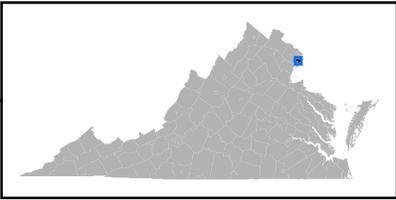
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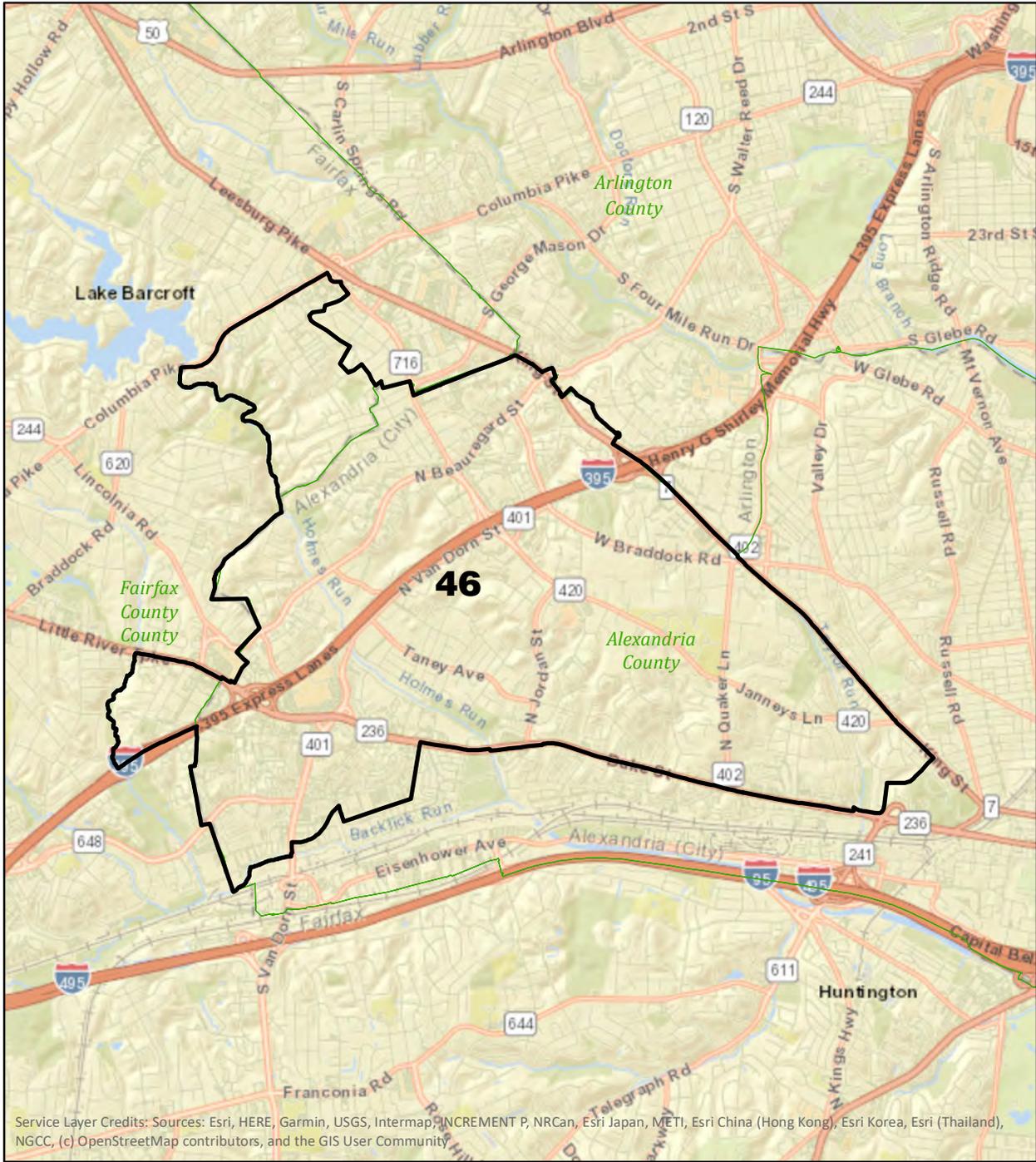
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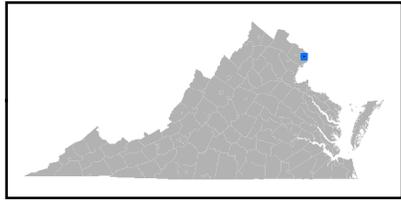
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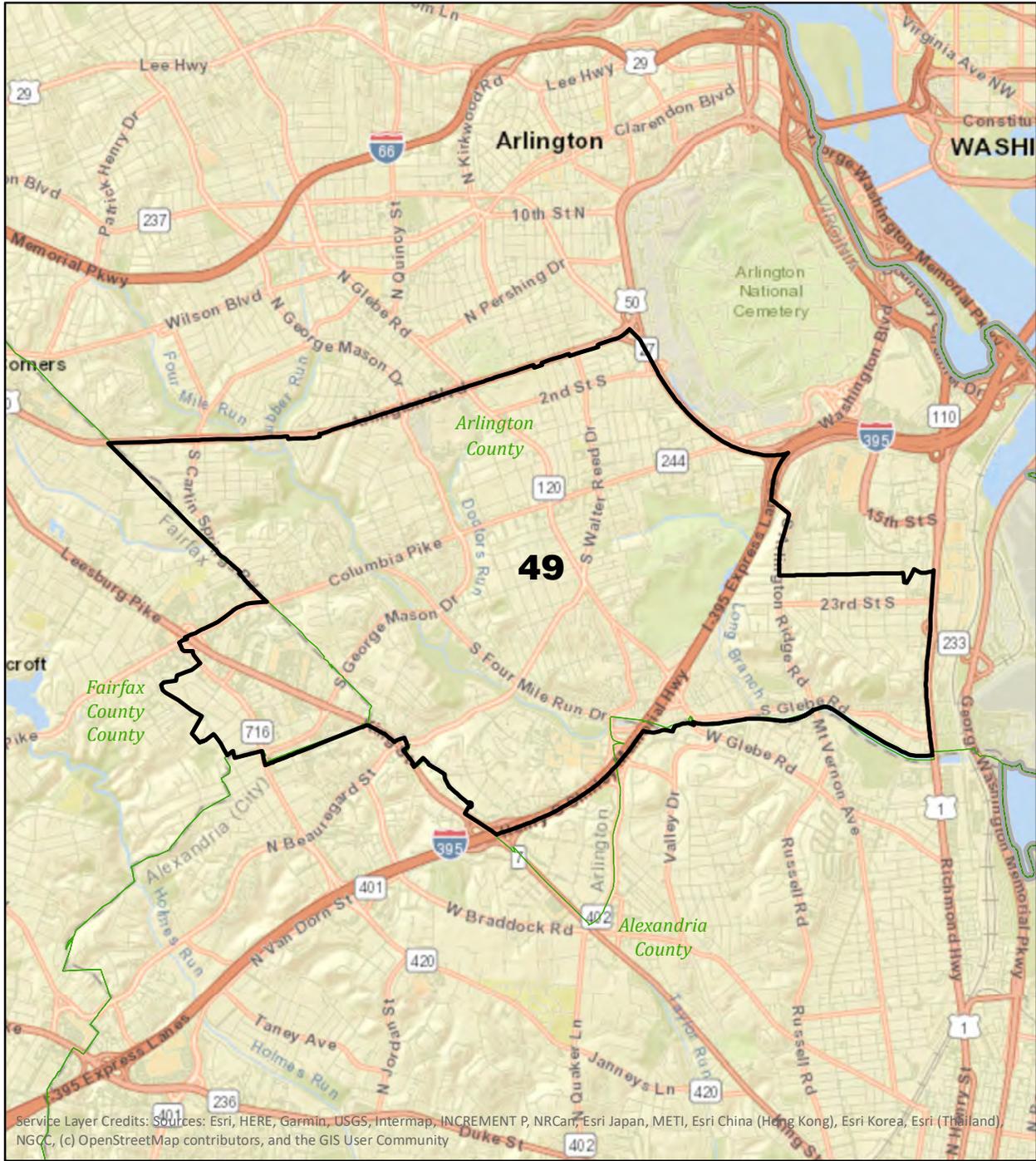
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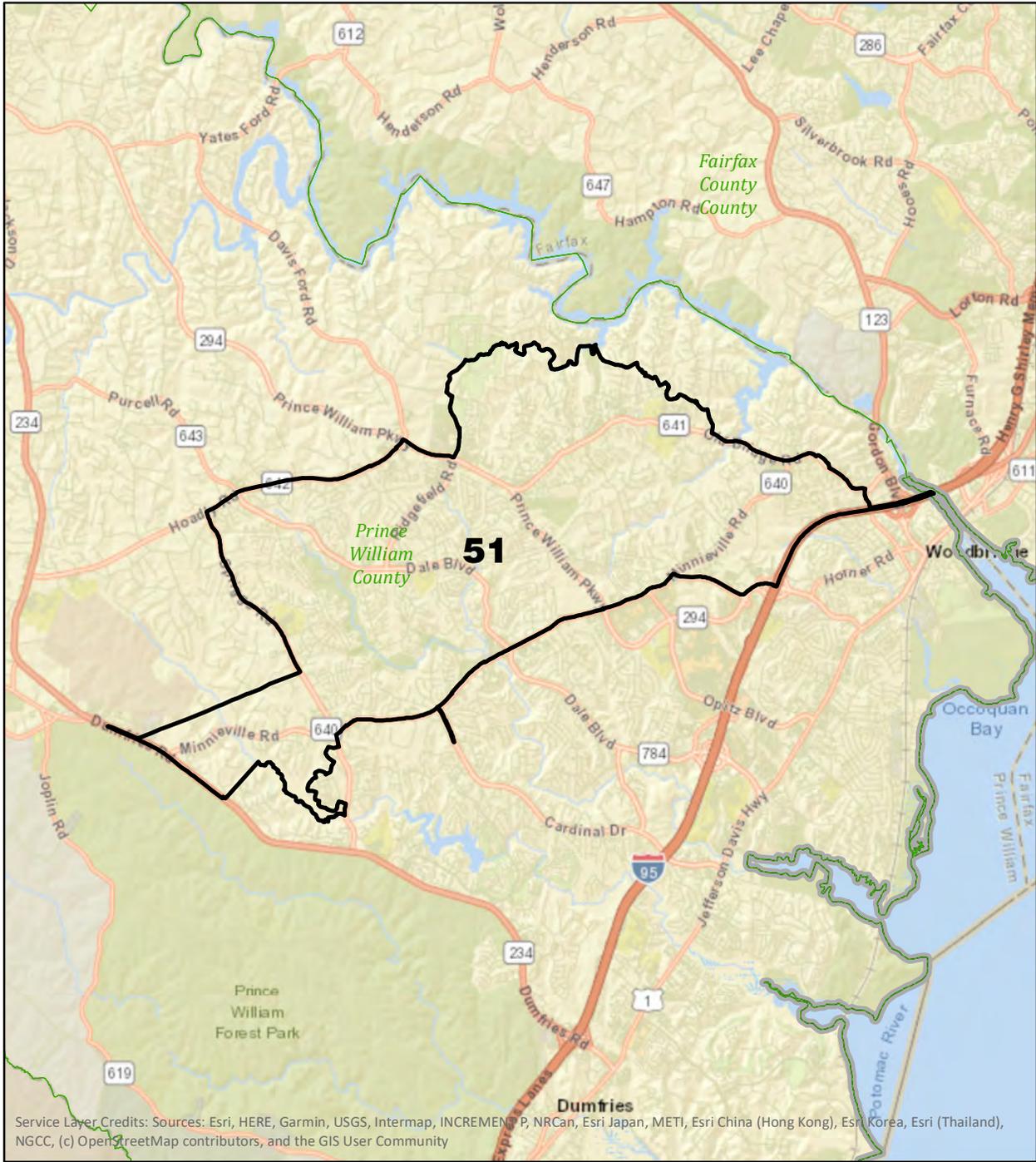
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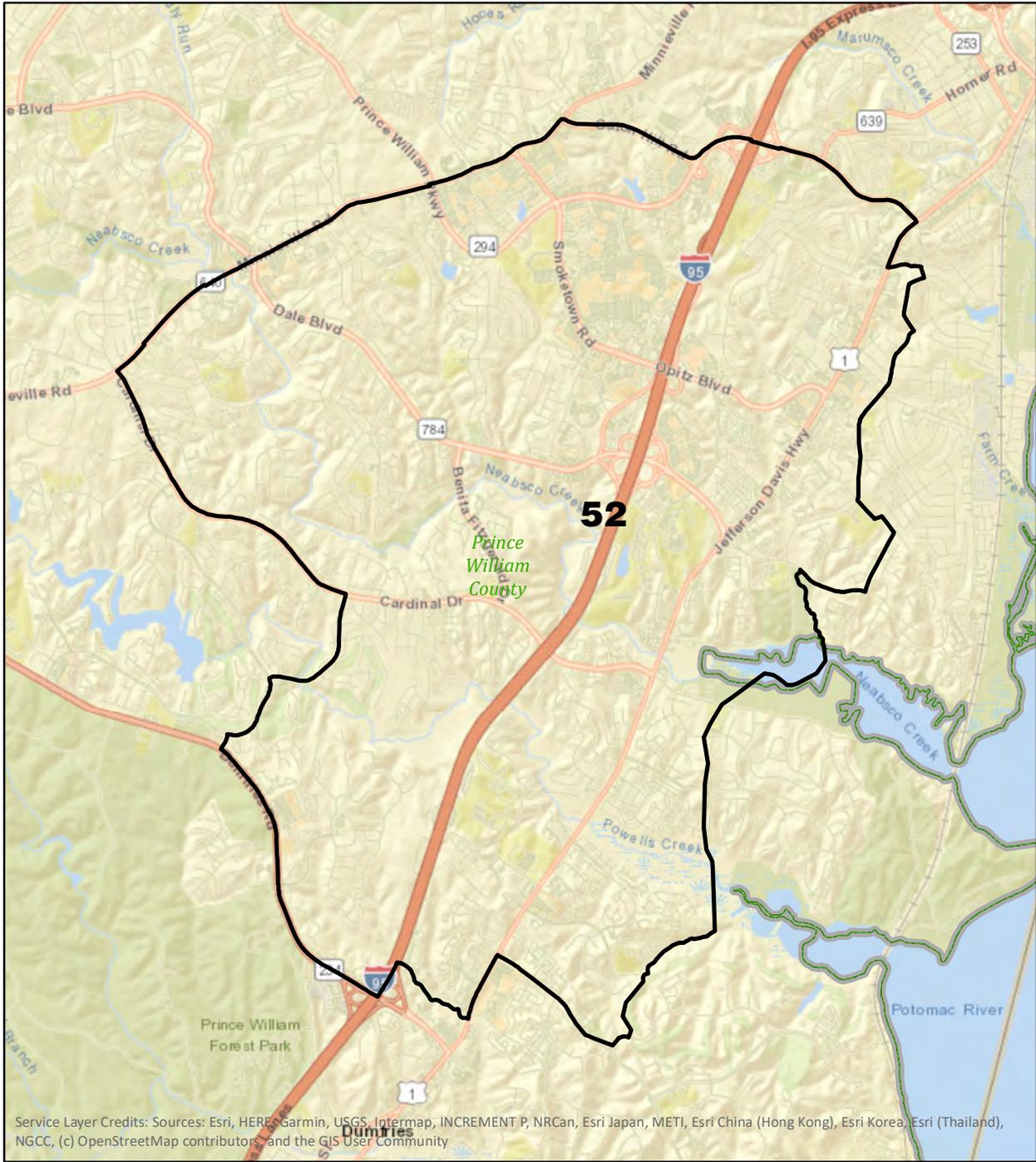
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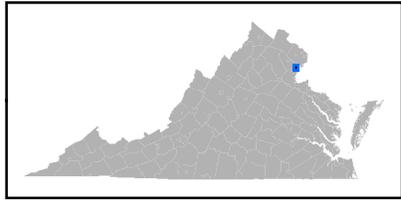
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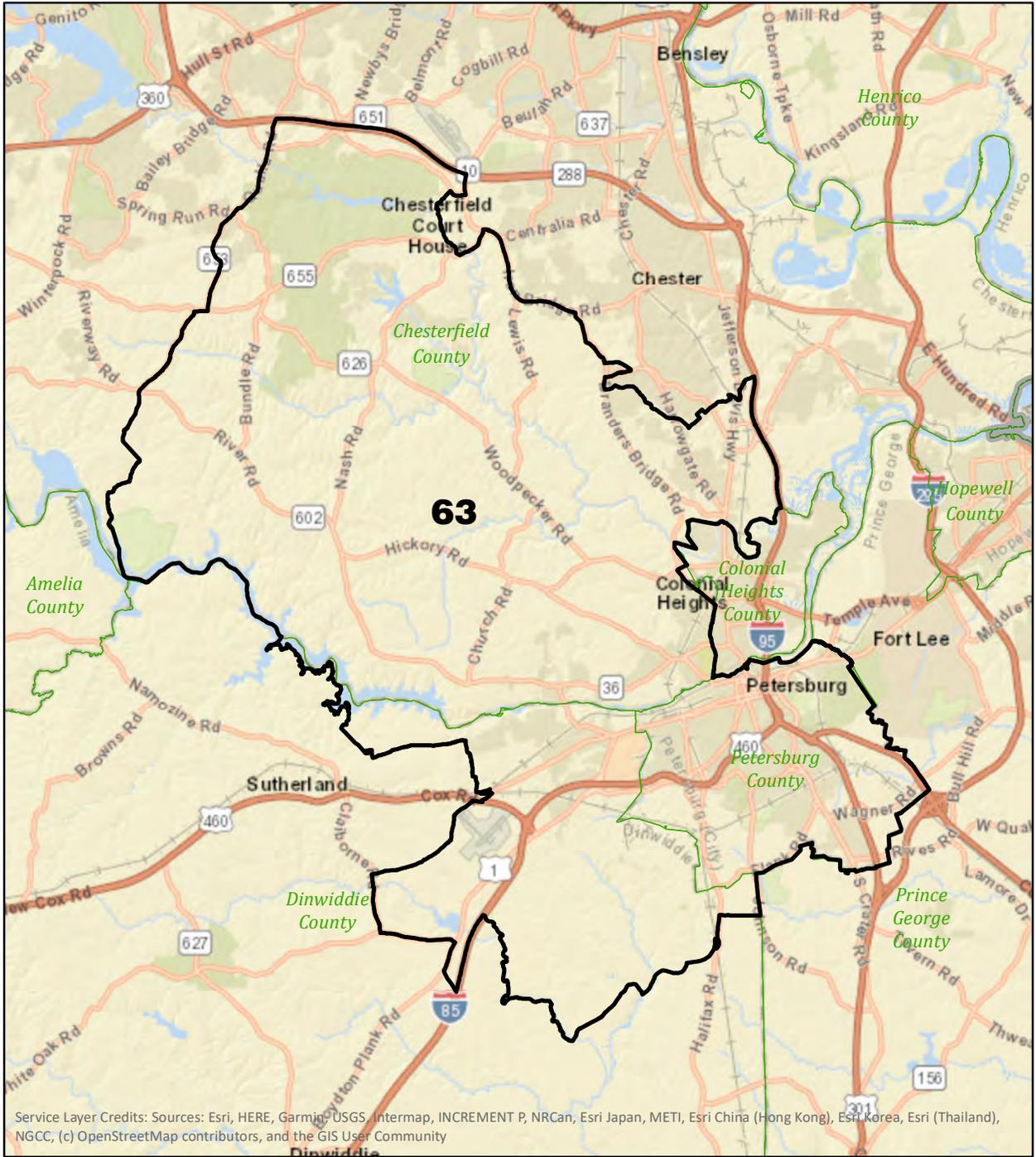
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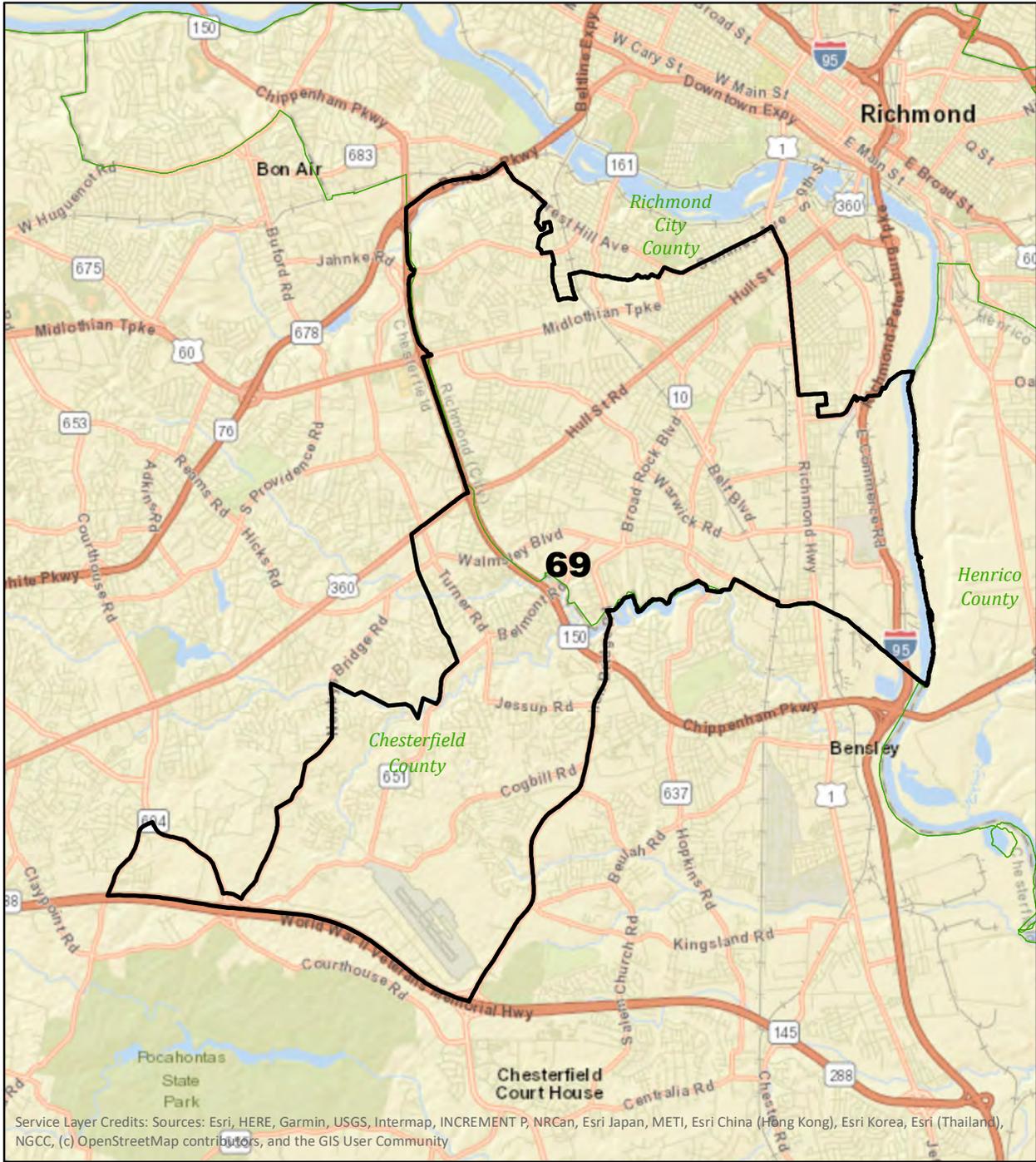
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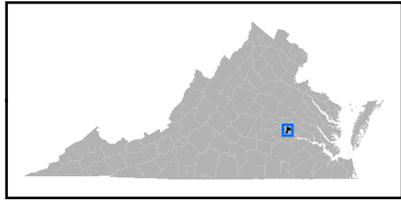
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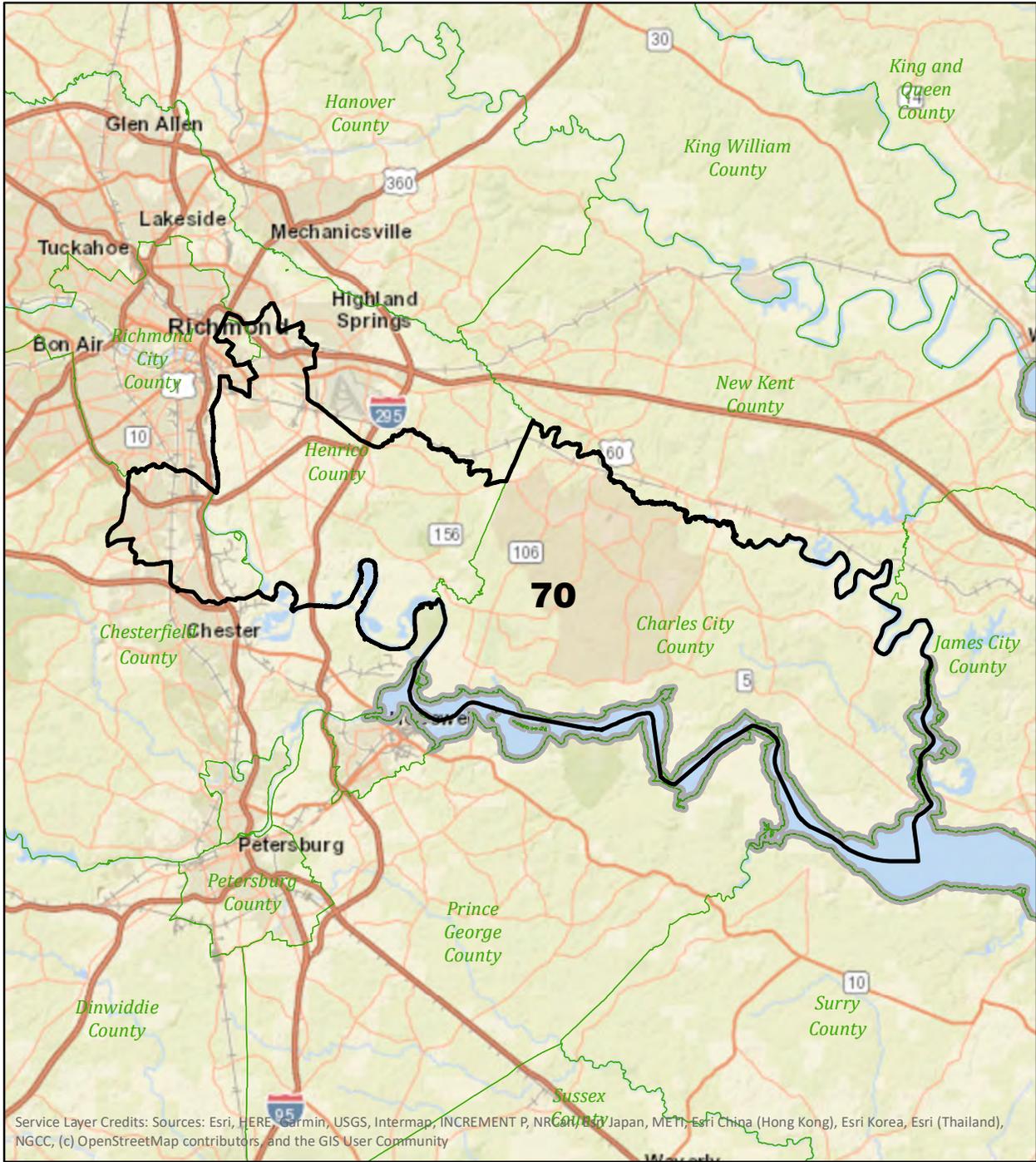
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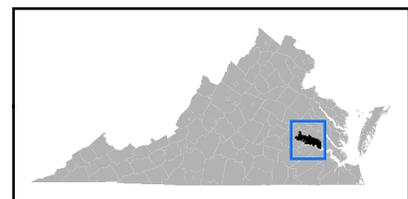
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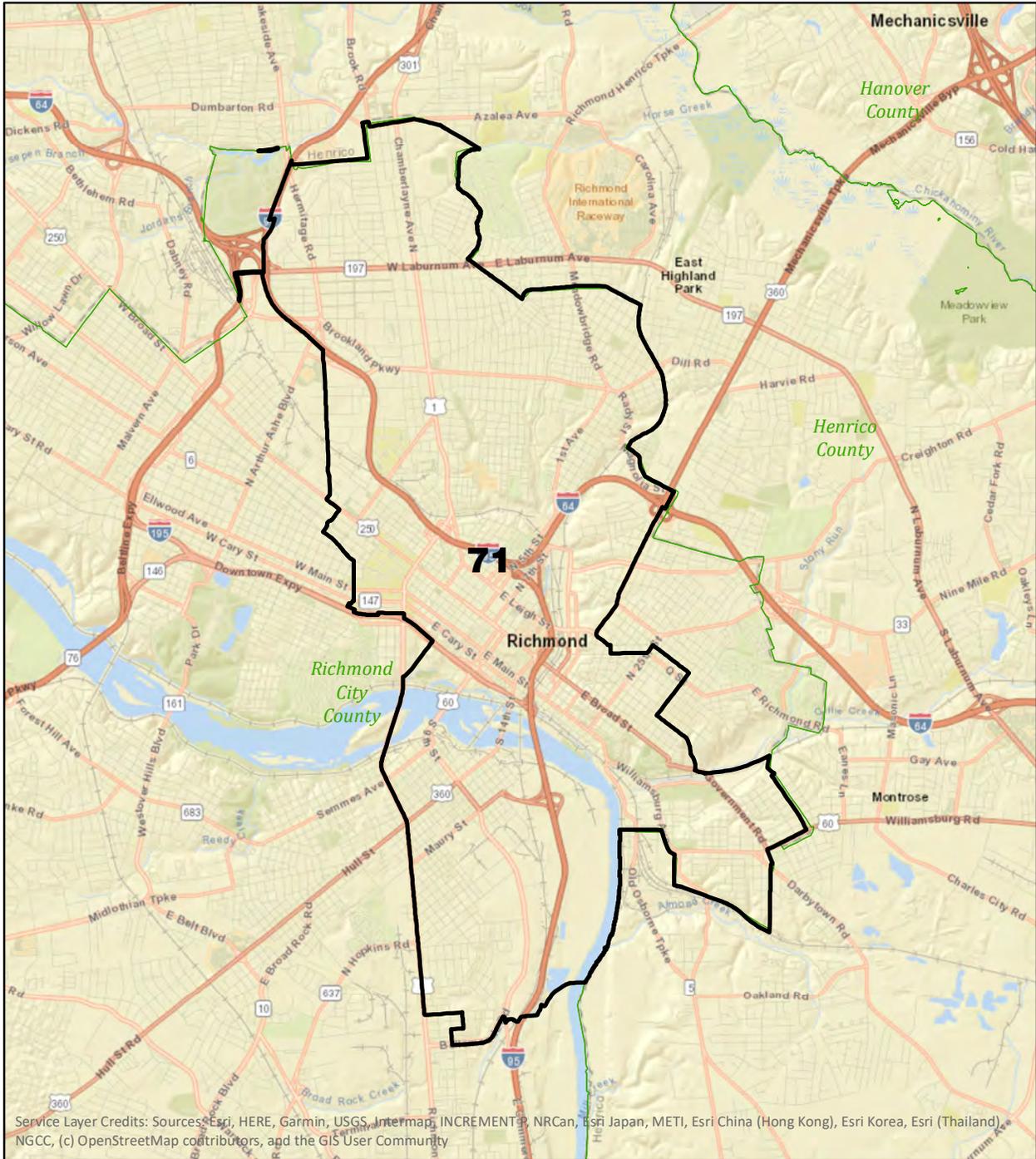
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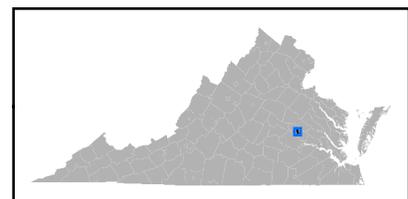
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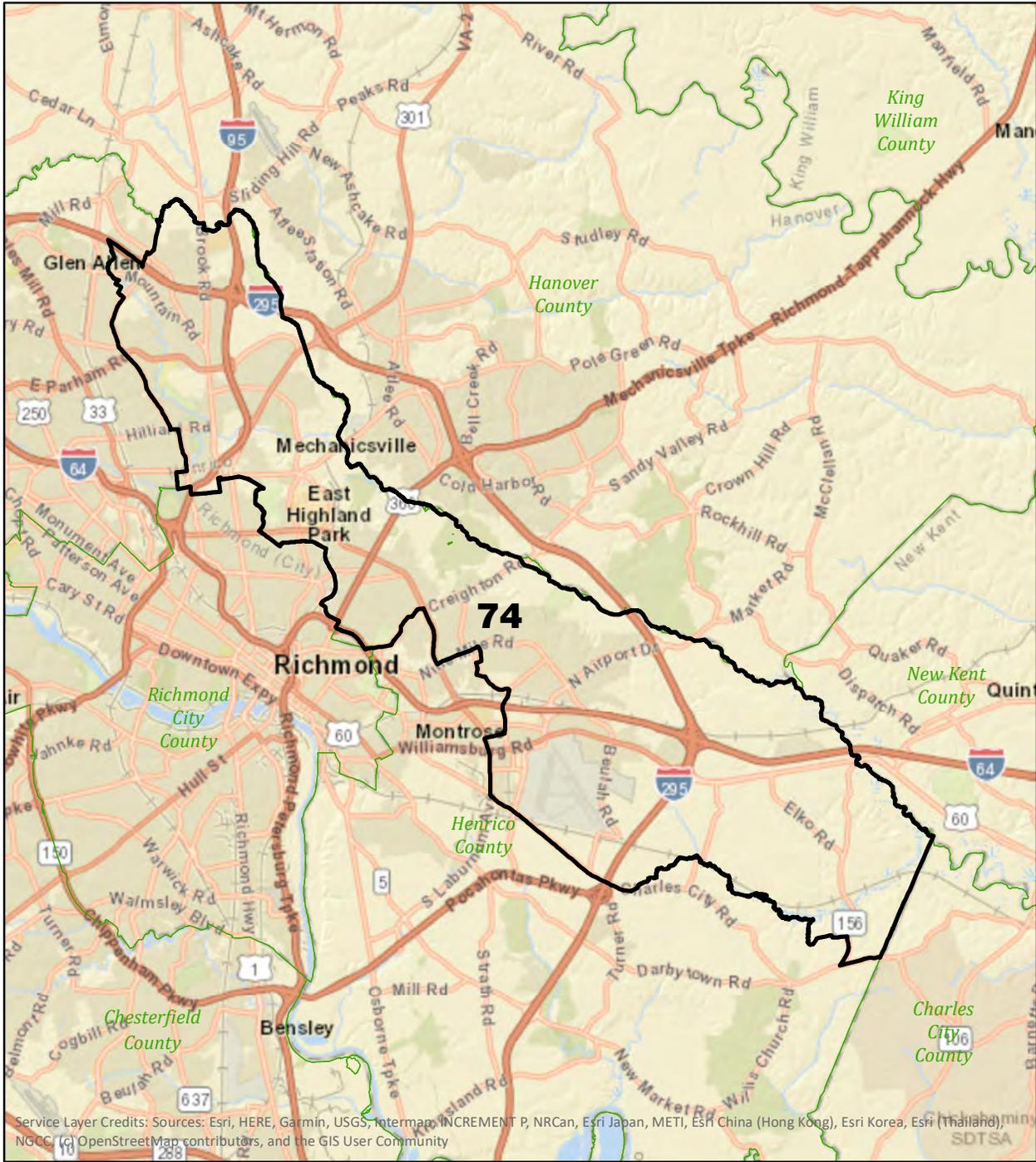
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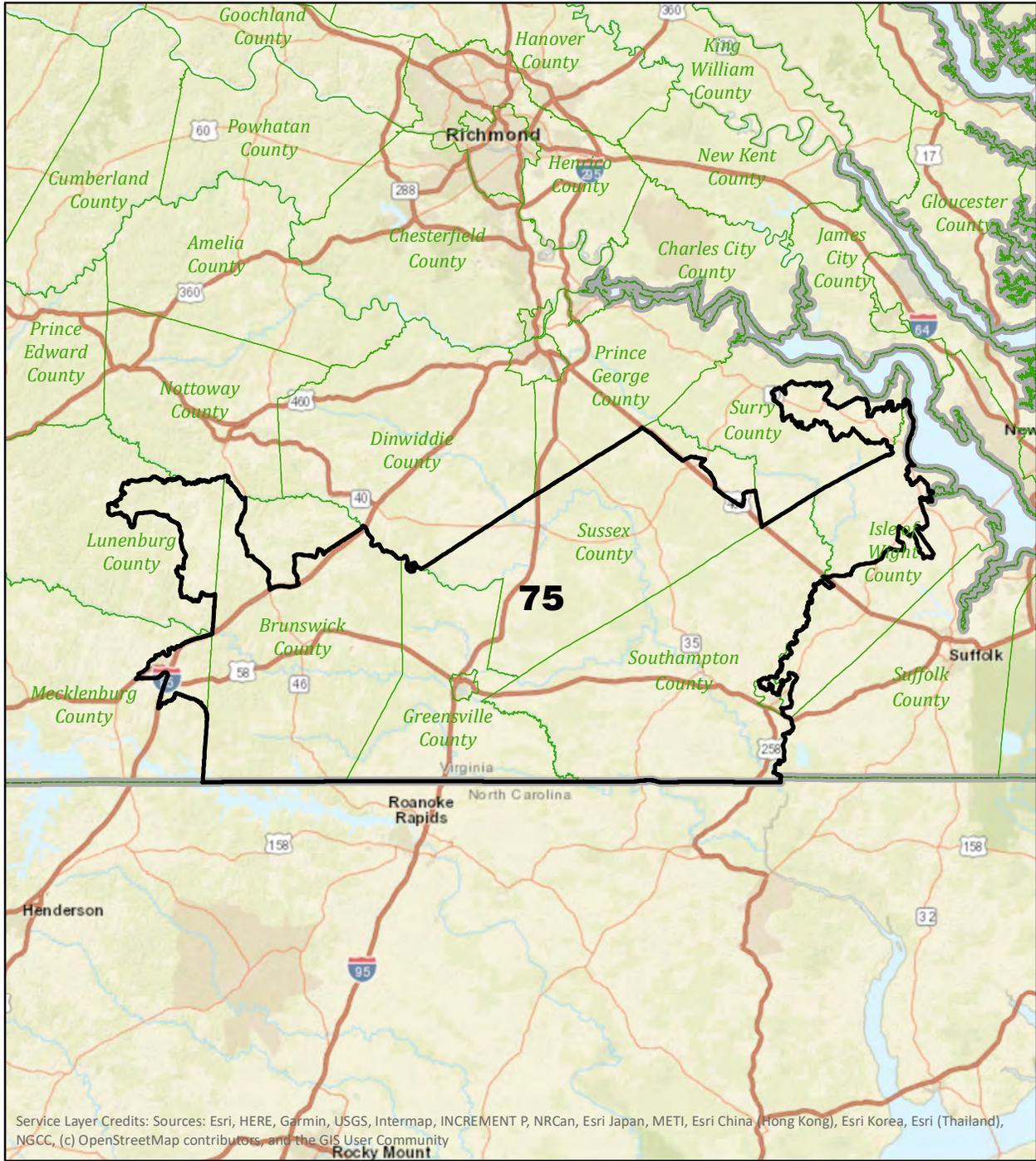
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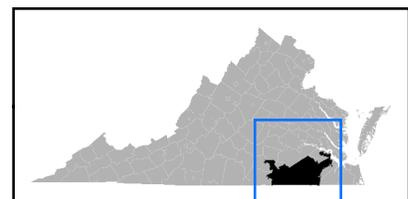
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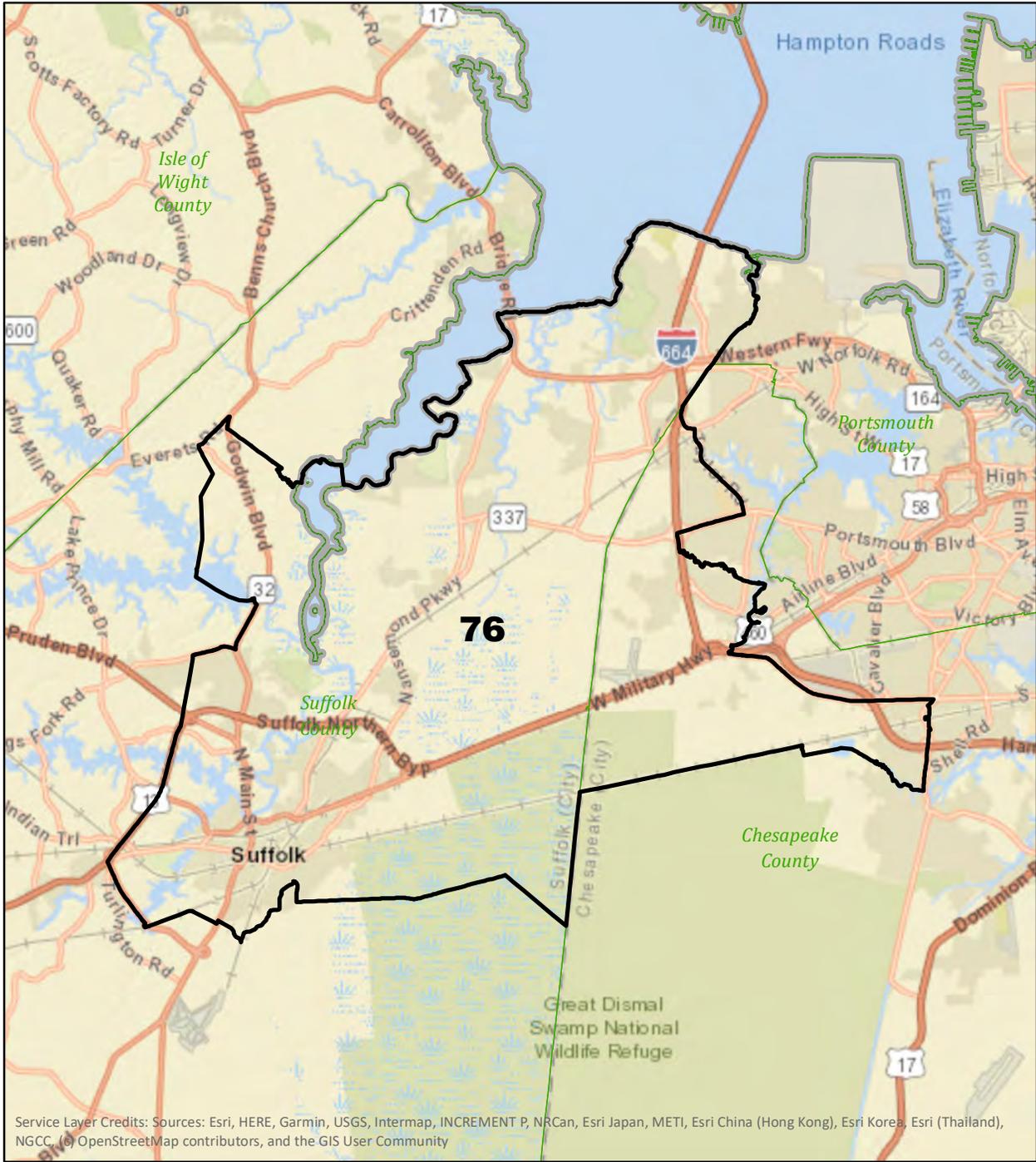
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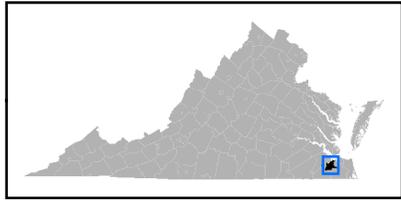
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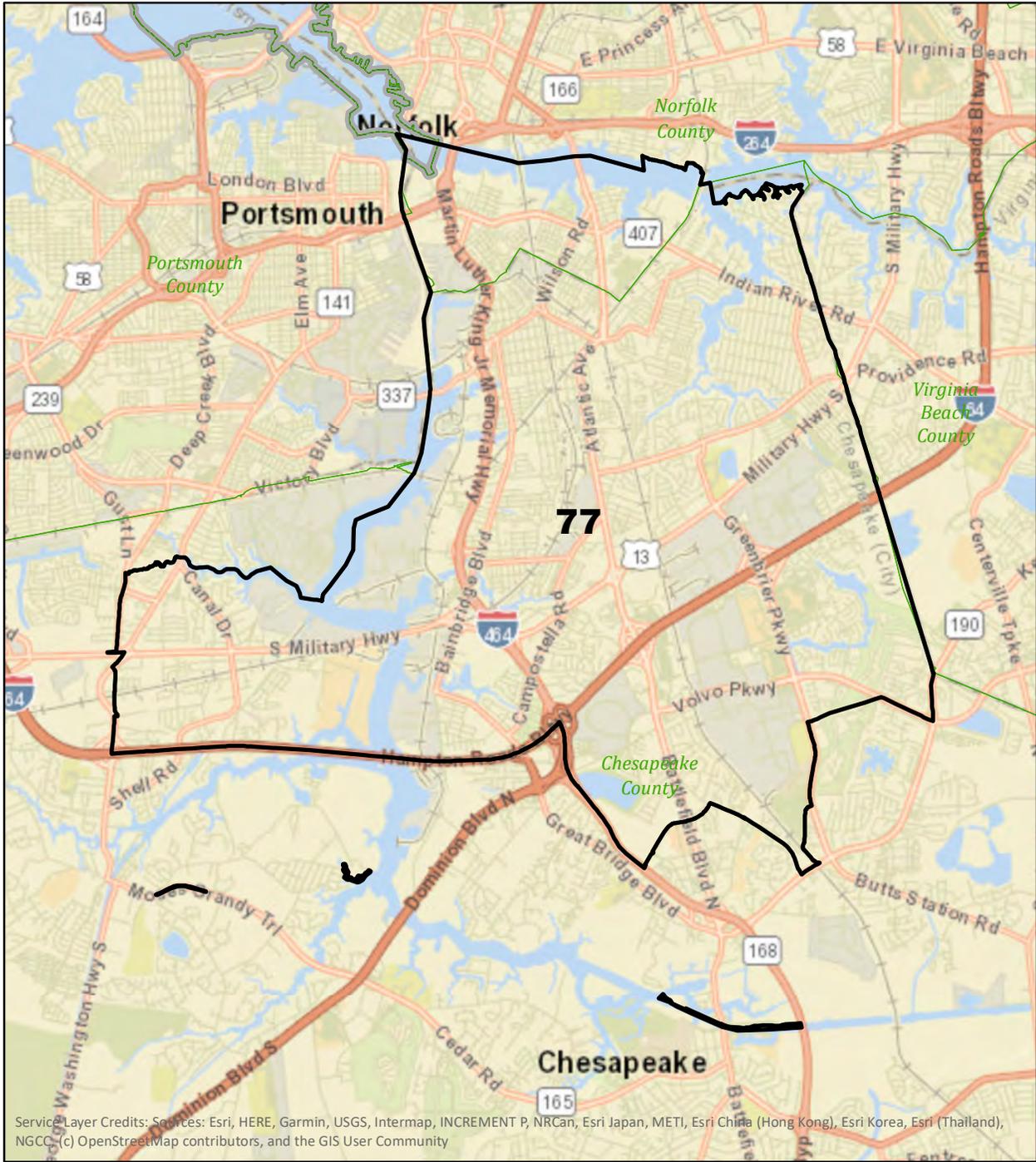
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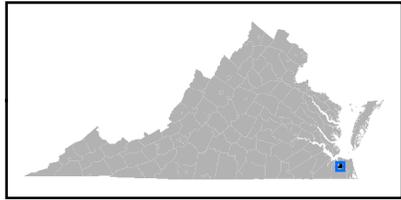
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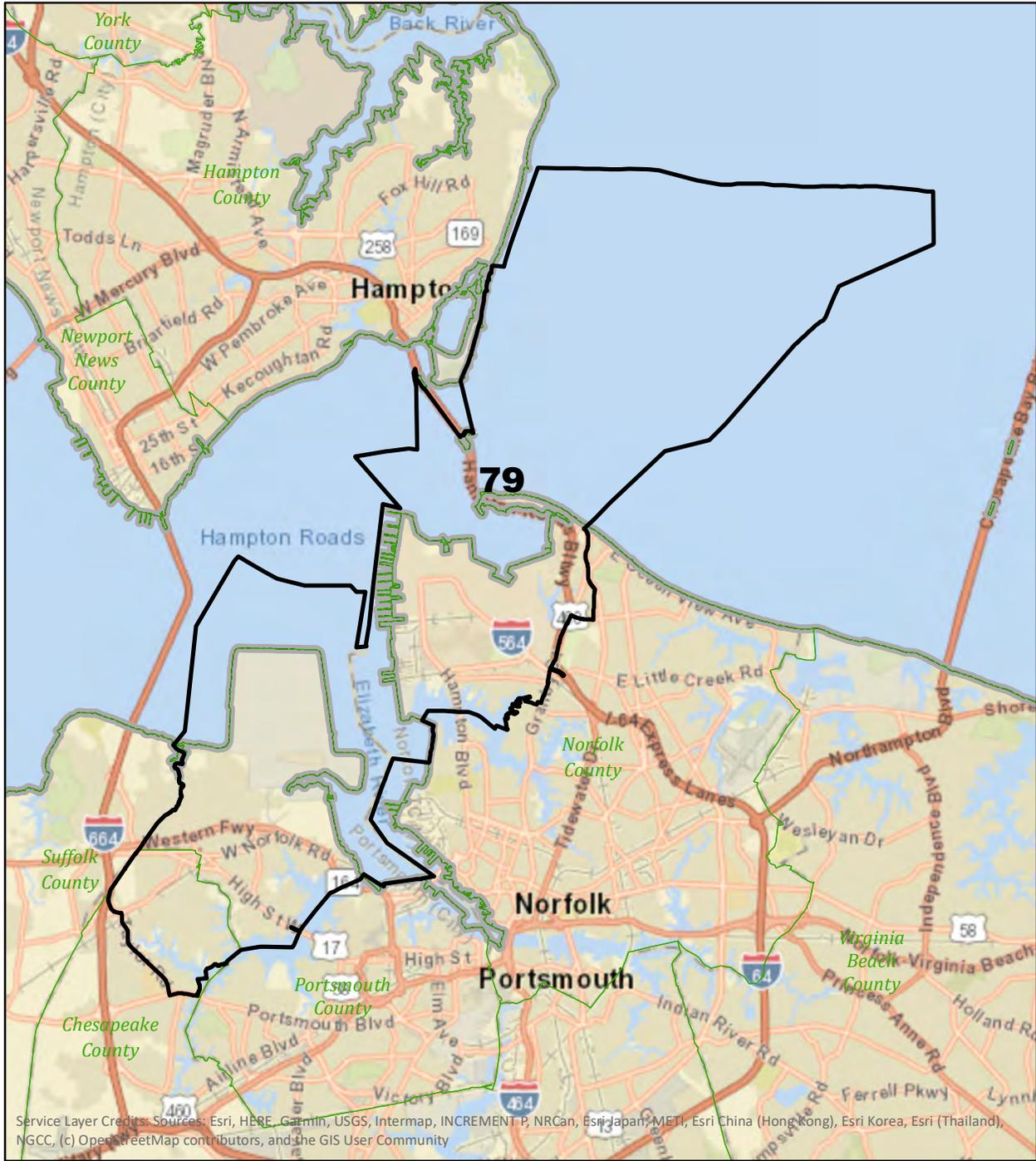
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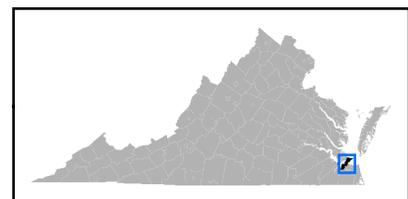
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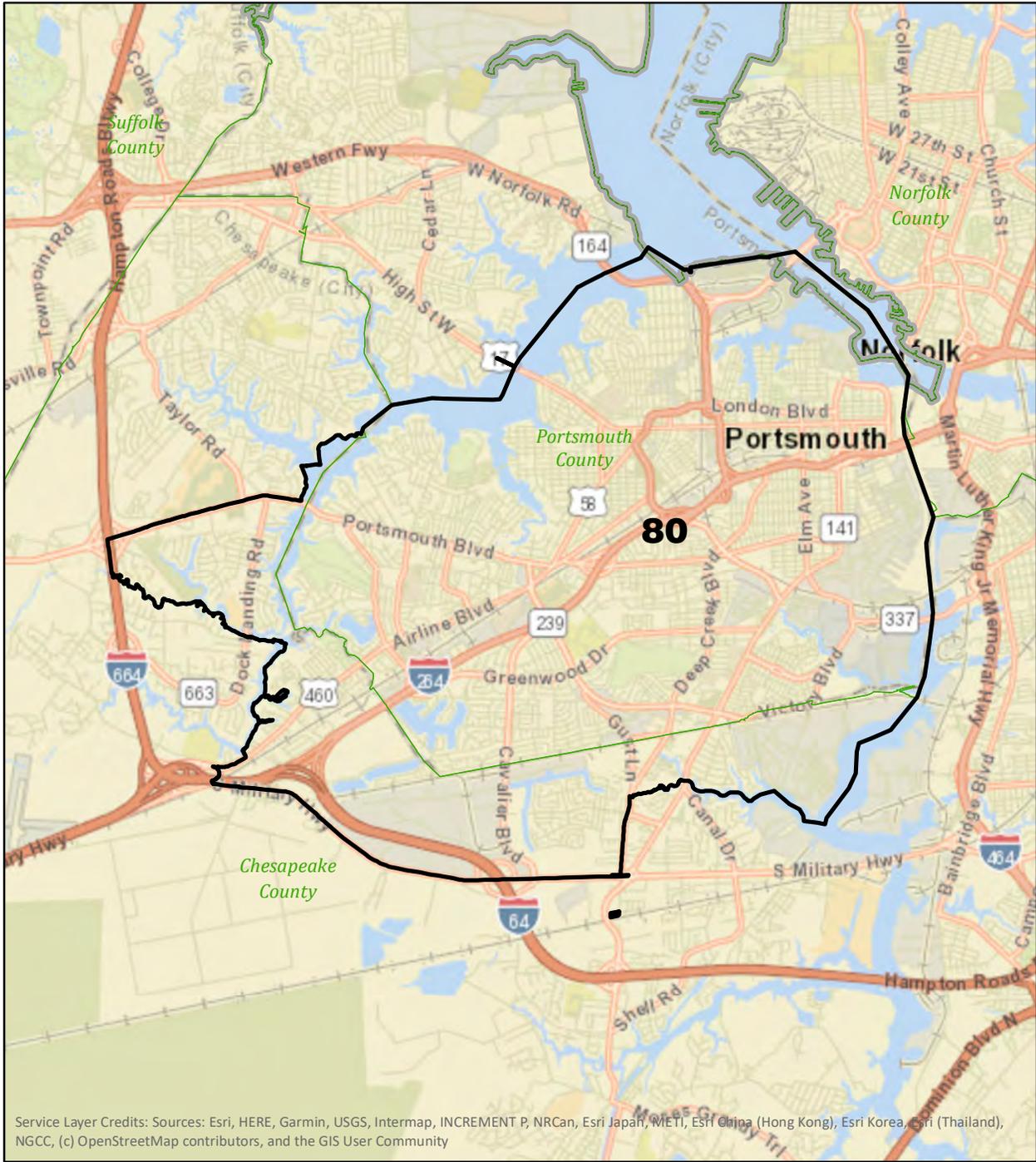
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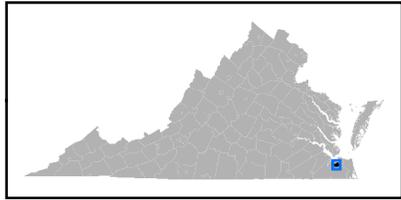
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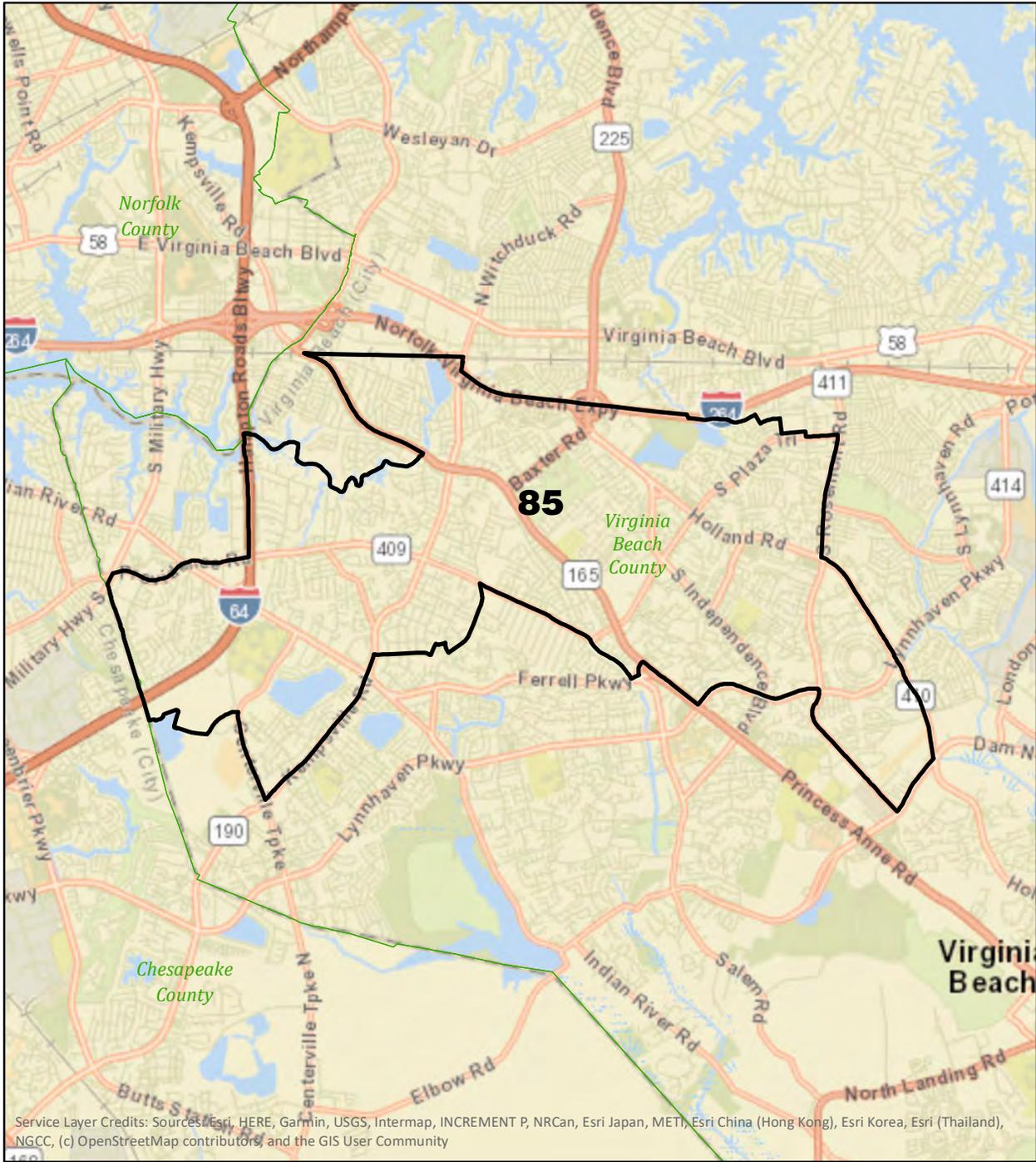
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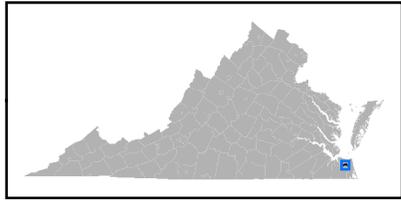
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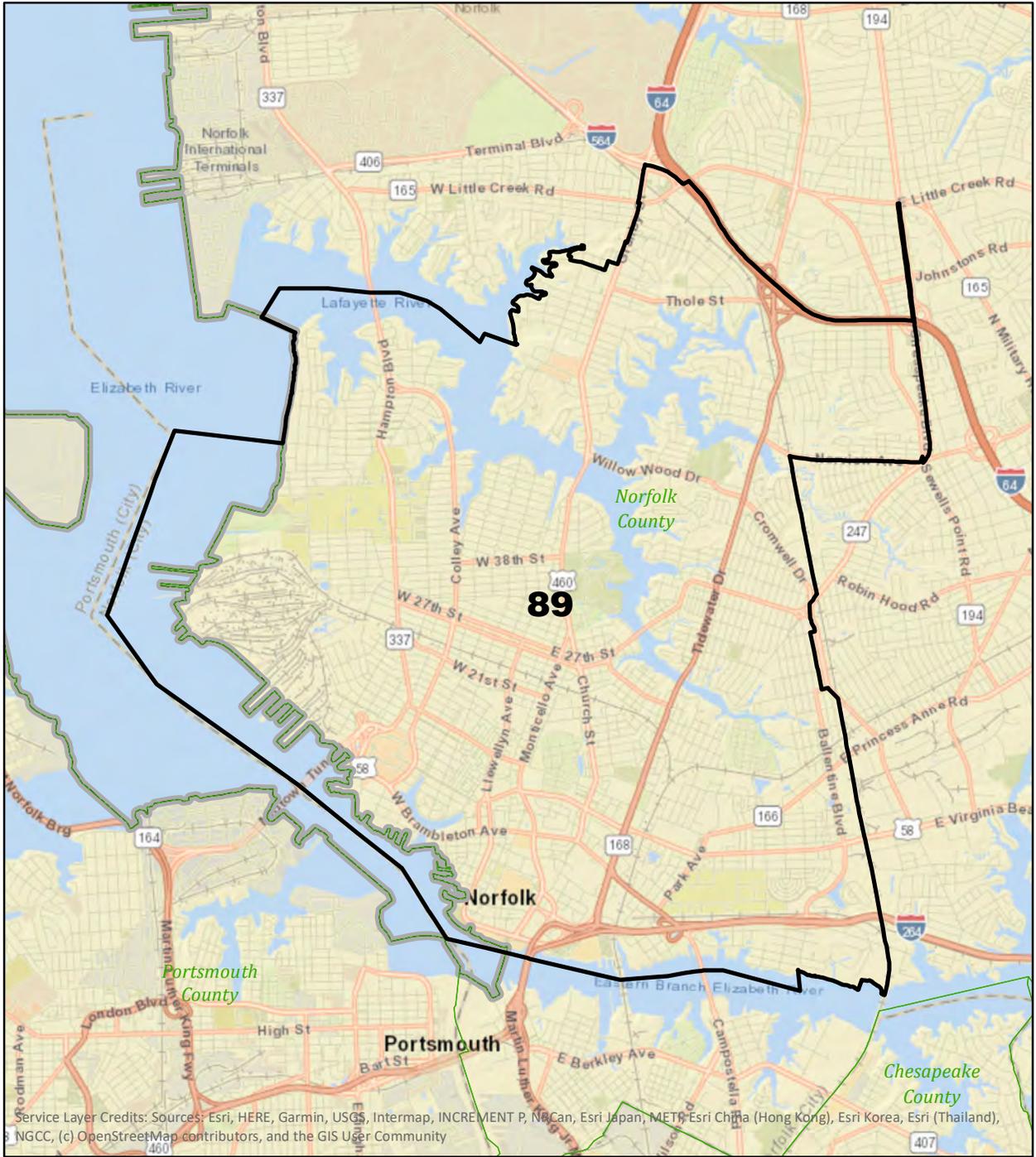
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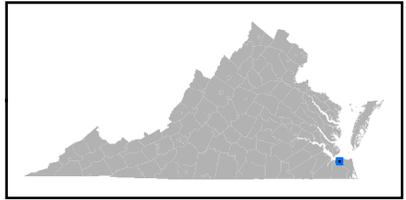
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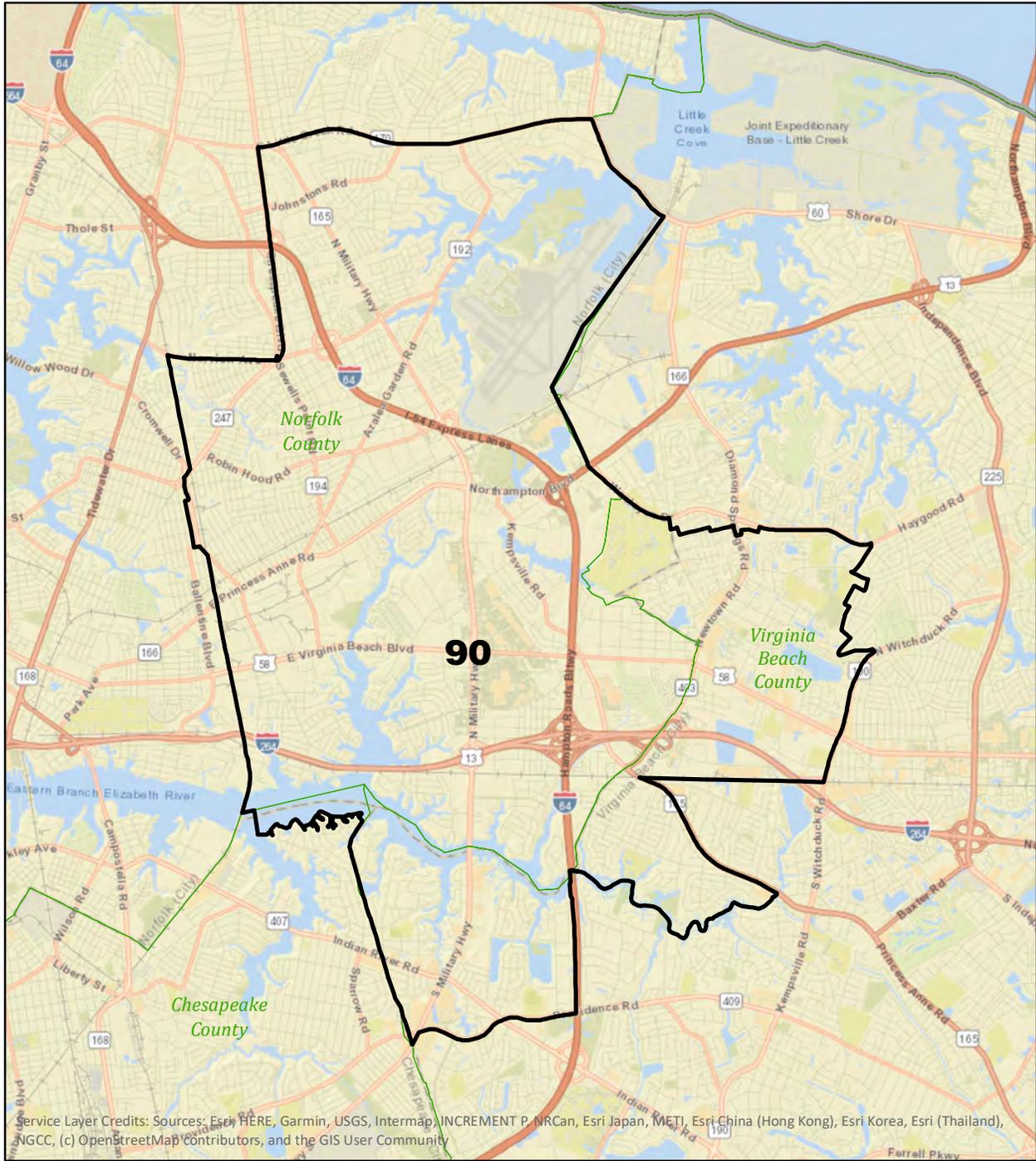
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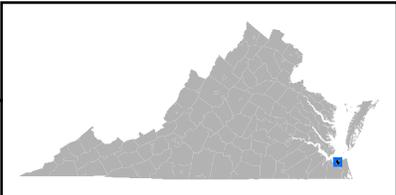
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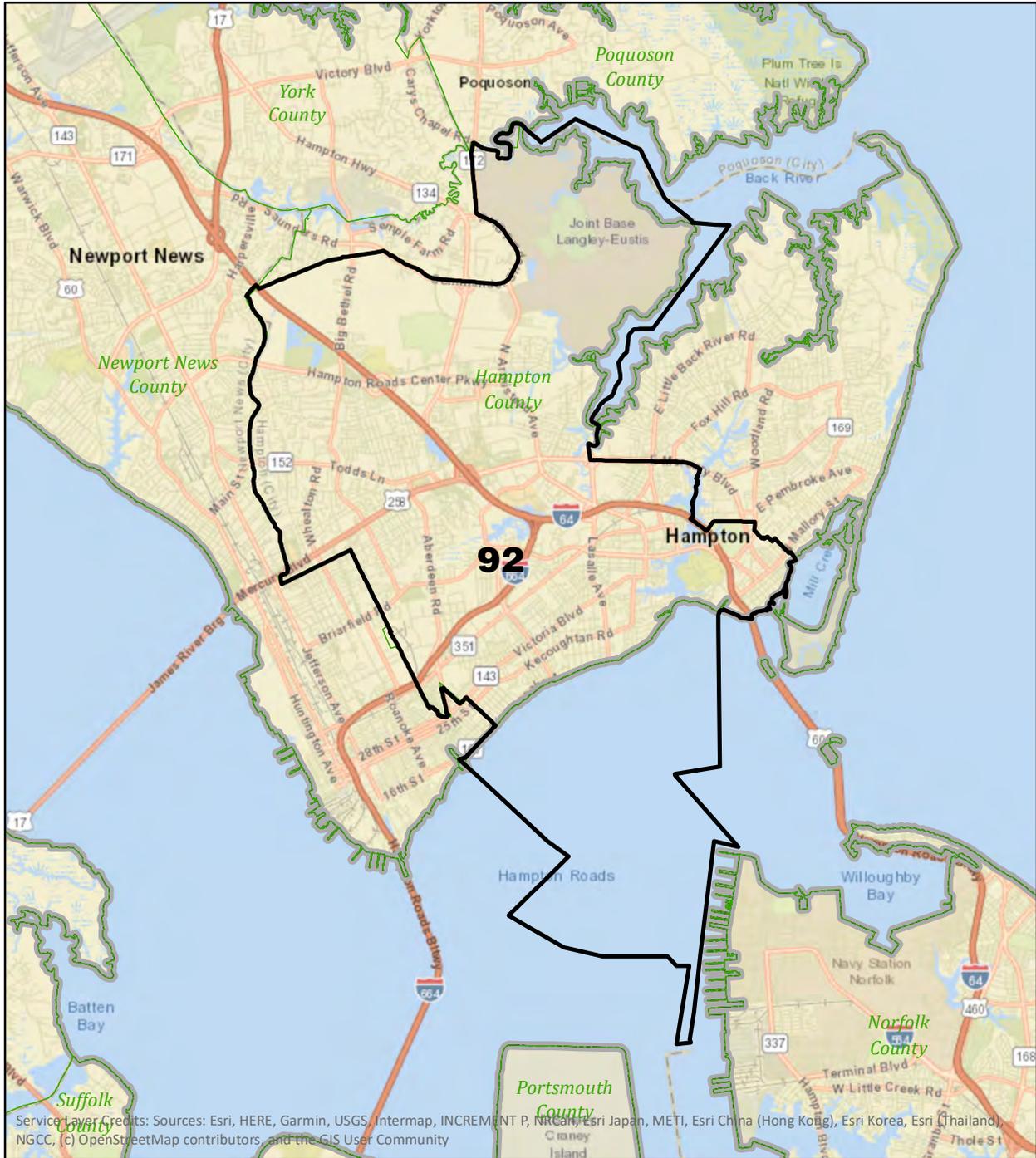
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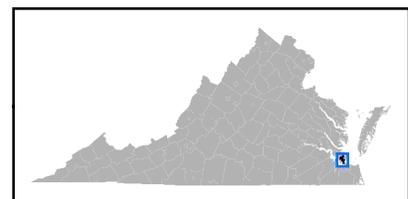
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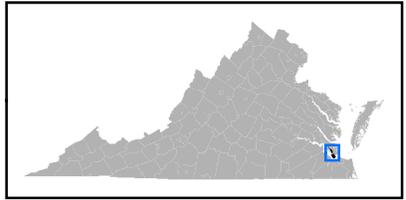
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Appendix B

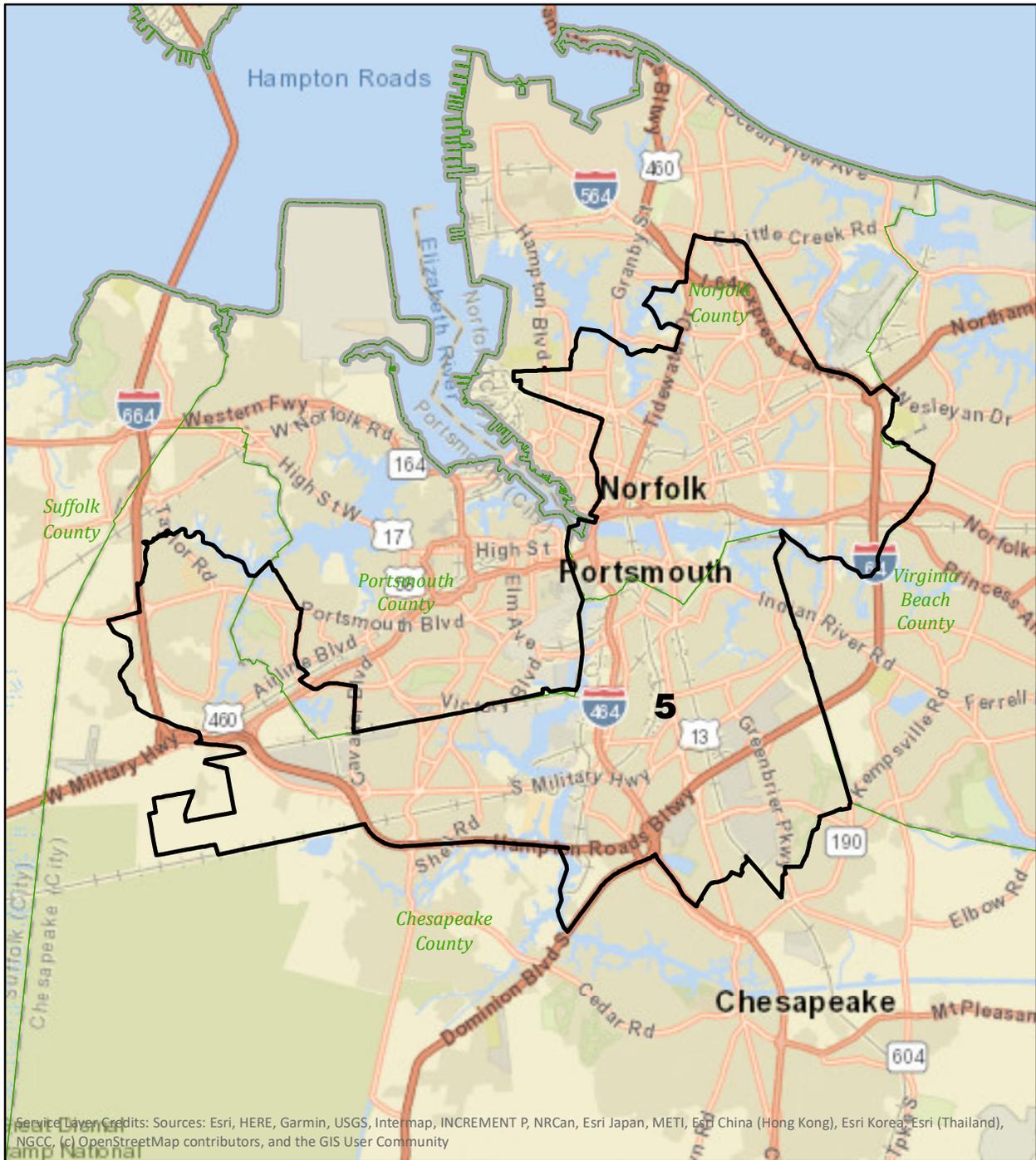
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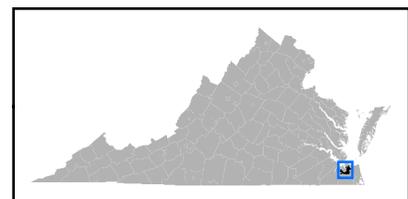
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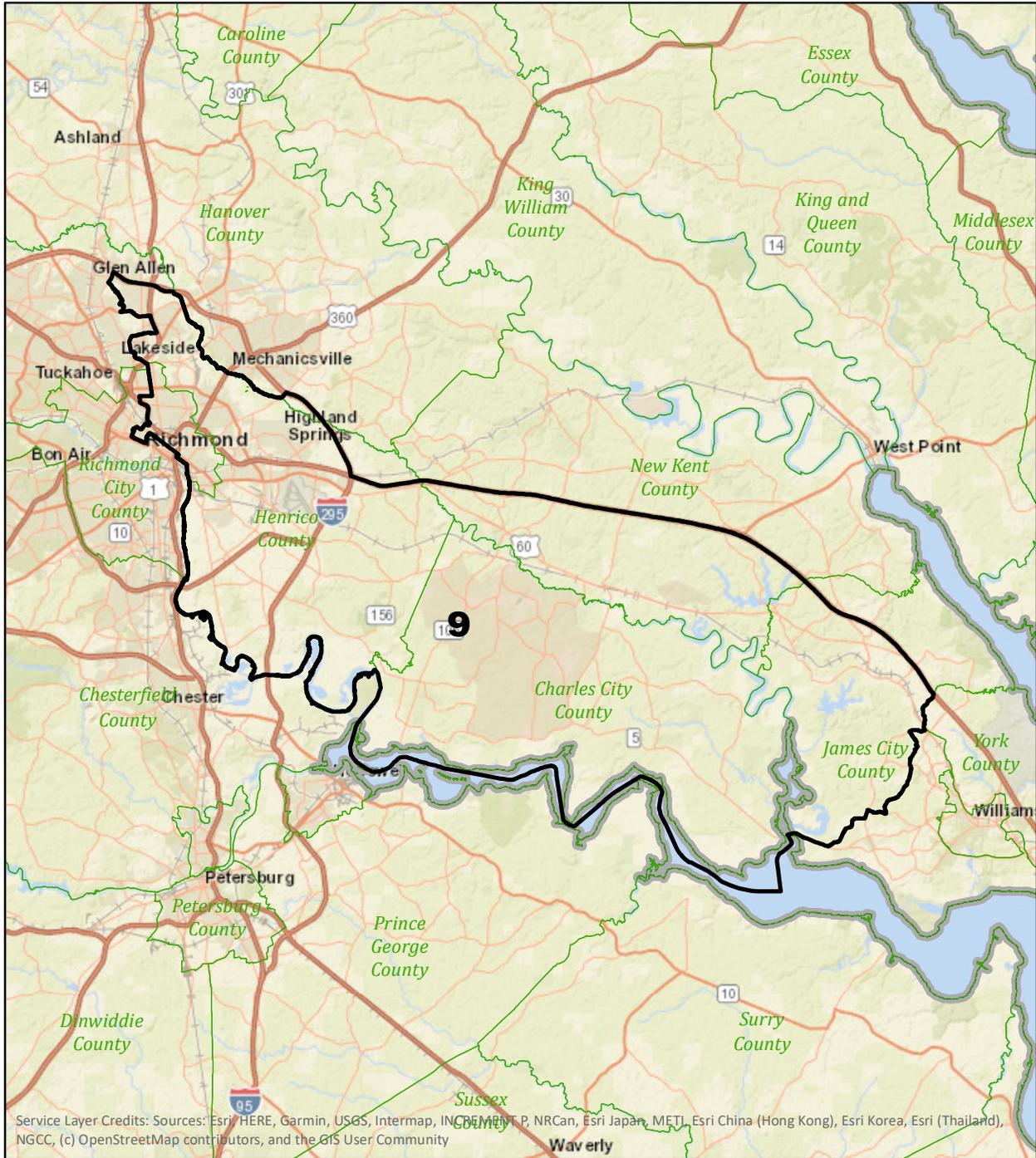
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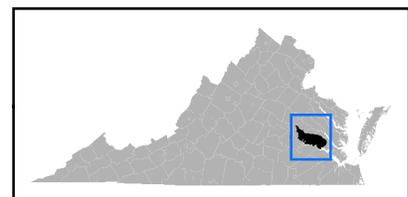
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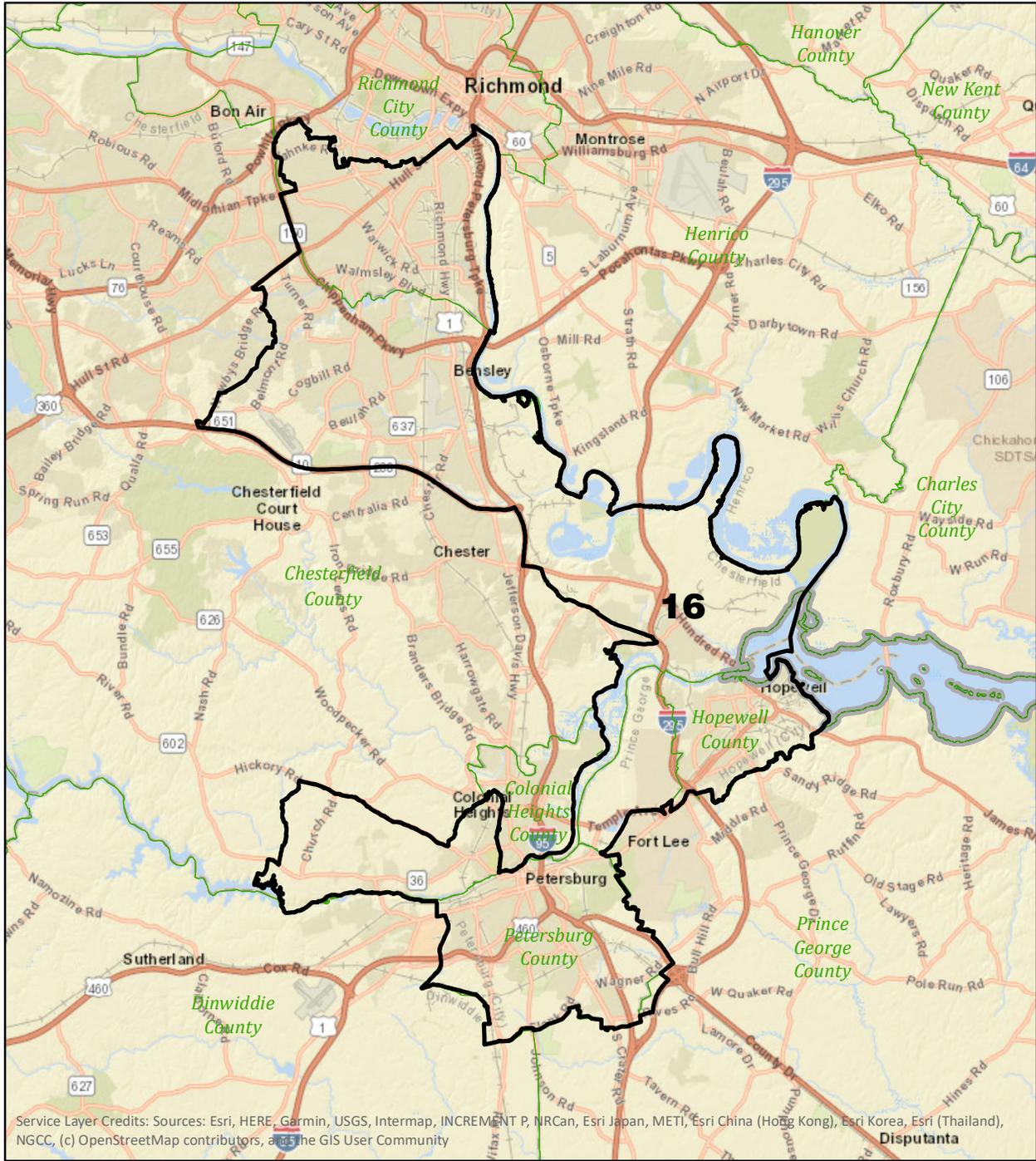
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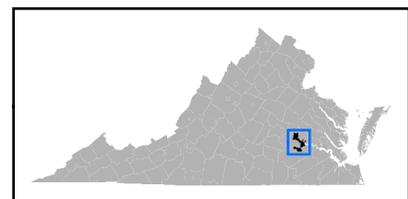
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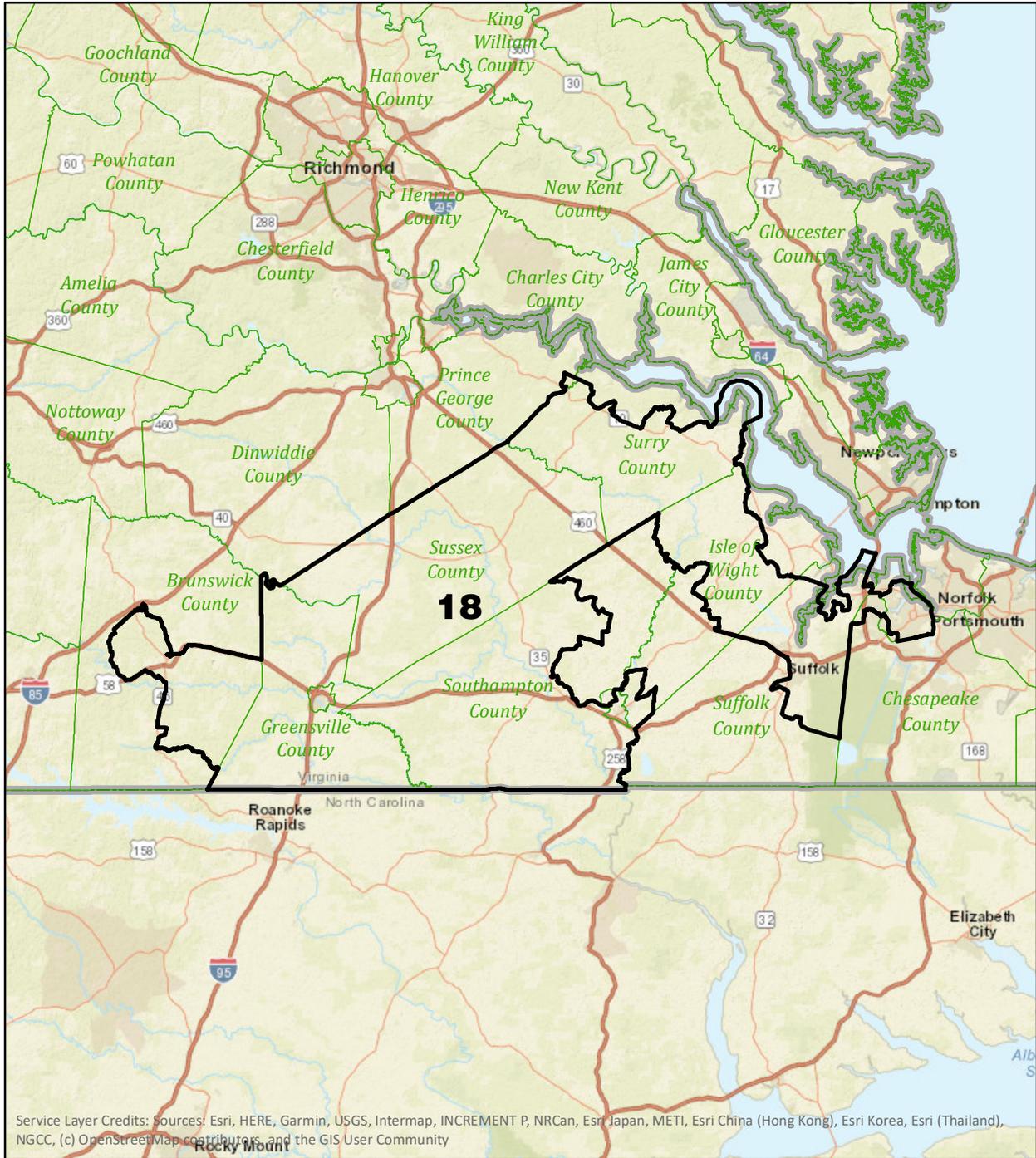
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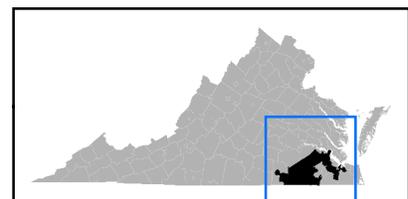
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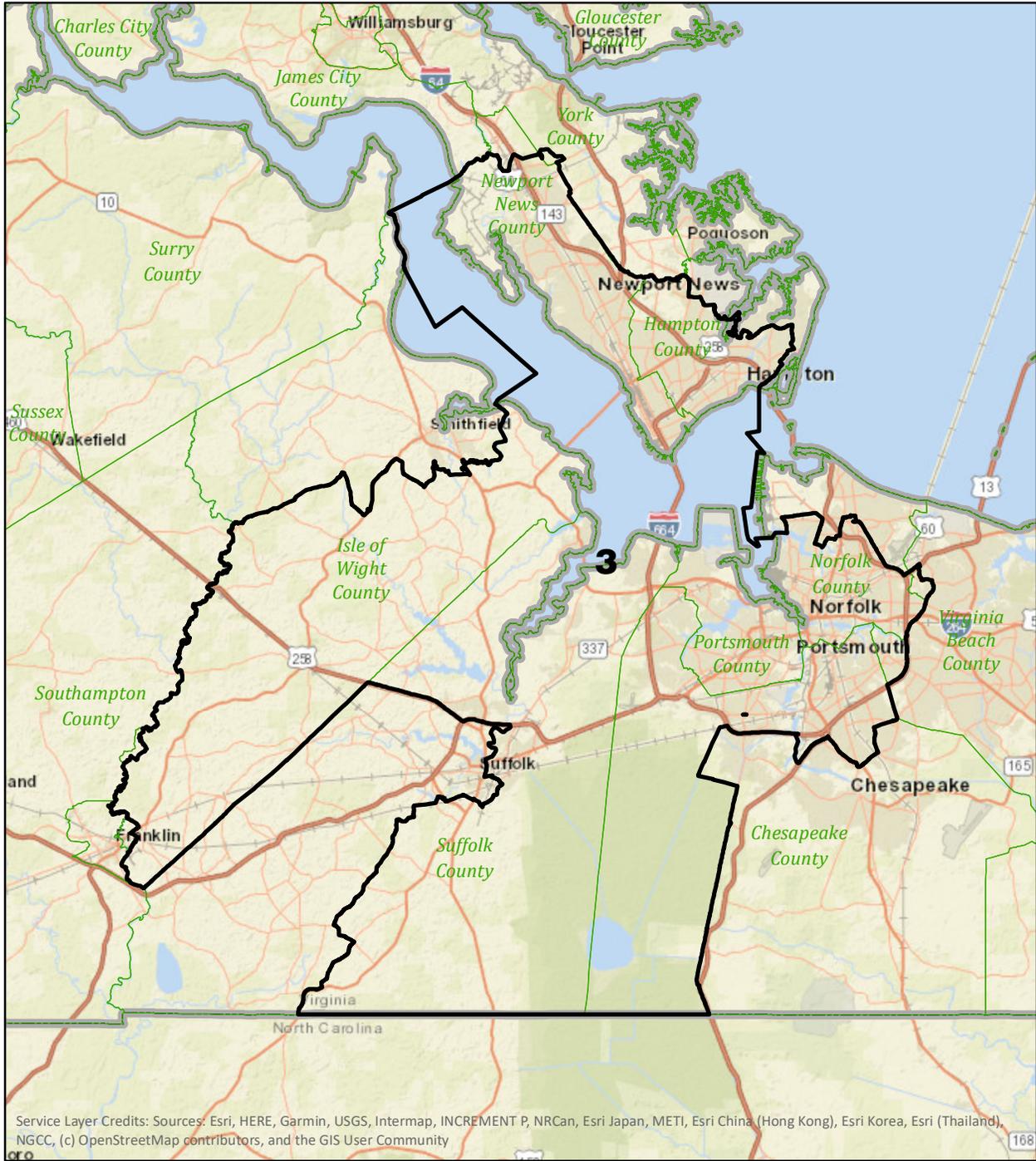


Appendix C

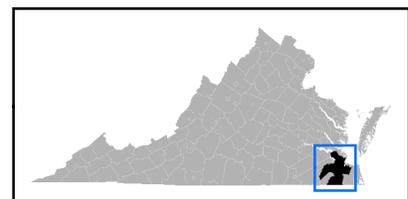
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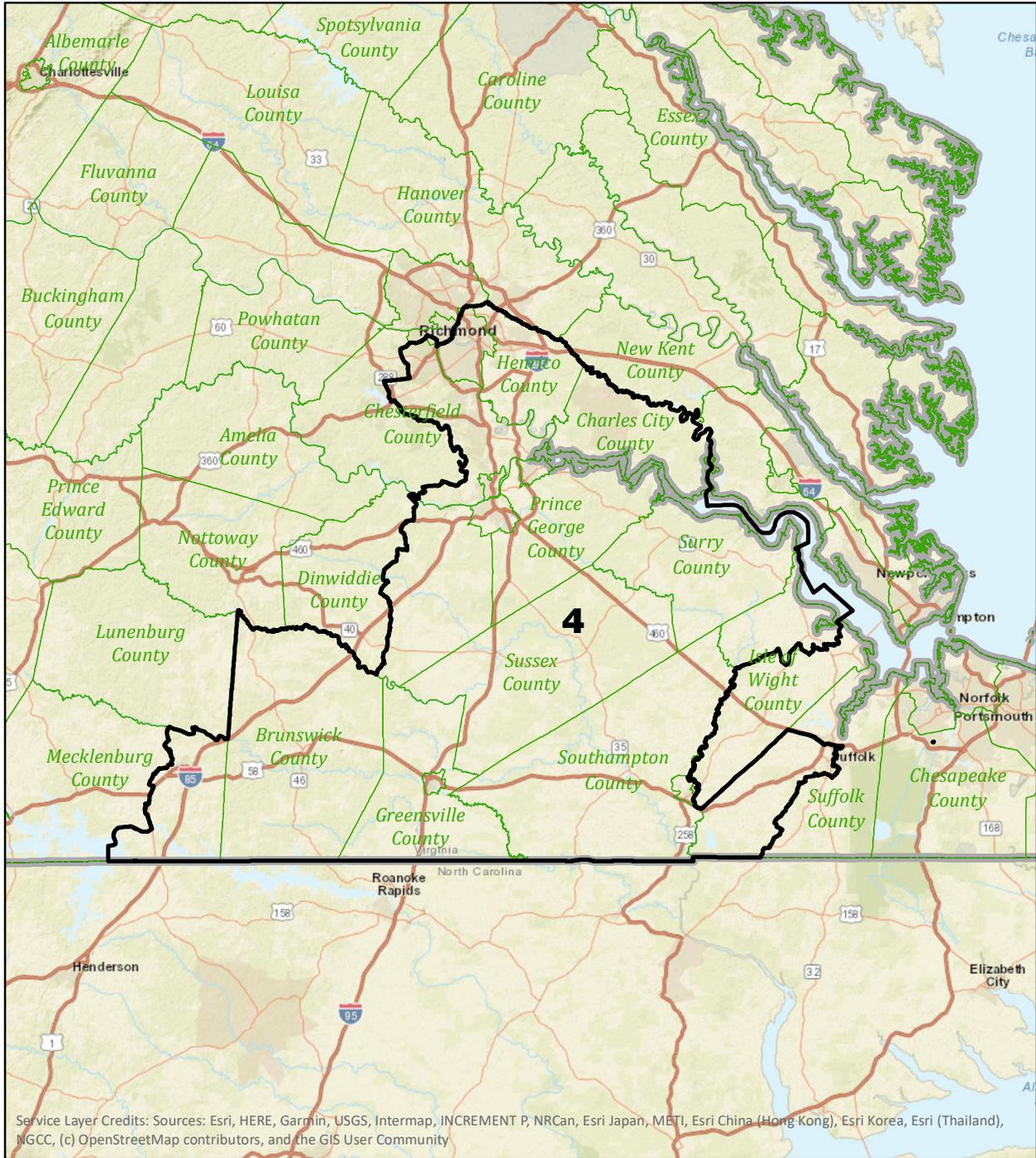
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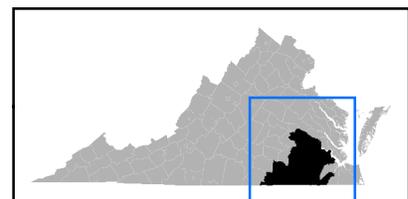
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C-NAACP-CD-004



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Figure 1. Comparison of NAACP’s and Special Masters’ Proposed House of Delegates Districts in Hampton/Newport News area.

NAACP HD*	Deviation	BVAP %	Reock	Polsby Popper		SM HD	Deviation	BVAP %	Reock	Polsby Popper
92	3	55.84	0.38	0.28		87	1,202	56.57	0.35	0.30
95	-118	50.59	0.16	0.22		85	1,515	44.48	0.28	0.32

* NAACP HDs use the same district numbers as the existing HDs, which form the core of those districts.

Figure 2. Comparison of NAACP’s and Special Masters’ Proposed House of Delegates Districts in Norfolk/Portsmouth area.

NAACP HD*	Deviation	BVAP %	Reock	Polsby Popper		SM HD	Deviation	BVAP %	Reock	Polsby Popper
75	362	46.87	0.37	0.34		83	145	41.32	0.29	0.26
76	-96	44.29	0.43	0.26		84	1,310	41.03	0.24	0.18
						89	390	28.65	0.30	0.24
77	172	43.32	0.51	0.39		91	762	45.86	0.25	0.16
79	23	31.81	0.24	0.24		88	57	48.93	0.45	0.41
						92	-156	49.04	0.36	0.28
						94	-1,661	21.05	0.30	0.40
80	260	53.02	0.6	0.46		88	57	48.93	0.45	0.41
85	-69	24.56	0.53	0.33		95	-1,990	31.47	0.40	0.31
89	-264	44.31	0.55	0.41		92	-156	49.04	0.36	0.28
90	161	41.37	0.53	0.34		93	-408	45.85	0.47	0.29

* NAACP HDs use the same district numbers as the existing HDs, which form the core of those districts.

Figure 3. Comparison of NAACP’s and Special Masters’ Proposed House of Delegates Districts in Richmond/Petersburg area.

NAACP HD*	Deviation	BVAP %	Reock	Polsby Popper		SM HD	Deviation	BVAP %	Reock	Polsby Popper
63	-81	50.31	0.48	0.24		82	-302	45.51	0.21	0.20
70	159	50.24	0.29	0.16		81	-1,596	47.91	0.30	0.22
71	77	44.54	0.35	0.27		79	1,486	57.70	0.31	0.23
74	-248	54.63	0.19	0.2		80	-621	46.84	0.26	0.22

* NAACP HDs use the same district numbers as the existing HDs, which form the core of those districts.

Figure 4. Comparison of NAACP’s and Special Masters’ Proposed House of Delegates Districts in Fredericksburg area.

NAACP HD*	Deviation	BVAP %	Reock	Polsby Popper		SM HD	Deviation	BVAP %	Reock	Polsby Popper
28	440	21.89	0.14	0.24		65	825	17.26	0.46	0.27

* NAACP HDs use the same district numbers as the existing HDs, which form the core of those districts.

Figure 5. Comparison of NAACP’s and Special Masters’ Proposed House of Delegates Districts in Dale City/Quantico area.

NAACP HD*	Deviation	BVAP %	Reock	Polsby Popper		SM HD	Deviation	BVAP %	Reock	Polsby Popper
2	-366	25.39	0.36	0.17		23	-1,594	33.08	0.29	0.22
51	-113	22.82	0.25	0.24		22	-2,044	10.15	0.41	0.24
						25	895	21.78	0.32	0.24
52	171	34.25	0.62	0.51		24	-1,380	22.99	0.36	0.32

* NAACP HDs use the same district numbers as the existing HDs, which form the core of those districts.

Figure 6. Comparison of NAACP’s and Special Masters’ Proposed House of Delegates Districts in Northern Virginia.

NAACP HD*	Deviation	BVAP %	Reock	Polsby Popper		SM HD	Deviation	BVAP %	Reock	Polsby Popper
43	-155	24.46	0.44	0.22		16	-106	15.27	0.60	0.34
						17	163	20.52	0.40	0.34
46	-164	28.38	0.4	0.31		4	-698	27.77	0.59	0.43
						5	512	12.30	0.48	0.43
49	87	15.66	0.38	0.41		3	573	13.47	0.33	0.42

* NAACP HDs use the same district numbers as the existing HDs, which form the core of those districts.

Figure 7. Comparison of NAACP’s and Special Masters’ Proposed State Senate Districts in Southside/Richmond area.

NAACP SD*	Deviation	BVAP %	Reock	Polsby Popper		SM SD	Deviation	BVAP %	Reock	Polsby Popper
9	53	50.28	0.30	0.27		13	-2,162	48.37	0.50	0.29
						14	3,544	37.97	0.32	0.22
16	44	53.13	0.27	0.09		13	-2,162	48.37	0.50	0.29
						15	4,414	36.73	0.31	0.17

* NAACP SDs use the same district numbers as the existing SDs, which form the core of those districts.

Figure 8. Comparison of NAACP’s and Special Masters’ Proposed State Senate Districts in Hampton Roads area.

NAACP SD*	Deviation	BVAP %	Reock	Polsby Popper		SM SD	Deviation	BVAP %	Reock	Polsby Popper
2	-131	51.22	0.29	0.25		23	-215	47.57	0.36	0.35
5	-244	53.63	0.39	0.18		18	-2,690	42.59	0.44	0.42
18	185	53.54	0.29	0.13		17	939	40.31	0.28	0.25
						21	-1,577	40.55	0.55	0.54

* NAACP SDs use the same district numbers as the existing SDs, which form the core of those districts.

Figure 9. Comparison of NAACP's and Special Masters' Proposed Congressional Districts in Hampton Roads area.

NAACP CD*	Deviation	BVAP %	Reock	Polsby Popper		SM CD	Deviation	BVAP %	Reock	Polsby Popper
3	-2	45.32	0.40	0.21		3	-319	42.11	0.43	0.34
4	0	40.88	0.52	0.17		4	-306	39.84	0.50	0.30

* NAACP CDs use the same district numbers as the existing CDs, which form the core of those districts.