



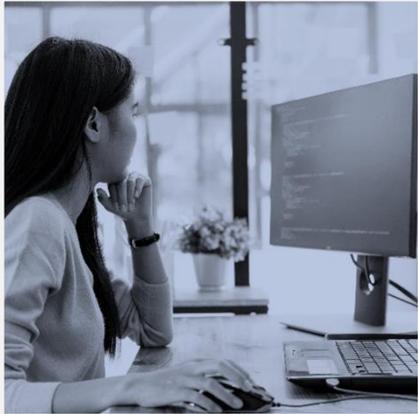
Presentation to the Maryland Citizens Redistricting Commission

Wendy Underhill, Director, Elections and Redistricting

Ben Williams, Policy Specialist, Elections and Redistricting

July 8, 2021

Who are we?



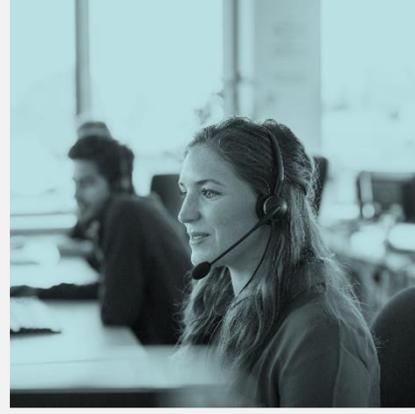
Policy Research

NCSL provides trusted, nonpartisan policy research and analysis



Connections

NCSL links legislators and staff with each other and with experts



Training

NCSL delivers training tailored specifically for legislators and staff



State Voice in D.C.

NCSL represents and advocates on behalf of states on Capitol Hill

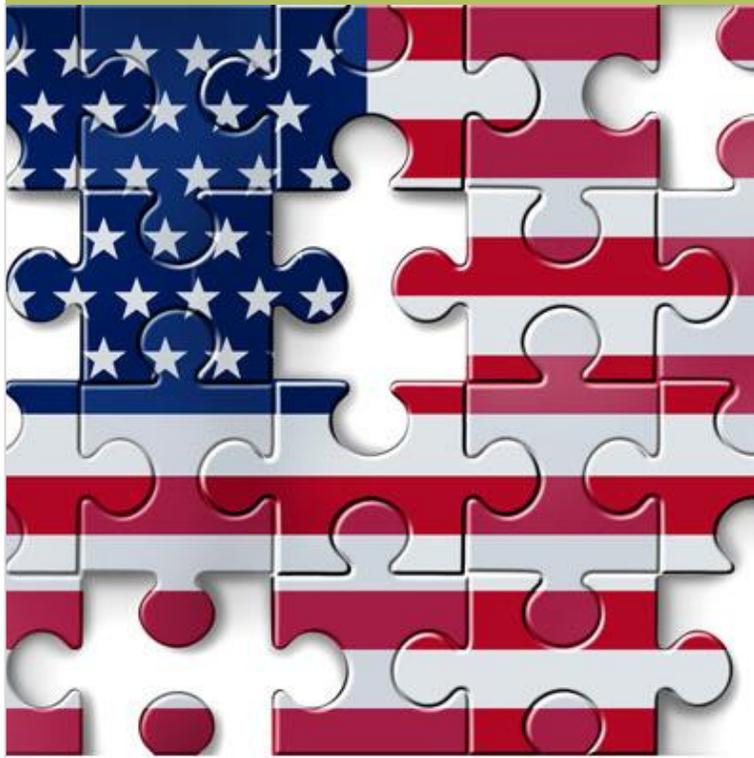


Meetings

NCSL meetings facilitate information exchange and policy discussions

Today's Outline

Fundamentals



Census



Law and Principles



Fundamentals: NCSL Definitions of EO Terms

- **Apportionment**—process of allocating congressional seats amongst states per formula in federal law.
- **Redistricting**—process of redrawing district boundaries every decade to comply with equal population requirements.
- **Commission**—a body other than the legislature with the responsibility for redistricting in a state, either for federal or congressional districts. Authority can be primary or advisory.
- **Criteria**—the state law rules for how legislative and/or congressional districts should be drawn.
- **Public Input**—the feedback provided by citizens, residents and stakeholder groups on how redistricting should be conducted; can relate to either processes or outcomes.

Fundamentals: Who Draws Legislative Districts

Statutory or constitutional only; excludes commissions set up under other authorities

- Legislature only
- Legislature, with advisory commission
- Legislature, with backup commission
- Commission



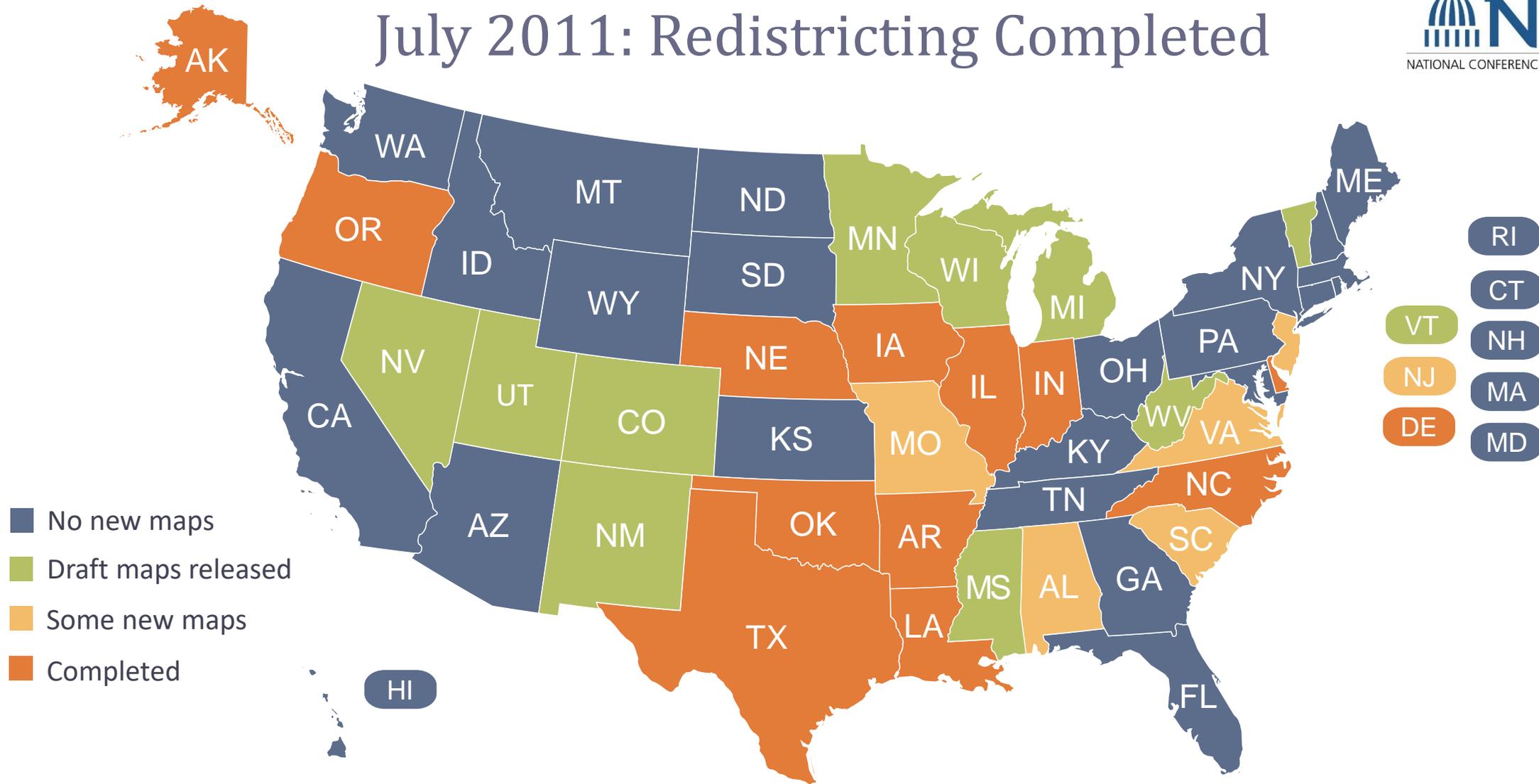
Fundamentals: Who Draws Congressional Districts

Statutory or constitutional only; excludes commissions set up under other authorities

- Legislature only
- Legislature, with advisory commission
- Legislature, with backup commission
- Commission
- At-large district

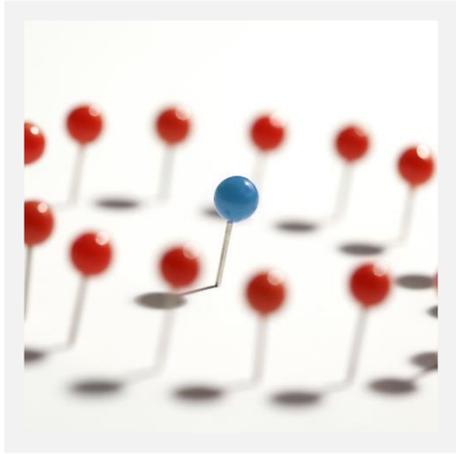


July 2011: Redistricting Completed



Source: All About Redistricting

Fundamentals: Data and the Process of Redrawing Lines



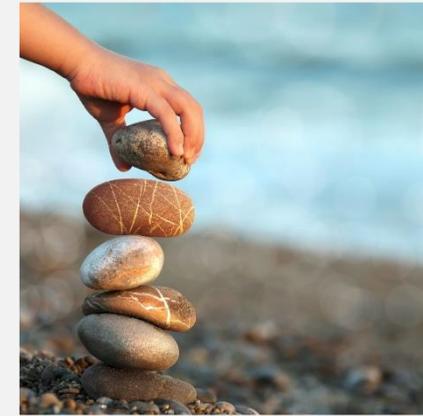
Census Data



Non-Census
Data



Public
Participation

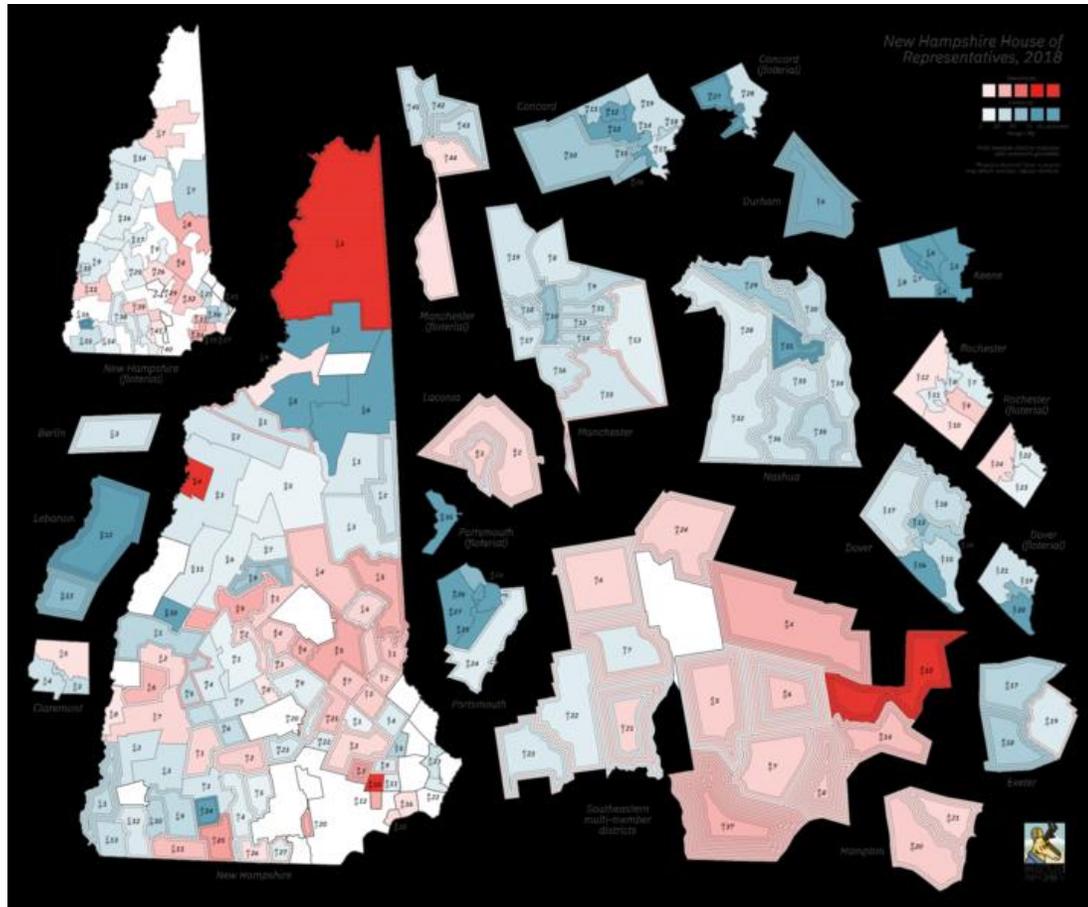


Balancing Act



Compliance

Fundamentals: Multimember vs. Single-Member Districts



- Declining in use
 - 1970: 28 states
 - 2020: 9 states
- Legal Liability?
 - Voting Rights Act
 - Equal Protection Clause
- Reformers want it?
 - Fair Representation Act would mandate modified version of multimember districts for Congress, as part of broader reform bill

Fundamentals: Types of Multimember Districts

○ Two-Member Districts

- Six states (AZ, ID, ND, NJ, SD, WA)
- State only draws one district map; each district elects two representatives and one senator

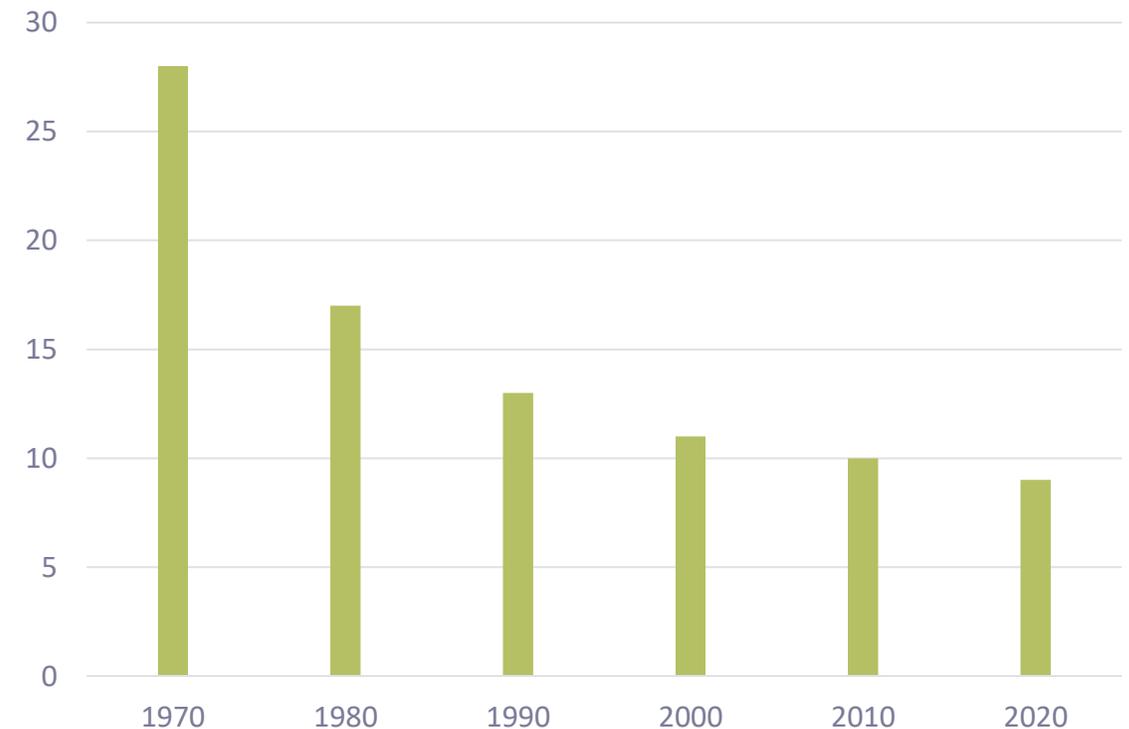
○ Varying Member Districts

- Two states (MD, VT)
- Varying number of representatives or senators per district
- May incorporate some single-member districts

○ Floterial Districts

- One state (NH)
- A single-member district map with multimember district overlay

States with Multimember Districts by Decade



The First Census Data Has Arrived



What we know

- Total population counts for all 50 U.S. states
- How many seats each state will receive in Congress for the next decade
- Growth trends of prior decades continue: South and West grow at expense of Midwest and Northeast



What we don't know

- Where population growth occurred within states
- Demographic information (age, gender, race, etc.)
- *We should know these by August 16*

2020 U.S. CENSUS



The Census Matters



NATIONAL CONFERENCE OF STATE LEGISLATURES



Funding

\$16.4 billion in federal funds distributed to Maryland annually



Apportionment

Maryland's voice in Congress



Redistricting

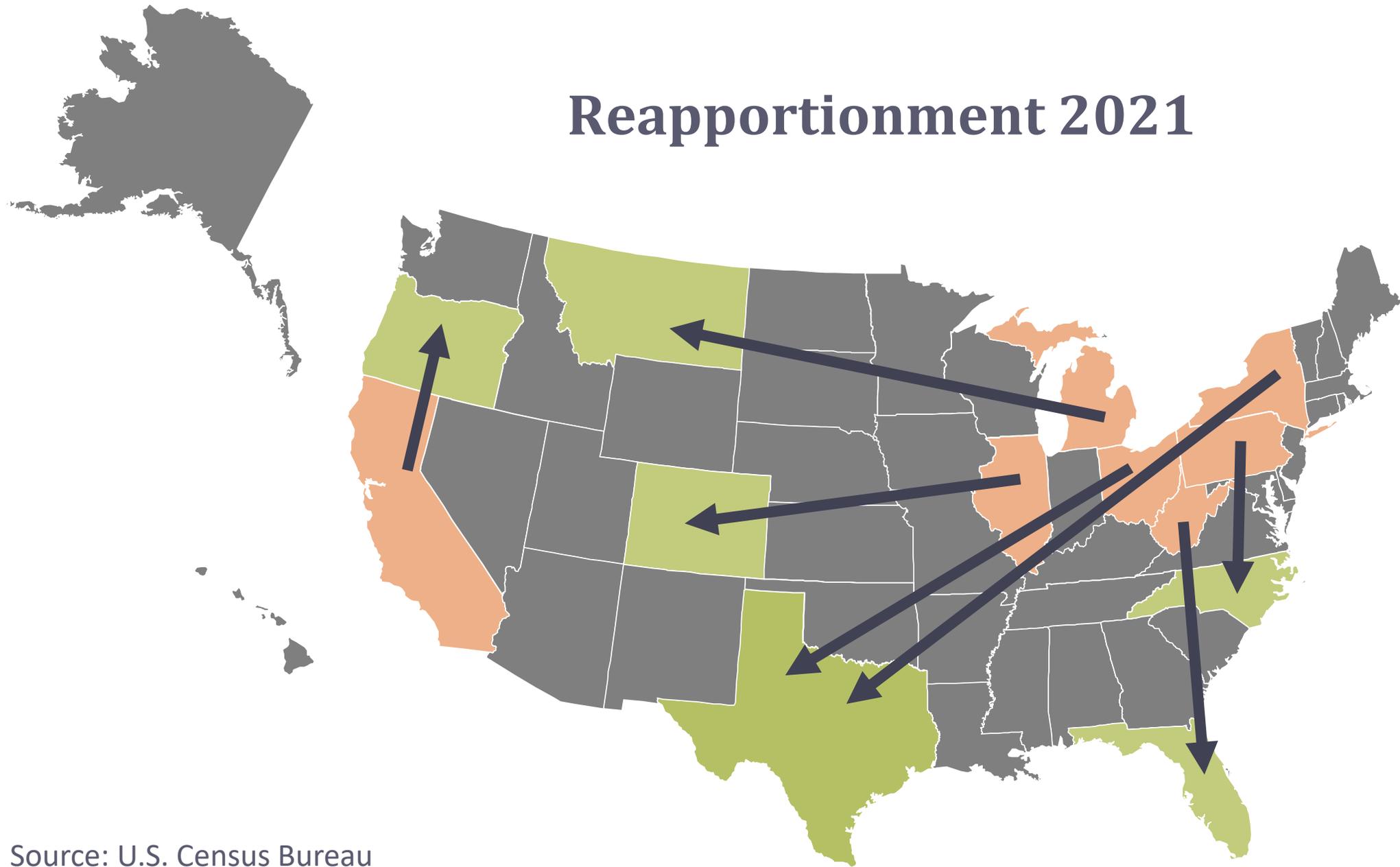
Fulfilling "One Person, One Vote"



Policymaking

Crafting policies for the people of Maryland

Reapportionment 2021



Source: U.S. Census Bureau

- People living in the United States: 331,449,281
- Growth since 2010: 7.4%
- National growth rate is lowest since the Great Depression
- 47/50 states saw population growth this decade
- Only three states saw their populations shrink this decade:
 - Illinois (-0.1%)
 - Mississippi (-0.2%)
 - West Virginia (-3.2%)



2020 Census Takeaways

What We Know So Far: Population

Prisoners and the Census

- Census policy: people reside where they sleep and eat
- Prisoners, thus, are counted as residents of wherever they are incarcerated on Census Day—even if temporary
- 10 states will “reallocate” prisoners for redistricting purposes this cycle.
 - How they are reallocated varies by state



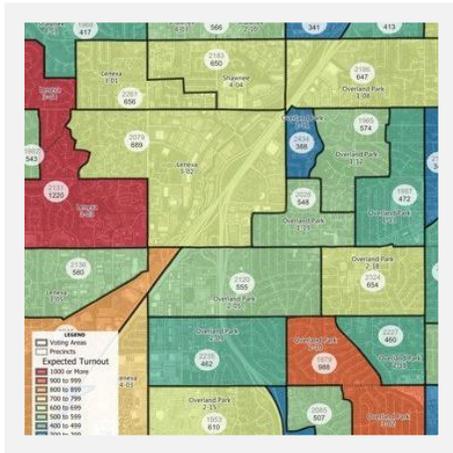
- The pandemic
- Fires
- Floods
- Policy changes



Delays

The Problem With Delays: Less Time to Redistrict

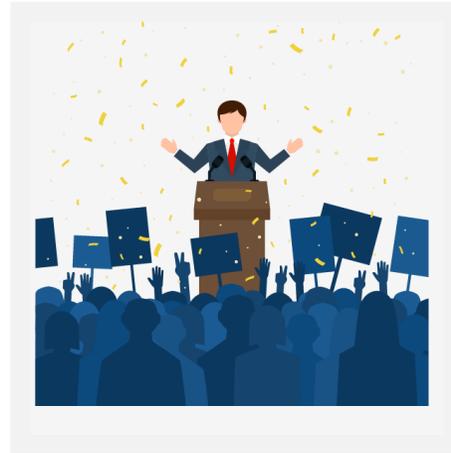
It isn't just drawing new maps



Processing



Filing Deadlines



Residency



Local Prep



Primaries

Law and Principles

Federal and State



United States Constitution



Federal Statutes



State Constitutions

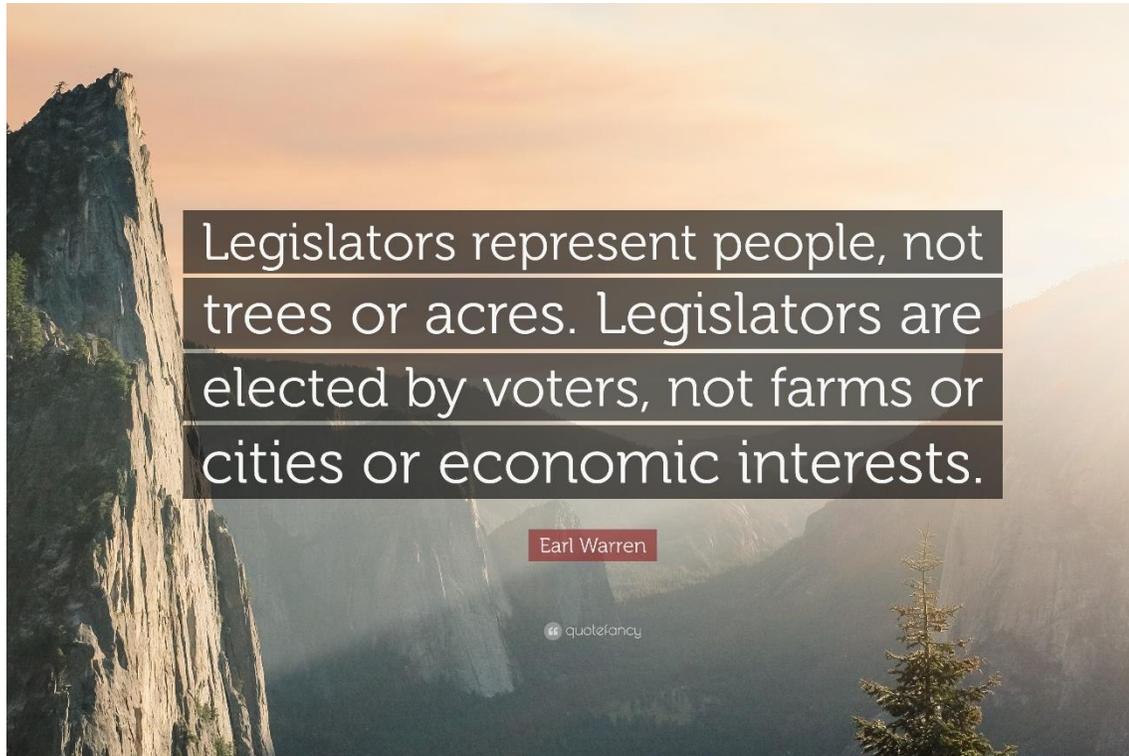


State Statutes/Common Law



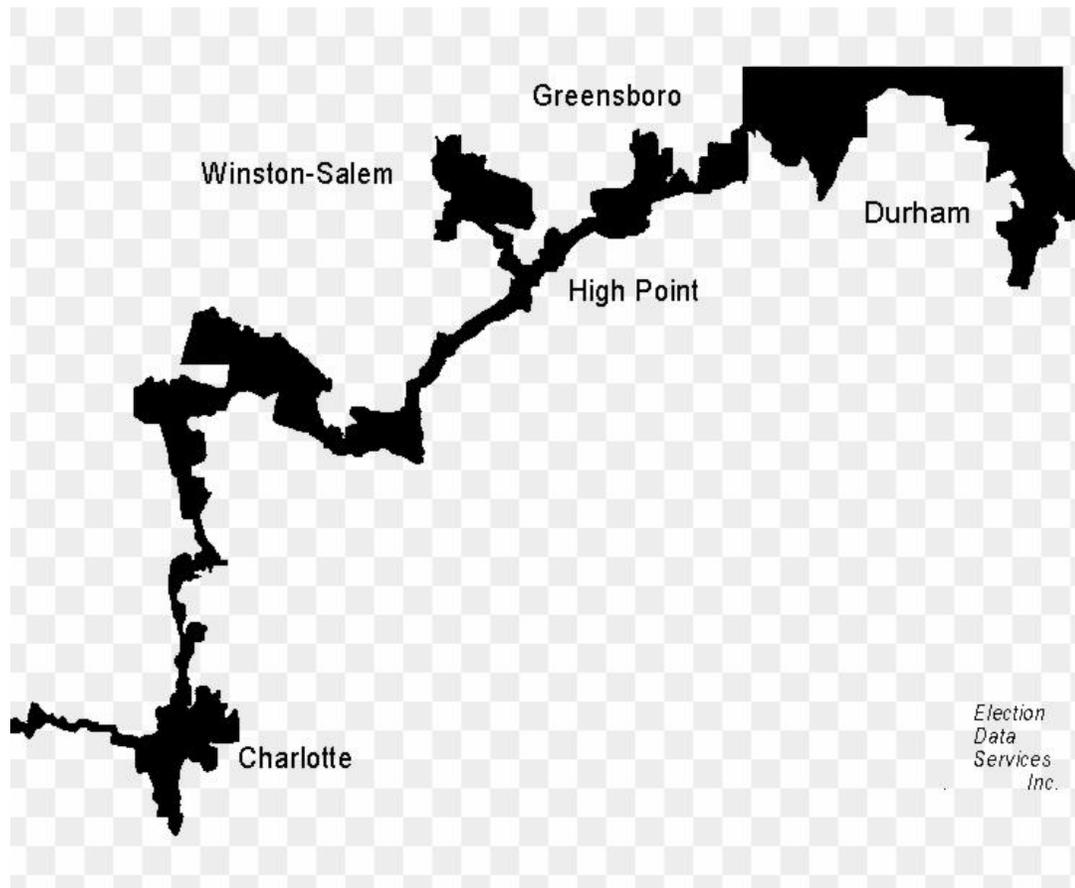
Guidelines

US Constitution: One Person, One Vote



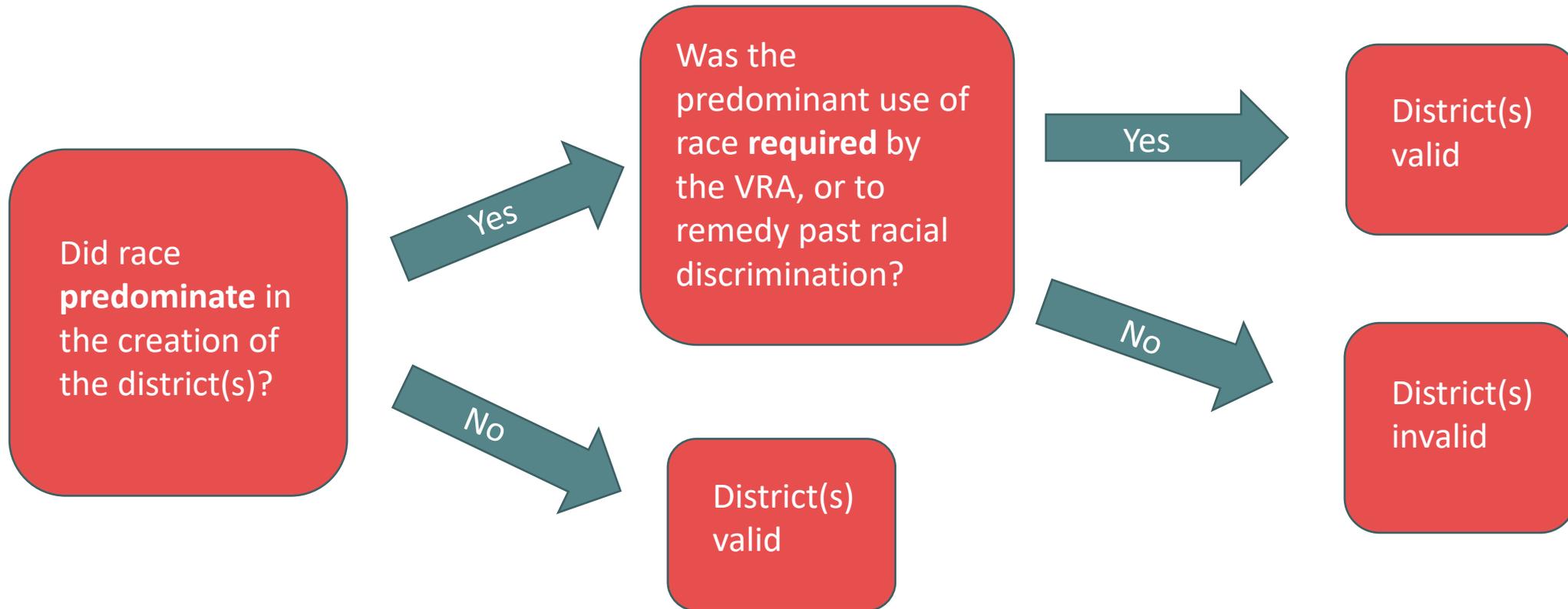
- **Principle:** Equal Protection requires that votes for legislators and congressmembers hold equal weight
 - Congressional Districts: *Wesberry v. Sanders* (1964)
 - State Legislative Districts: *Reynolds v. Sims* (1964)
- **Application:** Varies depending on district type
 - Congressional Districts: Exact numerical equality
 - State Legislative Districts: +/- 5% deviation if justified by compliance with traditional criteria
- **Governor's Order**
 - Congressional Districts: Exact numerical equality
 - State Legislative Districts: As equal as possible while respecting political and natural geographic boundaries

US Constitution: Racial Gerrymandering



- Equal Protection Clause claim
- Origin: *Shaw v. Reno* (1993)
- Claim has evolved over time
 - 1990s: white plaintiffs suing for lack of compliance with traditional principles
 - 2010s: black plaintiffs suing on vote dilution claims outside scope of Voting Rights Act

US Constitution: Racial Gerrymandering



US Constitution: Partisan Gerrymandering



- Major focus at SCOTUS this decade
- Claims based on 1st and 14th Amendments
- No longer judiciable in federal courts
- But theories from these cases have successfully been used in state courts

- Along with the 24th Amendment to the U.S. Constitution, ended Jim Crow restrictions on voting
- Passed under Congress's powers to enforce the 15th Amendment
- Widely accepted to be one of the most significant statutes ever enacted by Congress
- Two key provisions
 - Section 2: Vote Dilution
 - Section 5: Non-retrogression



The Voting Rights Act

Federal Statute

Federal Statute: Section 2

- Prohibits Vote Dilution
- Applies Nationwide
- Requires litigation (not prophylactic)
- Burden of Proof: Discriminatory Effect
 - Plaintiffs do not need to prove discriminatory intent



Federal Statute: Section 2

Gingles Preconditions

Sufficiently large and geographically compact to constitute majority

Minority group is **politically cohesive**

White voters act as a bloc to defeat minority group's candidate of choice

Senate Factors

- History of official discrimination
- Racially polarized voting in the state
- Minority vote diluting election procedures
- Minority exclusion from the candidate slating process
- Discrimination in health education and employment
- Subtle or overt racial appeals in campaigns
- Extent of minority success being elected to public office

Federal Statute: Section 5

SUPREME COURT OF THE UNITED STATES

Syllabus

SHELBY COUNTY, ALABAMA *v.* HOLDER, ATTORNEY
GENERAL, ET AL.

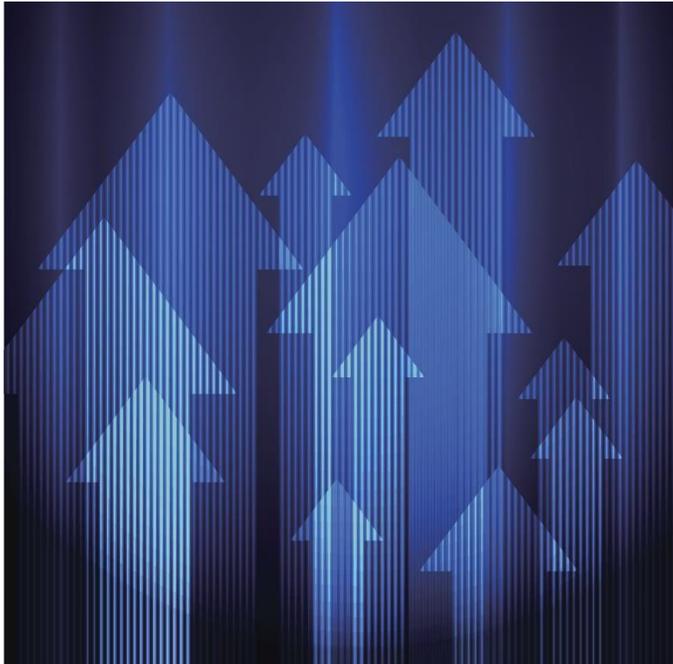
CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE DISTRICT OF COLUMBIA CIRCUIT

No. 12–96. Argued February 27, 2013—Decided June 25, 2013

The Voting Rights Act of 1965 was enacted to address entrenched racial discrimination in voting, “an insidious and pervasive evil which had been perpetuated in certain parts of our country through unremitting and ingenious defiance of the Constitution.” *South Carolina v. Katzenbach*, 383 U. S. 301, 309. Section 2 of the Act, which bans any “standard, practice, or procedure” that “results in a denial or abridgement of the right of any citizen . . . to vote on account of race



Federal Statute: Implications of the Voting Rights Act



Minority Representation



Multi-Member Districts



Racial Gerrymandering

Federal Statute: Single-Member Districts

“In each State entitled . . . to more than one Representative . . . there shall be established by law a number of districts equal to the number of Representatives to which such State is so entitled, and Representatives shall be elected only from districts so established, no district to elect more than one Representative.” – 2 U.S.C. 2a

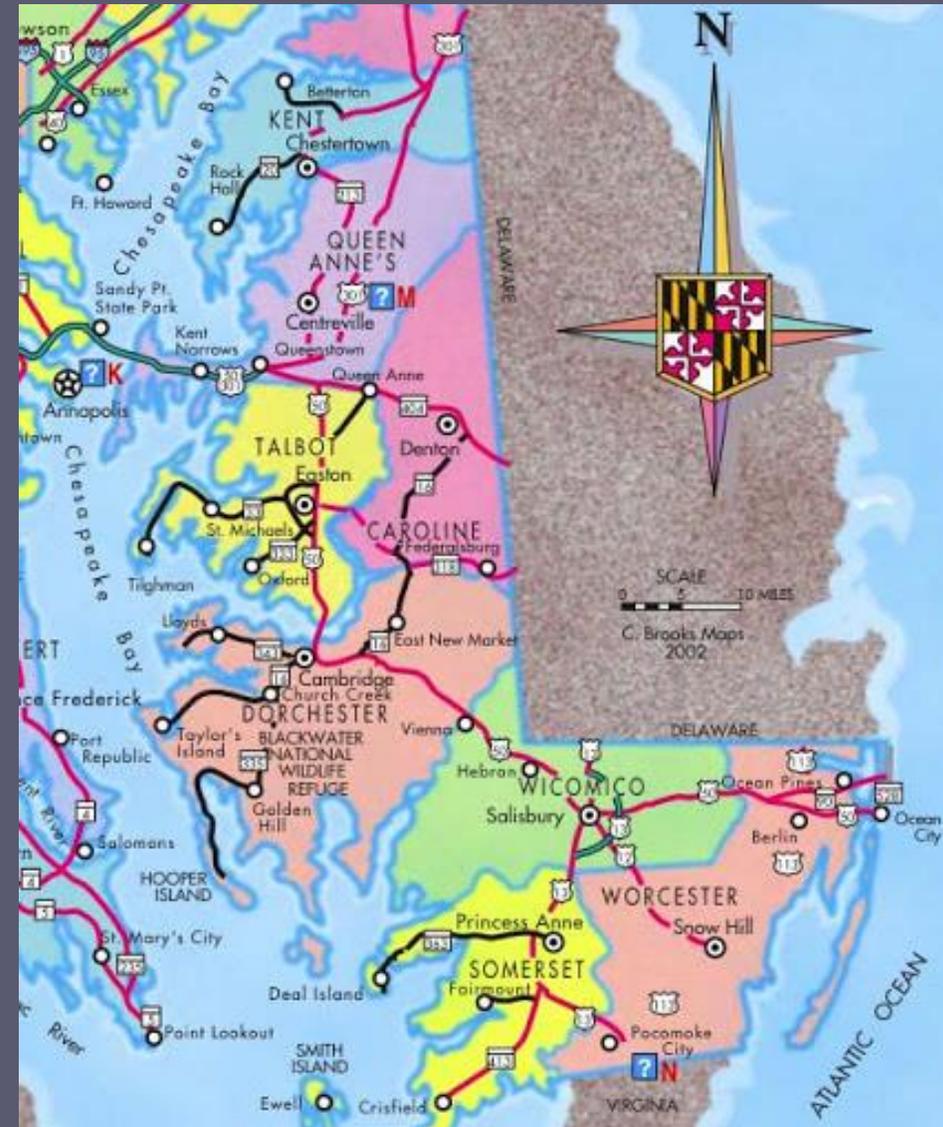
*State Constitution: Compactness

- Common traditional principle (40 states)
- Two common ways to measure:
 - Polsby-Popper : $\frac{\text{Area of District}}{\text{Area of Circle with Same Perimeter as District}}$
 - Reock : $\frac{\text{Area of District}}{\text{Area of Smallest Encompassing Circle}}$



*State Constitution: Contiguity

- Most common principle (all 50 states)
- **General Rule:** Must be able to go to every part of the district without leaving it
- Where issues arise:
 - Non-contiguous locality boundaries (usually arises with annexations)
 - Water



*State Constitution: Natural Boundaries & Subdivisions

General Application

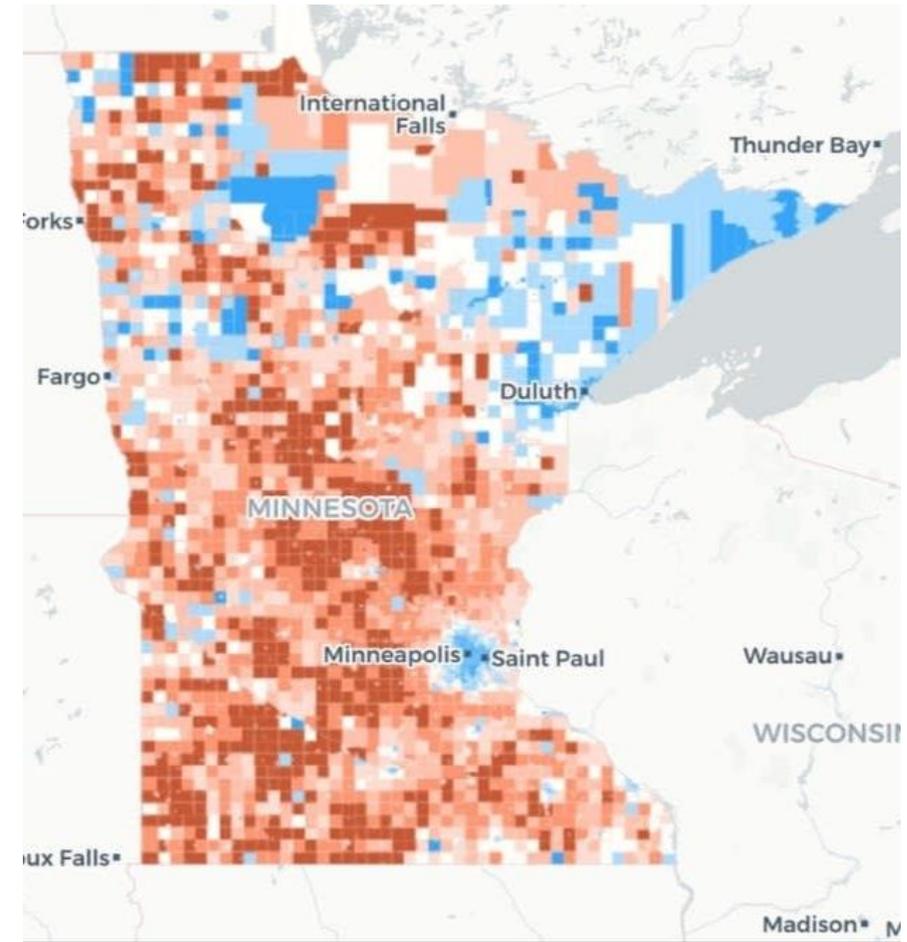
- Common traditional principle (45 states)
- Unless specified, could refer to any type of subdivision or geographic boundary
 - County, City, School District, River, Mountain Range, etc.
- A stand-in for communities of interest or compactness?
- Importance varies throughout the U.S.

Specific Application: Counties

- Sometimes codified (e.g., Idaho)
- Sometimes judicial (e.g., North Carolina)
- **General Idea:** keep counties or groups of counties together wherever possible. Only deviate from county borders when necessary to comply with federal laws like the Voting Rights Act or One Person, One Vote

Guidelines: Prohibition on Using Political Data

- Prohibited in constitution or statutes in five states
- What's prohibited in Maryland per Governor's Executive Order
 - Party registration data
 - Other party affiliation data
 - Voting history data
 - Residential addresses (and presumably, though not explicitly, other address information) for incumbents or known possible challengers



Other Principles Not Listed in Maryland Law or Guidelines

- Preserving communities of interest (25 states)
- Prohibition on drawing districts to favor or disfavor an incumbent, candidate or party (17 states)
- Preserving cores of prior districts (10 states)
- Competitiveness (5 states)
- Proportionality (2 states)



Emerging Trend: Free and Equal Elections Clauses

POLITICO



The request to stay the ruling from the Pennsylvania state Supreme Court was denied without comment or recorded dissent. | Jacqueline Martin/AP Photo

Supreme Court won't block new Pennsylvania congressional map

By ELENA SCHNEIDER and STEVEN SHEPARD | 03/19/2018 03:51 PM EDT | Updated 03/19/2018

- 30 state constitutions require elections to be some combination of free, equal and fair
- **Maryland Declaration of Rights, Article 7:** “Elections ought to be free and frequent; and every citizen having the qualifications prescribed by the Constitution, ought to have the right of suffrage.”
- PA and NC courts read this clause to include prohibition on partisan gerrymandering

Ohio—on the ground the Census Bureau hasn't met its statutory deadlines (settled)

Alabama—the same, plus it alleges that the use of differential privacy is unconstitutional (dismissed, pending appeal)

Illinois—two separate lawsuits challenging state's use of alternative data for redistricting (GOP; MALDEF)



Lawsuits This Cycle

In Summary, With Redistricting...



Criteria Can Conflict

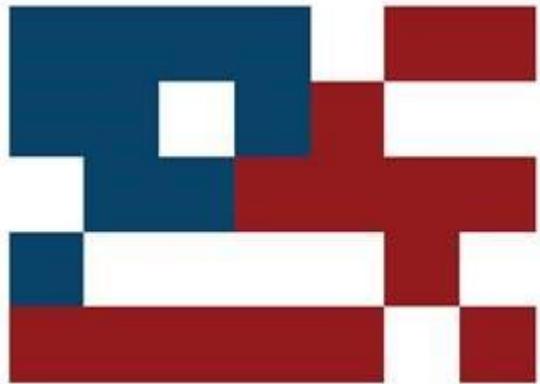


Law Can Be Ambiguous



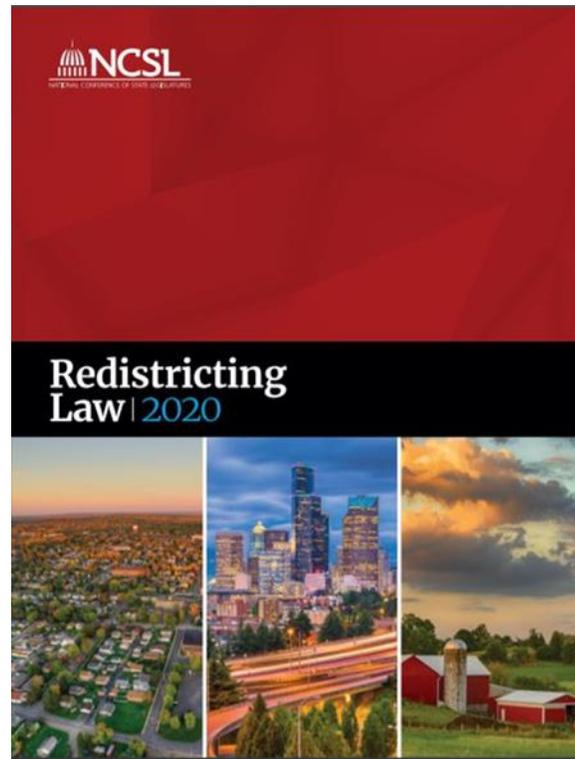
Impossible to Please Everyone

Questions?



Redistricting Seminars

Seminar next week!



THANK YOU!

Wendy Underhill

303-856-1379

Wendy.Underhill@NCSL.org

Ben Williams

303-856-1648

Ben.Williams@NCSL.org