

Drawing Maps That Will Stand Up in Court

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Definitions

- Reapportionment
- Redistricting

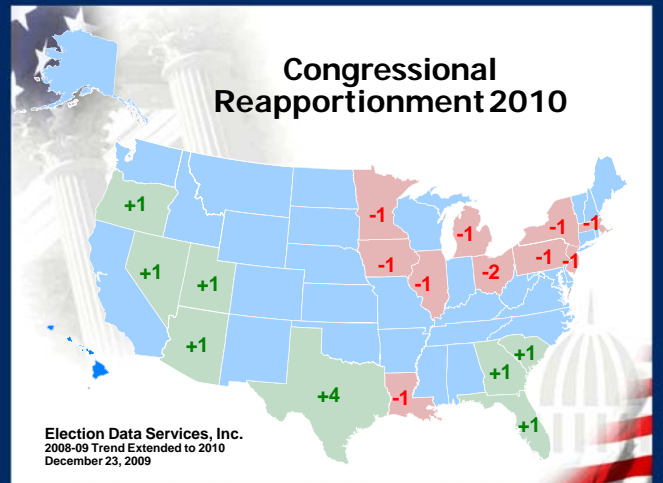
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Why Redistrict?

- Reapportionment of Congressional Seats

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Congressional Reapportionment 2010



Why Redistrict?

- Population Shifts within State

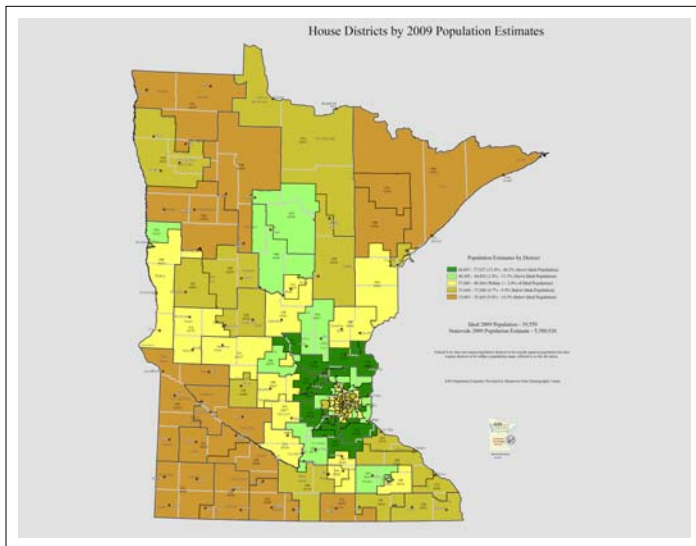
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The Facts of Life

Equal Population

- Absolute Numbers are Less Important than Relative Numbers
- Growth Slower than Average
 - Area Will Grow
- Growth Faster than Average
 - Area Will Shrink

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The Facts of Life

Gerrymandering

- Packing
- Fracturing
- Creating a Gerrymander

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The Need for Limits

- Who draws the plans
- Data that may be used
- Review by others
- Districts that result

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Limits on Gerrymanders

Who Draws the Plans

- No legislators
- No appointees of a legislator
- No public officials
- No politicians
- Minority party represented
- Equal number from majority & minority
- Neutral tie-breaker

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Limits on Gerrymanders

Data that May be Used

- Not party registration
- Not election results
- Not socio-economic data
- Not incumbent residences

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Limits on Gerrymanders

Review by Others

- Public hearings
- Preliminary plans
- Judicial review

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Limits on Gerrymanders

Districts that Result

- Populations equal
- Minorities fairly represented
- Territory contiguous
- Territory compact
- House districts nested in Senate districts
- Political subdivisions not divided
- Communities of interest not divided
- Politically competitive

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The Census

- Use Official Census Bureau Population Counts

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Equal Population

- Measuring Population Equality Among Districts
 - Ideal Population
 - Deviation
 - Average Deviation
 - Overall Range

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Congressional Districts

- Strict Equality
- Unless Necessary to Achieve “Some Legitimate State Objective”
 - Preserve Political Subdivisions
 - Contiguous Territory
 - Compact
 - Preserve Communities of Interest
 - Preserve the Cores of Prior Districts
 - Avoid Contests Between Incumbents

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Legislative Districts

- An Overall Range of Less than 10 Percent
 - Unless Proof of Intentional Discrimination
- Unless Necessary to Achieve Some “Rational State Policy”
 - Affording Representation to Political Subdivisions
 - Other State Policies

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Racial and Language Minorities

Data on Race and Language

- Non-Hispanic White
- Non-Hispanic Black + NH Black & White
- NH Asian + NH Asian & White
- NH Amer. Indian + NH Amer. Indian & White
- NH Pacific Islander + NH Pac. Is. & White
- NH Some Other Race
- NH Other Multiple Race
- Hispanic

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Voting Rights Act § 2

- No Discriminatory Effect
- *Thornburg v. Gingles* - Three Preconditions
 - Minority Population Sufficiently Large and Geographically Compact
 - Minority is Politically Cohesive
 - Bloc Voting by White Majority Usually Defeats Minority's Preferred Candidate
- Totality of the Circumstances
- Draw Districts the Minority has a Fair Chance to Win

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Voting Rights Act § 5

- "Covered Jurisdictions"
- Preclearance
 - Justice Department
 - U.S. District Court for District of Columbia
- Do Not Regress
 - Ability to Elect a Candidate of Choice
- Do Not Intend to Discriminate
- You Need Not Maximize the Number of Minority Districts

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Equal Protection Clause of the 14th Amendment

- You May Consider Race in Drawing Districts
- Avoid Drawing a Racial Gerrymander

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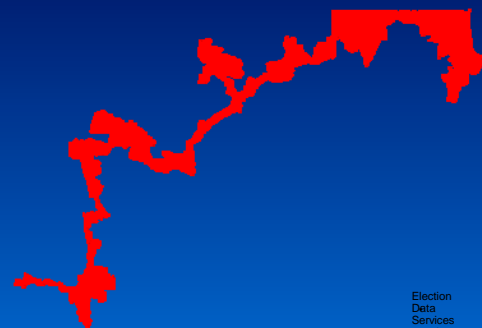
Racial Gerrymanders

- Don't Draw Districts With Bizarre Shapes

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North Carolina

Congressional District 12 - 1992



Election
Data
Services
Inc.

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“Reapportionment is one area in which appearances do matter.”

Redistricting is one area in which appearances do matter

North Carolina

Congressional District 12 - 1992



Election
Data
Services
Inc.

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Racial Gerrymanders

- Draw Districts that are “Reasonably Compact”

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Texas

Congressional District 30 - 1992



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Texas

Congressional District 30 - 1996



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Texas

Congressional District 18 - 1992



31

Texas

Congressional District 18 - 1996



32

Texas

Congressional District 29 - 1992



33

Texas

Congressional District 29 - 1996



34

Louisiana

Congressional District 4 - 1992



35

Louisiana

Congressional District 4 - 1994



36

Louisiana

Congressional District 4 - 1996



37

Florida

Congressional District 3 - 1992



38

Florida

Congressional District 3 - 1996



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North Carolina

Congressional District 12 - 1997



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North Carolina

Congressional District 12 - 1998



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North Carolina

Congressional District 12 - 2000 (1997)



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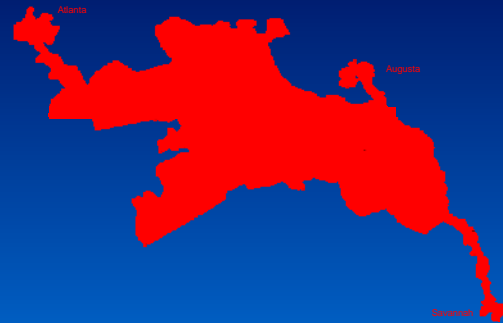
Racial Gerrymanders

- Don't Let Race Be Your Dominant Motive

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Georgia

Congressional District 11 - 1992



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Georgia

Congressional District 4 - 1996



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Racial Gerrymanders

- Don't Use Race as a Proxy for Political Affiliation

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Traditional Districting Principles

- Contiguous Territory
- Compact
- Preserve Political Subdivisions
- Preserve Communities of Interest
- Protect Incumbents
 - Preserve Cores of Prior Districts
 - Avoid Contests Between Incumbents
- Nest House Districts within Senate Districts

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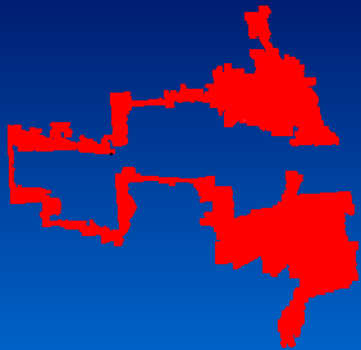
Strict Scrutiny

- A Compelling Governmental Interest
- Narrowly Tailored to Achieve that Interest
 - Remedying Past Discrimination
 - Avoiding Retrogression Under VRA § 5
 - Avoiding a Violation of VRA § 2

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Illinois

Congressional District 4 - 1992



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Partisan Gerrymandering

Partisan Gerrymandering

- A justiciable Issue
 - *Davis v. Bandemer* (1986)
- Can it Be Proved?
 - *Vieth v. Jubelirer* (2004)
 - *LULAC v. Perry* (2006)

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Federalism in Redistricting

The Minnesota Experience

- Legislature enacts a legislative plan (1991)
- Federal court enjoins state court (Dec. 5)
- State court corrects the legislative plan - *Cotlow v. Grove* (Dec. 9)
- U.S. Supreme Court vacates federal court's injunction (Jan. 10, 1992)
- Federal court enjoins Secretary of State (Feb. 19, 1992)
- U.S. Supreme Court reverses federal court (1993)

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Federalism in Redistricting

- Federal Court Must Defer to State Court
- Federal Court May Not Directly Review State Court Decision
- Plan Approved by State Court Subject to Collateral Attack in Federal Court
- Federal Court Must Defer to State Remedies

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www.senate.leg.state.mn.us/departments/scr/REDIST/Draw/Draw.pdf