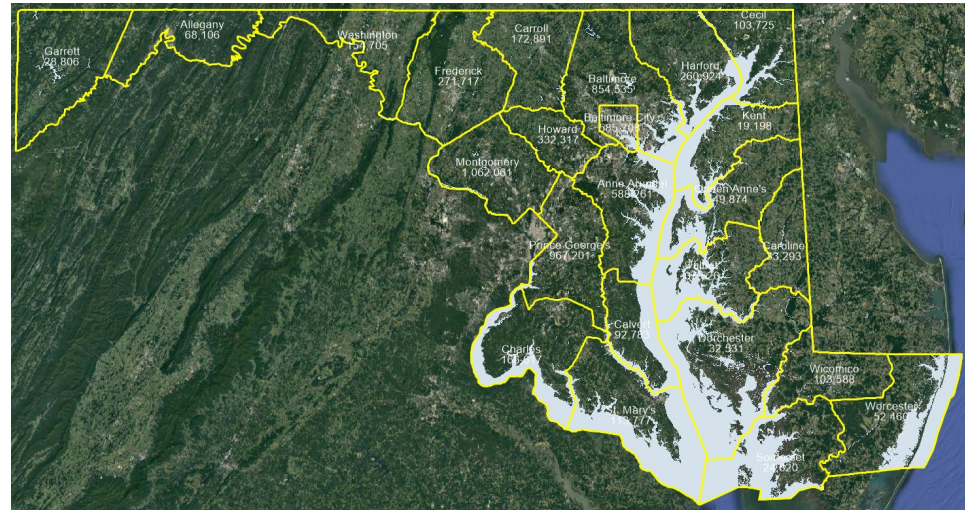
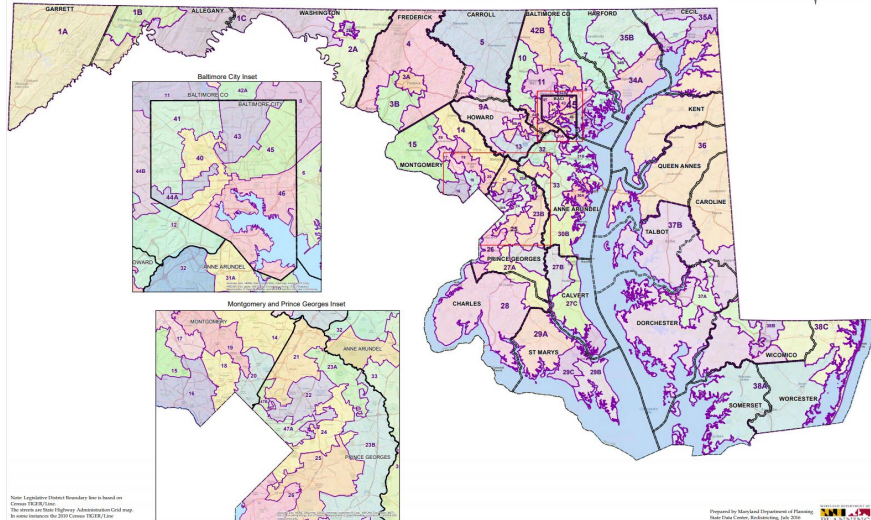


Principles and Criteria for the Maryland Redistricting Process

Nate Persily



Categories of Criteria

- ❑ Mandatory
 - ❑ Federal Law
 - ❑ State Law
 - ❑ Governor's Order

- ❑ Prohibited
 - ❑ Voter registration, vote history, party affiliation
 - ❑ Residence of incumbent, candidate or other individual

- ❑ Discretionary/Permissible

Mandatory Criteria

U.S. Constitution

- ❑ One Person, One Vote
 - ❑ Congressional Districts – no unexplained de minimis deviations allowed.
 - ❑ See *Karcher v. Daggett*, 462 U.S. 725 (1983) (striking down plan with 0.7% deviation)
 - ❑ State Legislative Districts – +/- 5% population

- ❑ Prohibition on intentional race-based vote dilution
- ❑ Prohibition on intentional creation of majority-minority districts not required by the Voting Rights Act. (*Shaw v. Reno*)

Section 2 of the Voting Rights Act

- ❑ *Gingles* Prongs
 - ❑ Large and compact enough to form a majority in a single member district
 - ❑ Minority political cohesion
 - ❑ White bloc voting that ordinarily leads to defeat of minority-candidate of choice
- ❑ Senate Factors – history of discrimination etc.
- ❑ Bottom line – in areas where these factors are present, must draw a district where minorities have an “equal opportunity to elect candidates of their choice.”
- ❑ Note tension with *Shaw*

Maryland Constitution

Article 3, Section 4:

“Each legislative district shall consist of **adjoining** territory, be **compact** in form, and of **substantially equal** population. Due regard shall be given to **natural boundaries and the boundaries of political subdivisions.**”

Governor's Order (Part 1)

1. The Commission shall prepare one plan for Maryland's state legislative districts and one plan for Maryland's congressional districts, in conformance with the following:
 - a. The plans shall:
 - i. Comply with all State and federal constitutional and legal requirements, including the Voting Rights Act;
 - ii. Comply with all applicable judicial direction, rulings, judgments, or orders;
 - iii. Respect natural boundaries and the geographic integrity and continuity of any municipal corporation, county, or other political subdivision to the extent practicable; and
 - iv. Be geographically compact and include nearby areas of population to the extent practicable;

Governor's Order Part 2

c. Congressional districts shall:

- i. Equal the number of representatives in the U.S. Congress that have been apportioned to the state; and
- ii. Be equal in population to the extent practicable; and

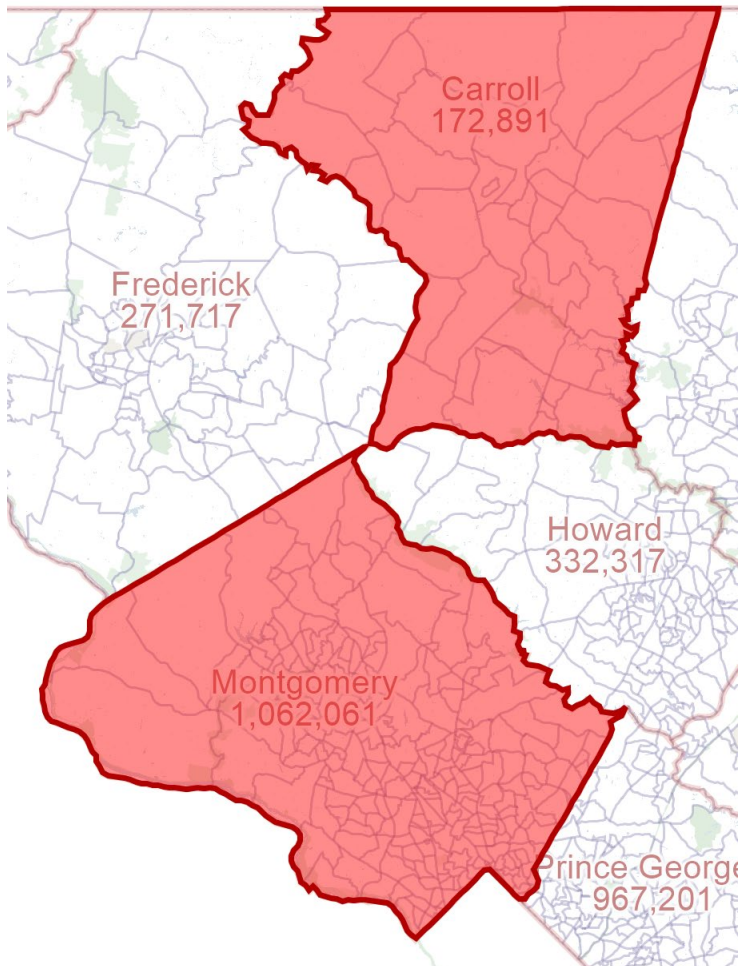
d. Legislative districts shall be:

- i. As nearly equal in population as is feasible given due regard for natural boundaries and the boundaries of political subdivisions;
- ii. To the extent possible and consistent with the Commission's other duties and responsibilities, subdivided into single-member delegate districts; and
- iii. Numbered consecutively commencing at the northwestern boundary of the state and ending at the southeastern boundary of the state.

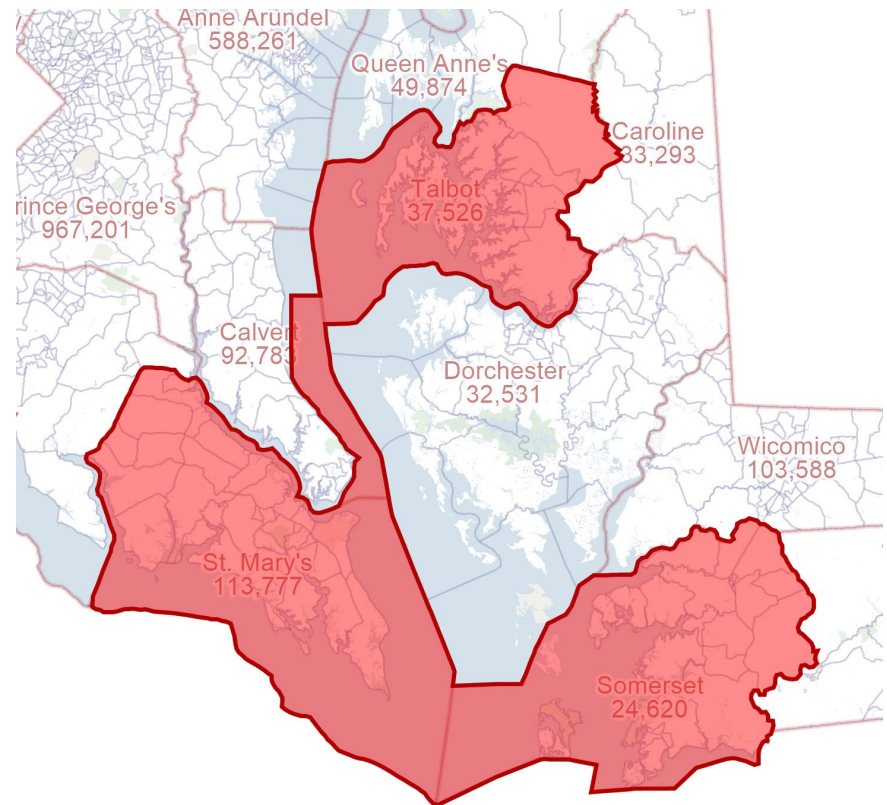


Contiguity - “Each legislative district shall consist of adjoining territory...”

Point Contiguity

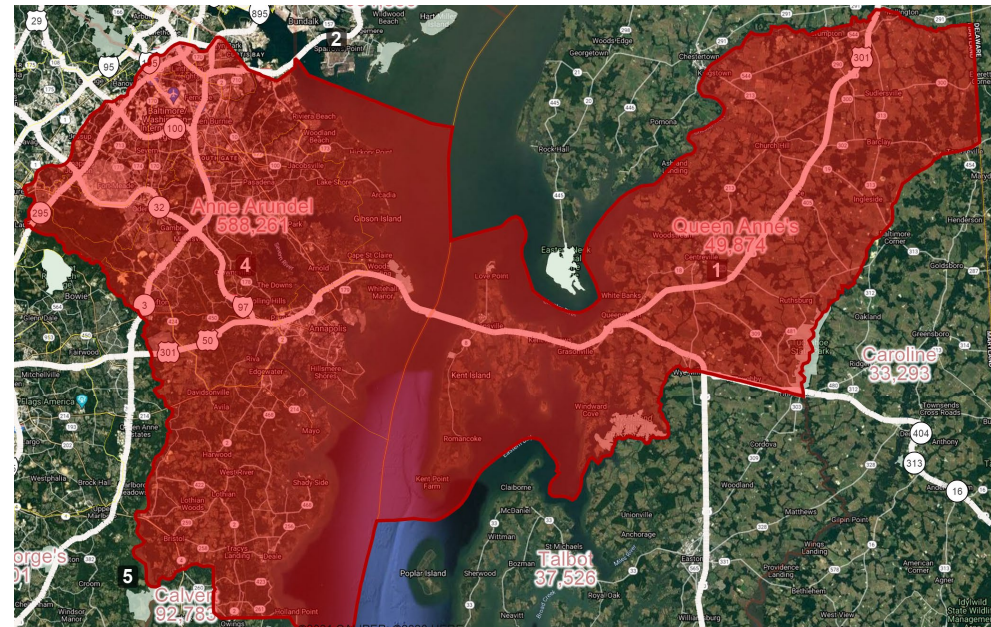
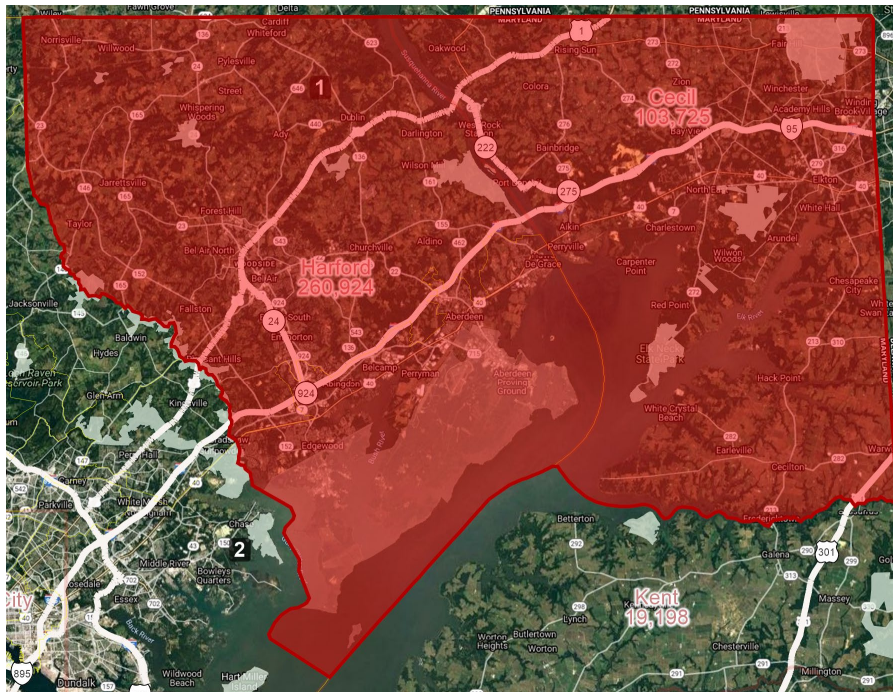


Water Contiguity



Respect Natural Boundaries

- ☞ “Due regard shall be given to natural boundaries”
- ☞ “Respect natural boundaries...to the extent practicable”
- ☞ One key initial question: Whether to cross the Chesapeake?
 - If so, where?

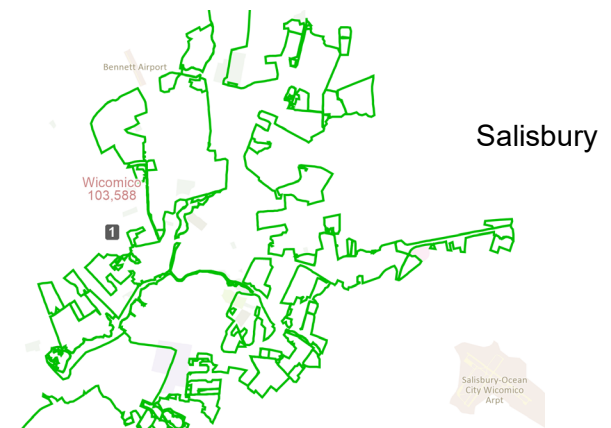
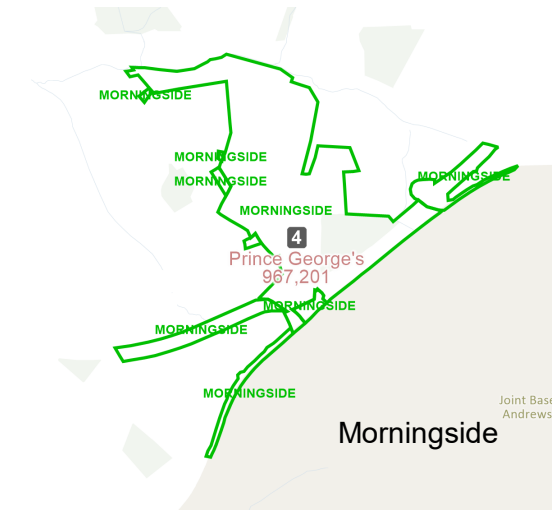


Political subdivisions

- ❑ Maryland Constitution: “Due regard shall be given to . . . the boundaries of political subdivisions.”
- ❑ Governor’s Order: “Respect the geographic integrity and continuity of any municipal corporation, county, or other political subdivision to the extent practicable.”
- ❑ Maryland Court of Appeals in *In Re Legislative Redistricting* (2002) strikes down plan for legislature under this provision.

Considerations for “due regard” and “respect” for political subdivisions

- Questions to consider:
 - Priority of subdivisions?
 - Counties
 - Municipalities
 - Others? Precincts?
 - Prioritize number of subdivisions that are split or number of times a subdivision is split?
 - Many municipalities are noncompact and even lack contiguity



Compactness

- ❑ “Maryland Constitution – “Be compact in form”
- ❑ Governor’s Order – “Be geographically compact and include nearby areas to the extent practicable.”
- ❑ Definition
 - ❑ Aesthetic concept – no bizarre shapes; “know it when you see it”
 - ❑ Mathematical concept – assortment of measures relating shape or perimeter of district to some other standard.
 - ❑ Functional concept – “cultural compactness”
- ❑ Tension with natural boundaries and political subdivisions
 - ❑ Maryland itself is noncompact

Other Traditional Redistricting Criteria

- ❑ Communities of interest
- ❑ Respecting the cores and configurations of existing or prior districts
- ❑ Transportation corridors
- ❑ Boundary agreement between districts
- ❑ Precinct boundaries and election administration concerns

Communities of Interest

- ❑ Justification: Districting is, in the end, about representing geographically defined communities.

- ❑ **Potential Tradeoffs**
 - ❑ Compactness and Contiguity
 - ❑ Political Subdivision or Natural Boundaries
 - ❑ District Cores
 - ❑ Prohibition on Undue Favoring of Party
 - ❑ Equal Population and Voting Rights Act

- ❑ **Challenges**
 - ❑ Pretexts for partisan interests
 - ❑ Community boundaries overlap
 - ❑ Communities sometimes prefer to be split
 - ❑ Who gets to define the boundaries of a community?
 - ❑ Which types of communities deserve protection?

Communities of Interest (Defined)

Arizona's Definition:

“[A] group of people in a defined geographic area with concerns about common issues (such as religion, political ties, history, tradition, geography, demography, ethnicity, culture, social economic status, trade or other common interest) that would benefit from common representation.”

California's Definition:

“a contiguous population which shares common social and economic interests that should be included within a single district for purposes of its effective and fair representation. Examples of such shared interests are those common to an urban area, a rural area, an industrial area, or an agricultural area, and those common to areas in which the people share similar living standards, use the same transportation facilities, have similar work opportunities, or have access to the same media of communication relevant to the election process. Communities of interest shall not include relationships with political parties, incumbents, or political candidates.”

Colorado's Definition:

“any group . . . that shares one or more substantial interests that may be the subject of state legislative action, is composed of a reasonably proximate population, and thus should be considered for inclusion within a single district for purposes of ensuring its fair and effective representation. Such interests include but are not limited to matters reflecting: (A) Shared public policy concerns of urban, rural, agricultural, industrial, or trade areas; and (B) Shared public policy concerns such as education, employment, environment, public health, transportation, water needs and supplies, and issues of demonstrable regional significance. Groups that may comprise a community of interest include racial, ethnic, and language minority groups, [but] does not include relationships with political parties, incumbents, or political candidates.”

Community of Interest (Maryland)

Maryland Court of Appeals (2002) on whether communities of interest can supersede political subdivision requirements in Constitution:

"communities of interest," [is] a concept we found "nebulous and unworkable," pointing out that such communities, "involving concentrations of people sharing common interests," are virtually unlimited and admit of no reasonable standard.

**Even if might not supercede constitutional criteria, can supplement them.

Preserving Cores and Configurations of Prior Districts

- ❑ Justification: Provides for continuity in district identity and representation.
- ❑ Tradeoffs (depends on principles that guided existing districts)
 - ❑ Compactness
 - ❑ Political subdivisions and geographic boundaries
 - ❑ Communities of interest
 - ❑ **Undue favoring of incumbents or parties
- ❑ Challenges
 - ❑ How to define a core?
 - ❑ If existing districts are “tainted,” then preserving their cores replicates existing biases.

Boundary agreement between different types of districts

- ❑ Justification: Facilitates election administration and precinct drawing, promotes coherence of different boundaries, allows for building of legislative teams for representation of different areas.
- ❑ Nesting requirement for House districts addresses this
- ❑ Would only potentially implicate Senate and Congressional districts

Preference for Single Member House Districts

- ❑ Multimember districts can help navigate tradeoffs with:
 - ❑ Political subdivision, compactness and nesting requirements
 - ❑ *Shaw*/Voting Rights Act concerns
- ❑ However, almost always physically possible to break up multimember districts into legal single-member districts.