



VRA Presentation to the Pennsylvania Legislative Reapportionment Commission

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Strengthening
the legislative
institution.

Serving 7,383
legislators and
25,000 staff.

Voting Rights Act of 1965



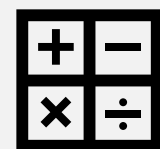
Section 2

Private and Federal
Cause of Action



Section 3

The “Bail-In” Remedy for
Violations of the VRA



Section 4

The Preclearance
Coverage Formula



Section 5

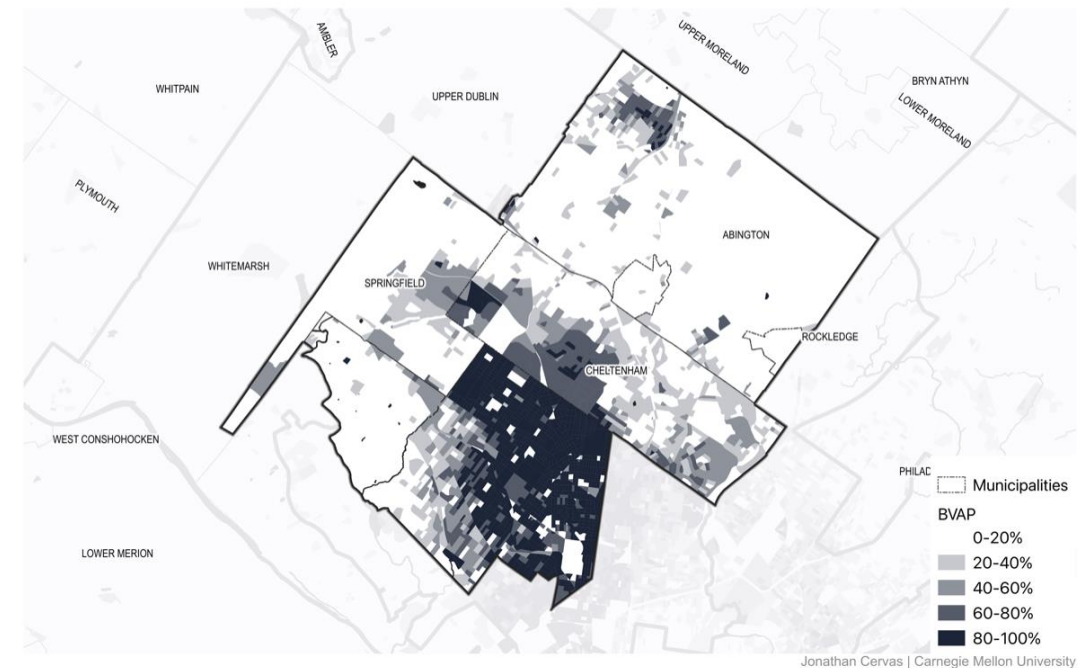
The Preclearance
Regime

Key Sections of the VRA

Section 2: Overview

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

Senate District 4



Section 2: When Applies

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

Key Distinction: Vote Denial vs. Vote Dilution

Vote Denial (Elections)

- Applies to laws denying or abridging the right to vote on account of race or color
- Localized or statewide impact of challenged law on denial of right to vote
- Key Supreme Court case:
 - *Brnovich v. Democratic National Committee* (2021)

Vote Dilution (Redistricting)

- Applies to districting plans that hinder a minority group's opportunity to elect its candidate of choice
- District-by-district analysis
- Some key Supreme Court cases:
 - *Mobile v. Bolden* (1980)
 - *Thornburg v. Gingles* (1986)
 - *Bartlett v. Strickland* (2009)

Section 3: “Bail-In”

- **What:** Remedy available from courts who find violation Fourteenth or Fifteenth Amendments to U.S. Constitution.
- **How:** Judge orders jurisdiction subject to preclearance for future election law changes *if* it finds proof of discriminatory intent by a defendant.
- **When:** Limited duration set by judge; not permanent like Sections 4 and 5. Judge has significant discretion in crafting remedy.
- **Prevalence:** Rare



Sections 4 and 5

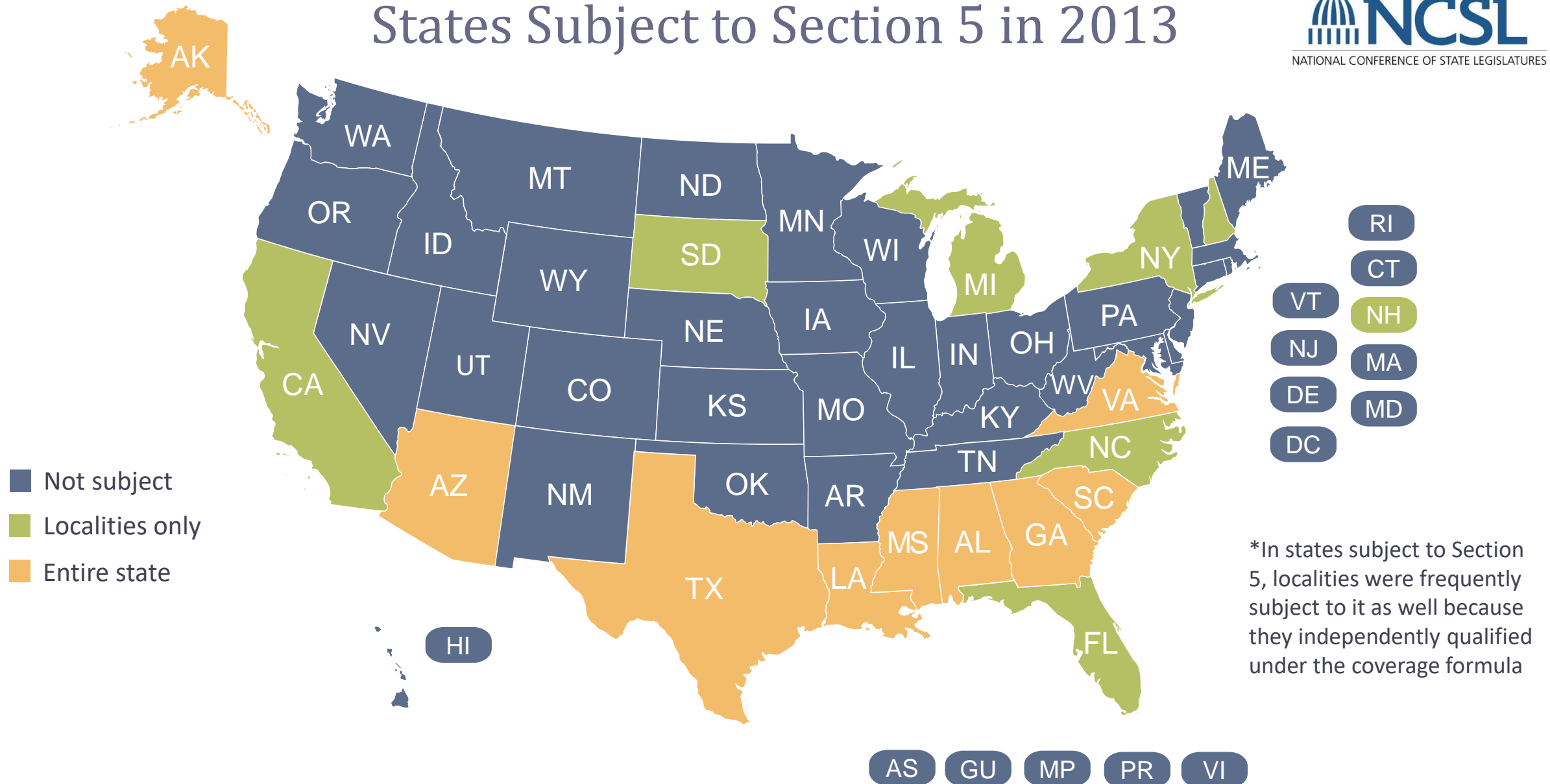
Section 4: Coverage Formula

- **Status:** Invalidated per *Shelby County v. Holder*; Formula determined which jurisdictions are subject to Section 5 preclearance
- Factors considered:
 - Jurisdiction applies test or device as voting requirement
 - Less than 50% of eligible persons were registered to vote in the jurisdiction
 - Jurisdiction provides ballot information only in English, despite the presence of protected language minorities

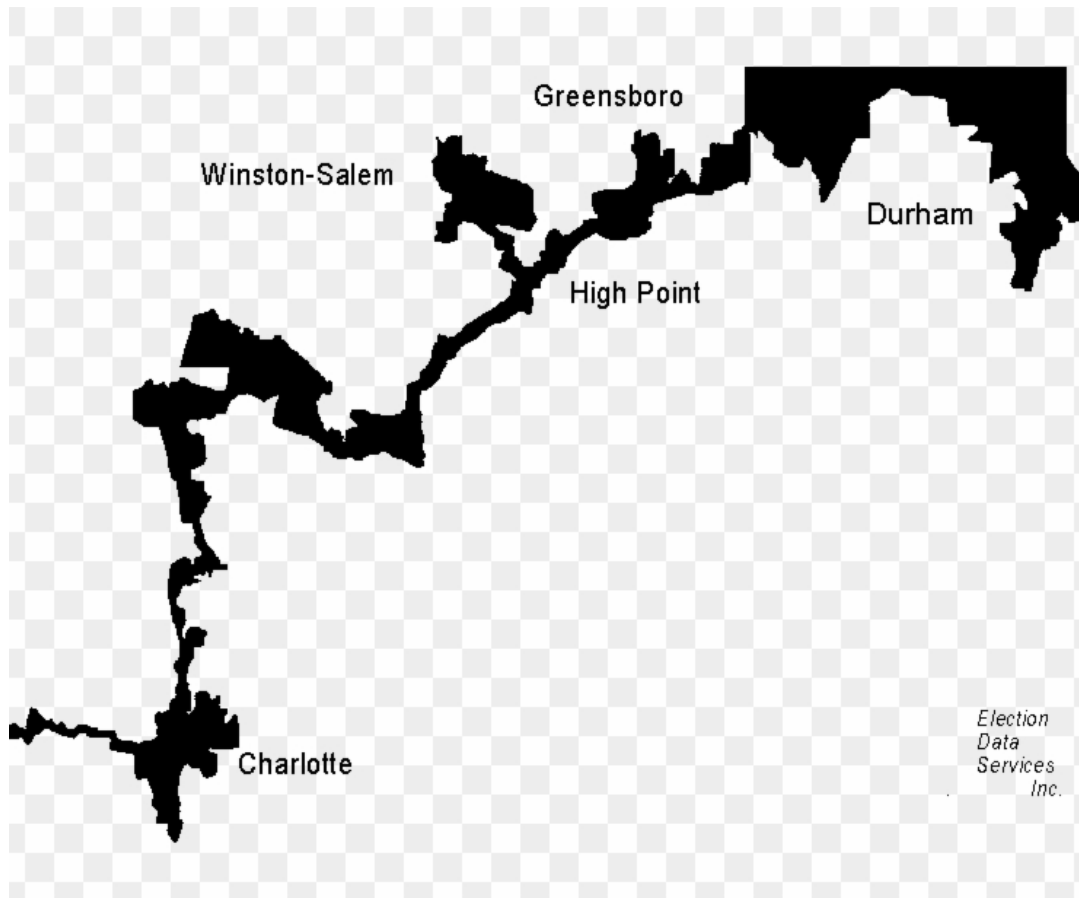
Section 5: Preclearance Regime

- **Status:** In effect
- Applied to both states and localities
- Jurisdictions subject to it must receive permission to make any changes to election laws, including redistricting plans, from either a federal court in D.C. or the U.S. Department of Justice
- Reauthorization required due to sunset provisions

States Subject to Section 5 in 2013

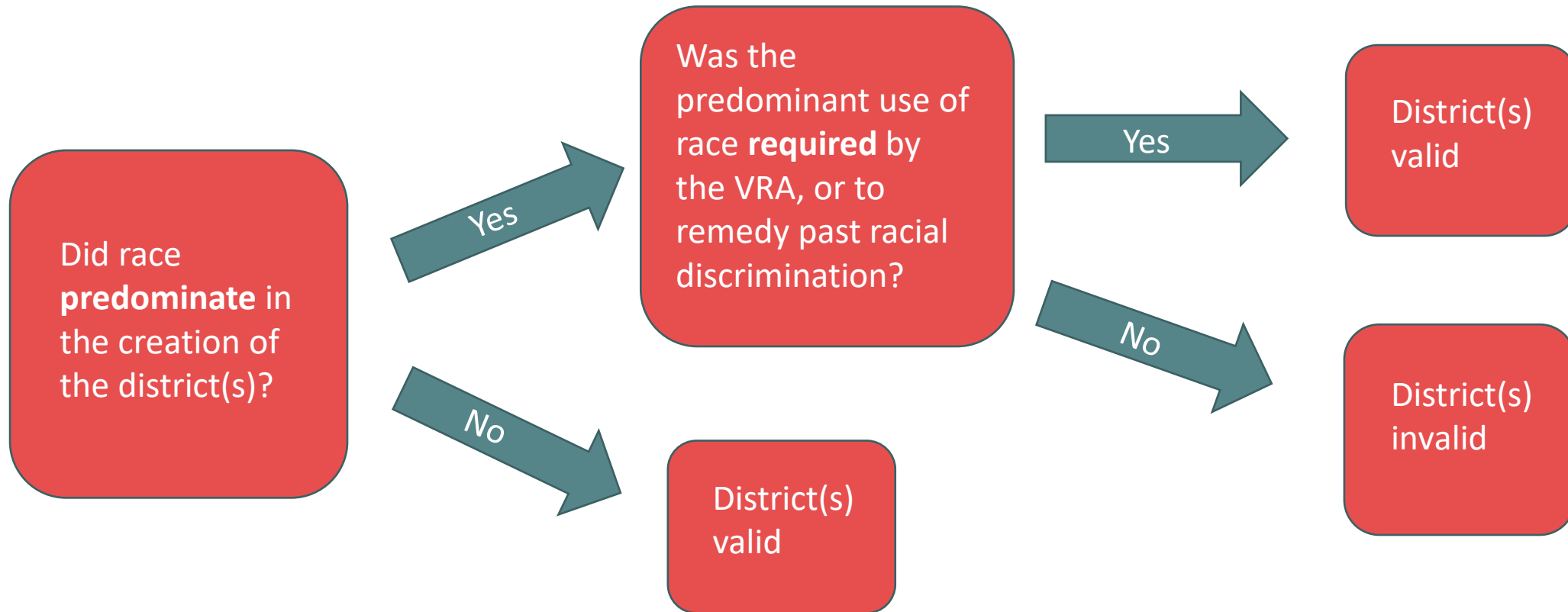


The Flipside: Racial Gerrymandering



- 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

Racial Gerrymandering: Legal Analysis



- Build a record to justify decisions
- Understand the dual mandates
- Ask your counsel about areas of your state requiring further investigation
- Previous court findings may hold little weight this time



How to balance?

Threading the needle

Pennsylvania-Specific Considerations

Know who counts

- Minority groups can have non-racial/ethnic shared interests that bind them together (e.g., economic)
- Scope can vary depending on type of redistricting plans (House, Senate, Congress)

Demographics change

- Experts can help you understand how districts may need to change
- Forecasting future trends can be challenging

Know your priorities

- Supremacy Clause will govern conflicts between state and federal law
- Courts will look to your records to determine liability



Reach out anytime!

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