



Presentation to the Pennsylvania Legislative Reapportionment Commission

Ben Williams, Program Principal, Elections and Redistricting

July 29, 2021

Who are we?



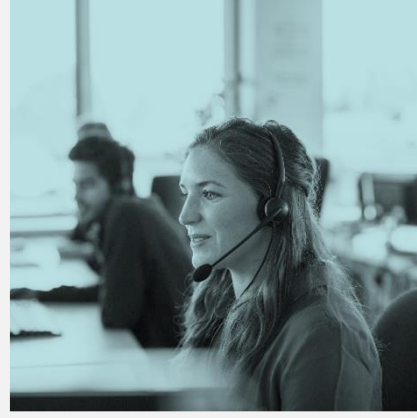
Policy Research

NCSL provides trusted, nonpartisan policy research and analysis



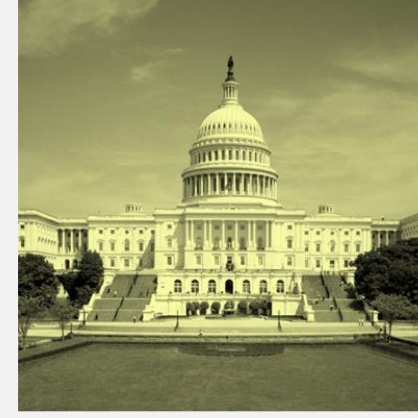
Connections

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

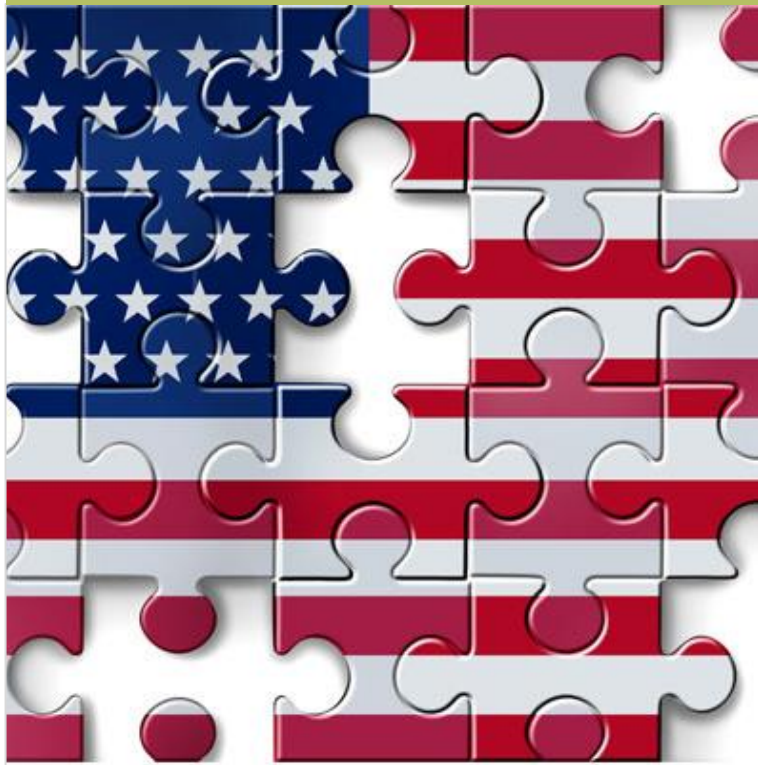


Meetings

NCSL meetings facilitate information exchange and policy discussions

Today's Outline

Fundamentals



Census



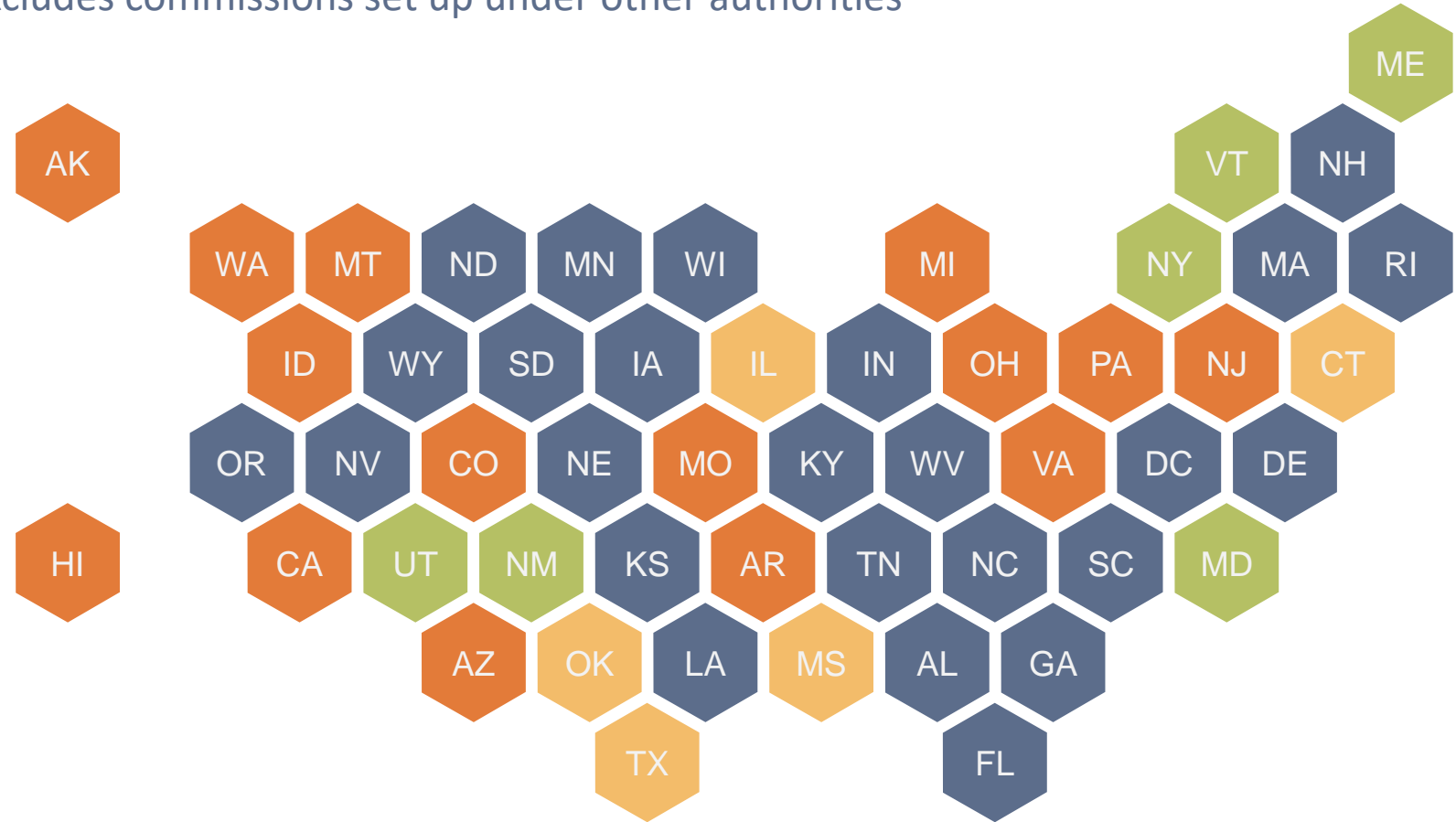
Law and Criteria



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



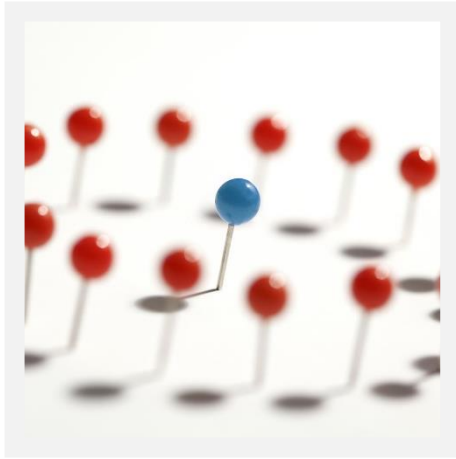
Fundamentals: Who Draws Congressional Districts

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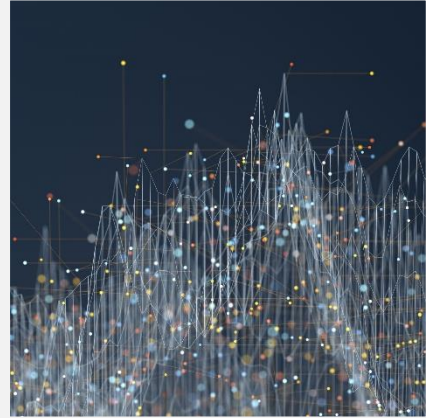
- Legislature only
- Legislature, with advisory commission
- Legislature, with backup commission
- Commission
- At-large district



Fundamentals: Data and the Process of Redrawing Lines



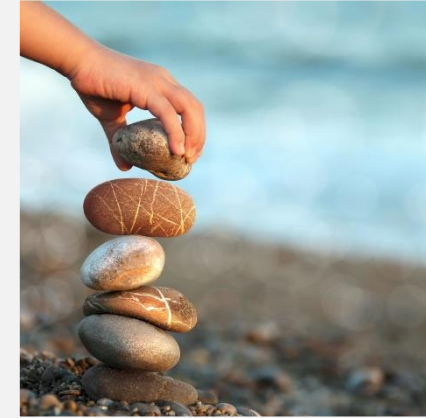
Census Data



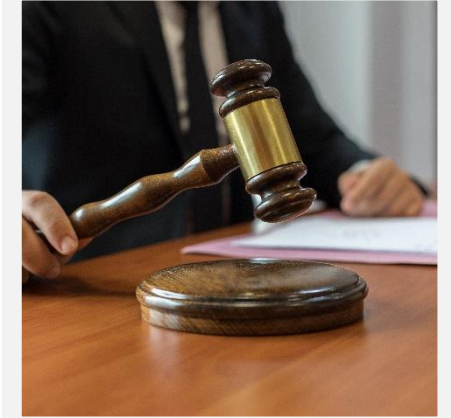
Non-Census
Data



Public
Participation

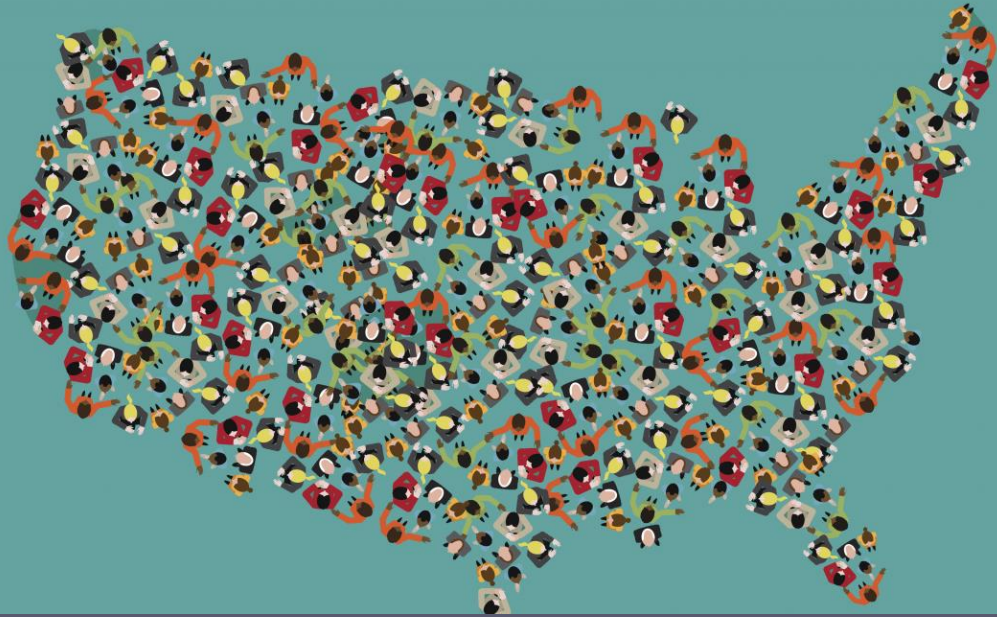


Balancing Act



Compliance

2020 U.S. CENSUS



The Census Matters



NATIONAL CONFERENCE OF STATE LEGISLATURES



Funding

\$39.2 billion in federal funds distributed to Pennsylvania annually



Apportionment

Pennsylvania's voice in Congress



Redistricting

Fulfilling "One Person, One Vote"



Policymaking

Crafting policies for the people of Pennsylvania

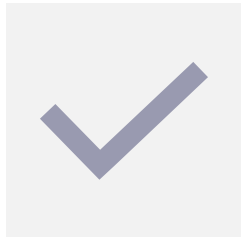
- People living in the United States: 331,449,281
- Growth since 2010: 7.4%
- National growth rate is lowest since the Great Depression
- 47/50 states saw population growth this decade
- Only three states saw their populations shrink this decade:
 - Illinois (-0.1%)
 - Mississippi (-0.2%)
 - West Virginia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



2020 Census Takeaways

What We Know So Far: Population

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*

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

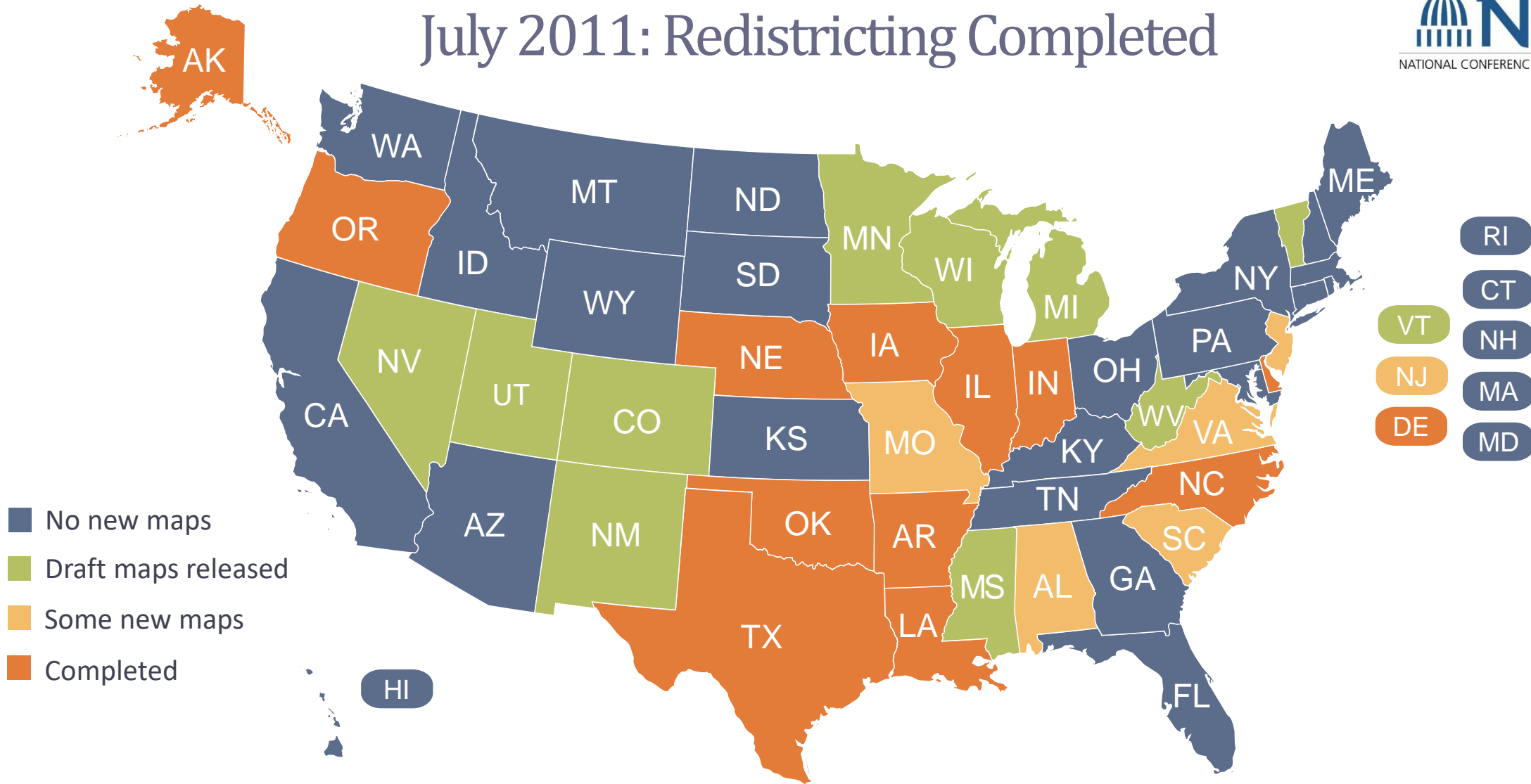


- The pandemic
- Fires
- Floods
- Policy changes



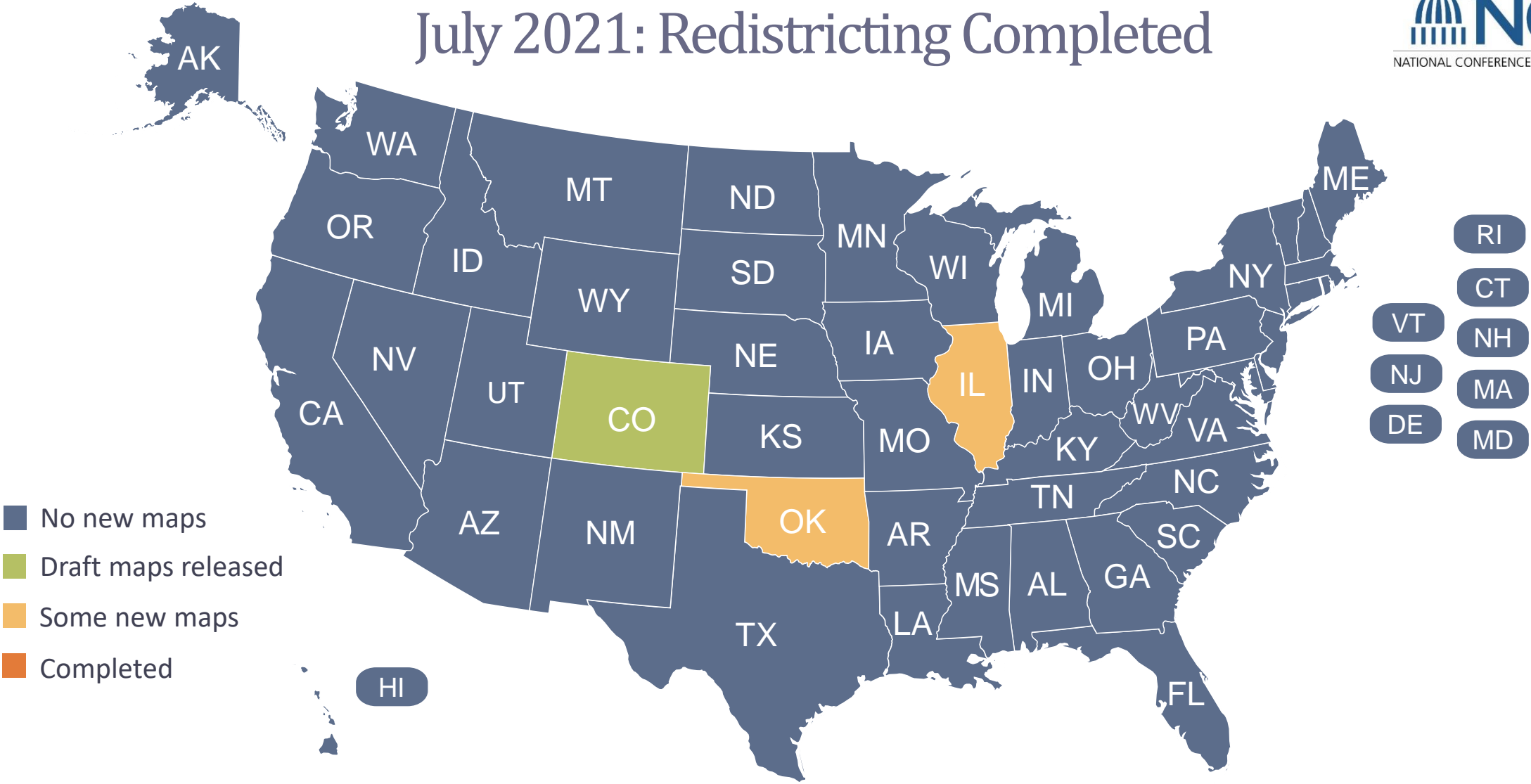
Delays

July 2011: Redistricting Completed



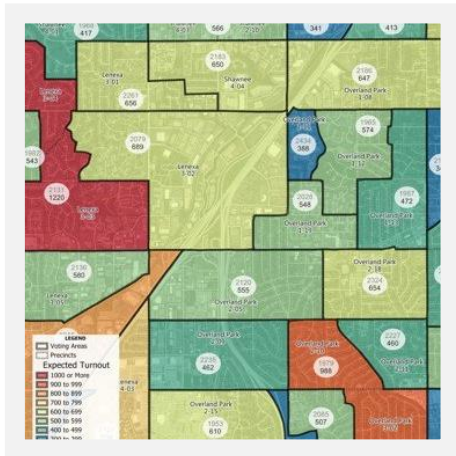
Source: All About Redistricting

July 2021: Redistricting Completed



The Problem With Delays: Less Time to Redistrict

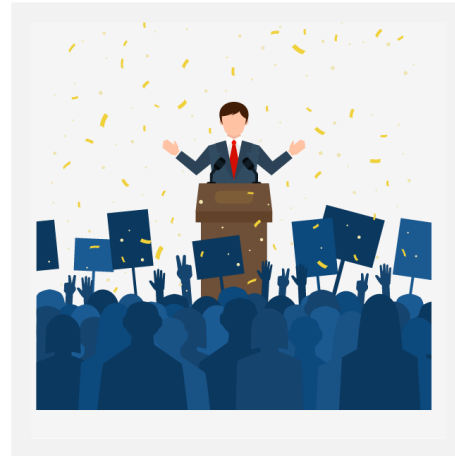
It isn't just drawing new maps



Processing



Filing Deadlines



Residency



Local Prep



Primaries

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

Law and Criteria

Federal and State



United States Constitution



Federal Statutes



State Constitutions



State Statutes/Common Law



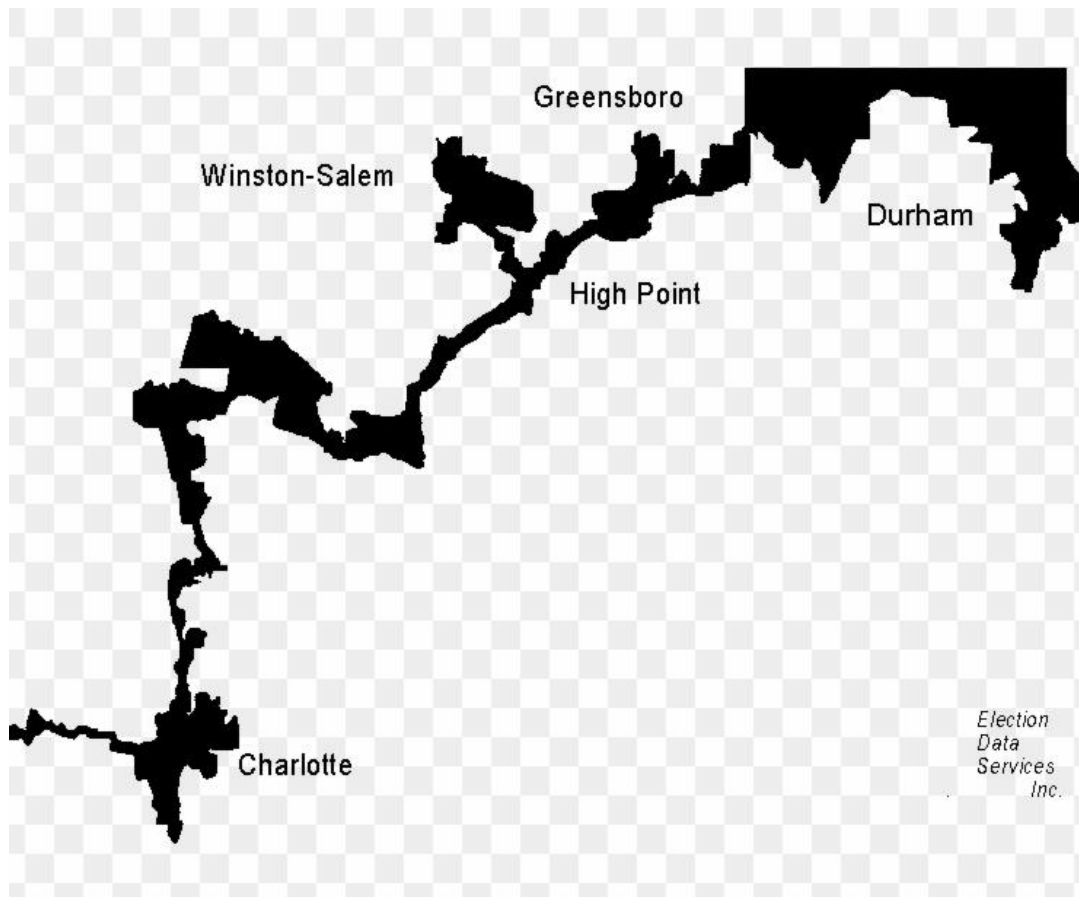
Guidelines

US Constitution: One Person, One Vote



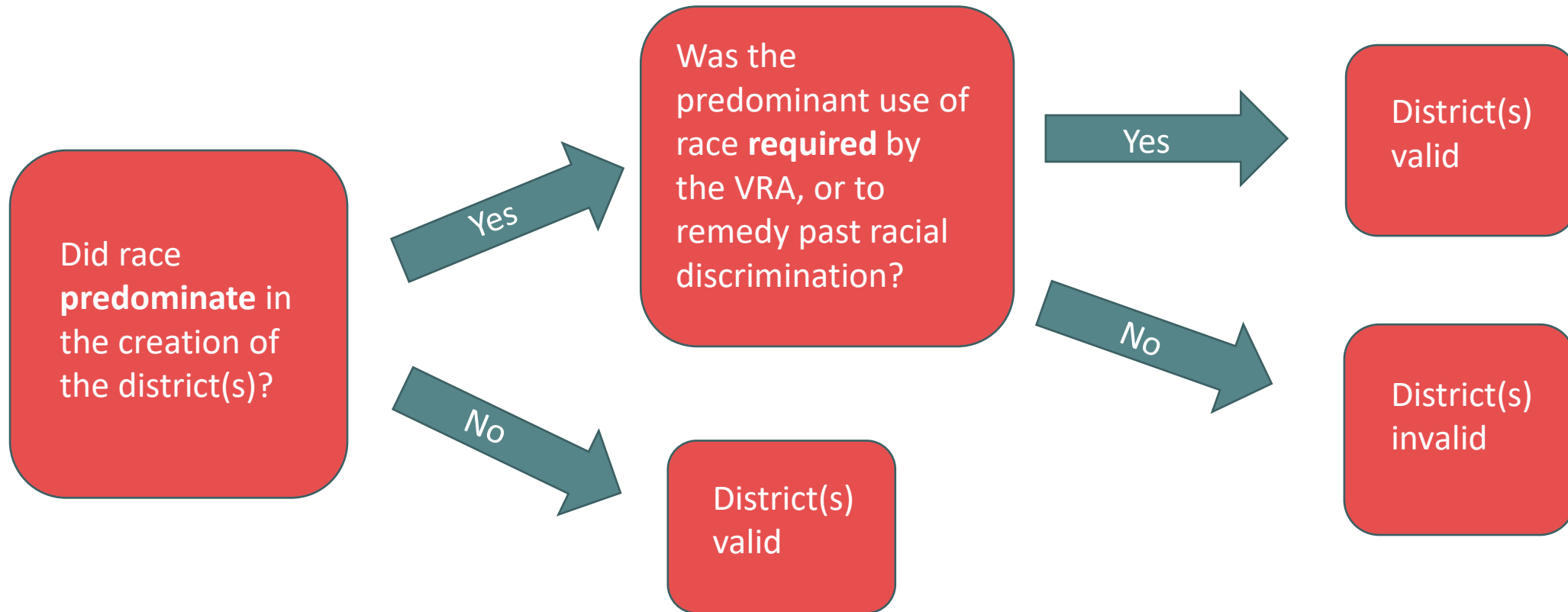
- Principle: Equal Protection requires that votes for legislators and congressmembers hold equal weight
 - Congressional Districts: *Wesberry v. Sanders* (1964)
 - State Legislative Districts: *Reynolds v. Sims* (1964)
- Application: Varies depending on district type
 - Congressional Districts: Exact numerical equality
 - State Legislative Districts: up to 10% deviation if justified by compliance with traditional criteria

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 justiciable in federal courts

Federal Statute: VRA 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: VRA 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: VRA Section 5

SUPREME COURT OF THE UNITED STATES

Syllabus

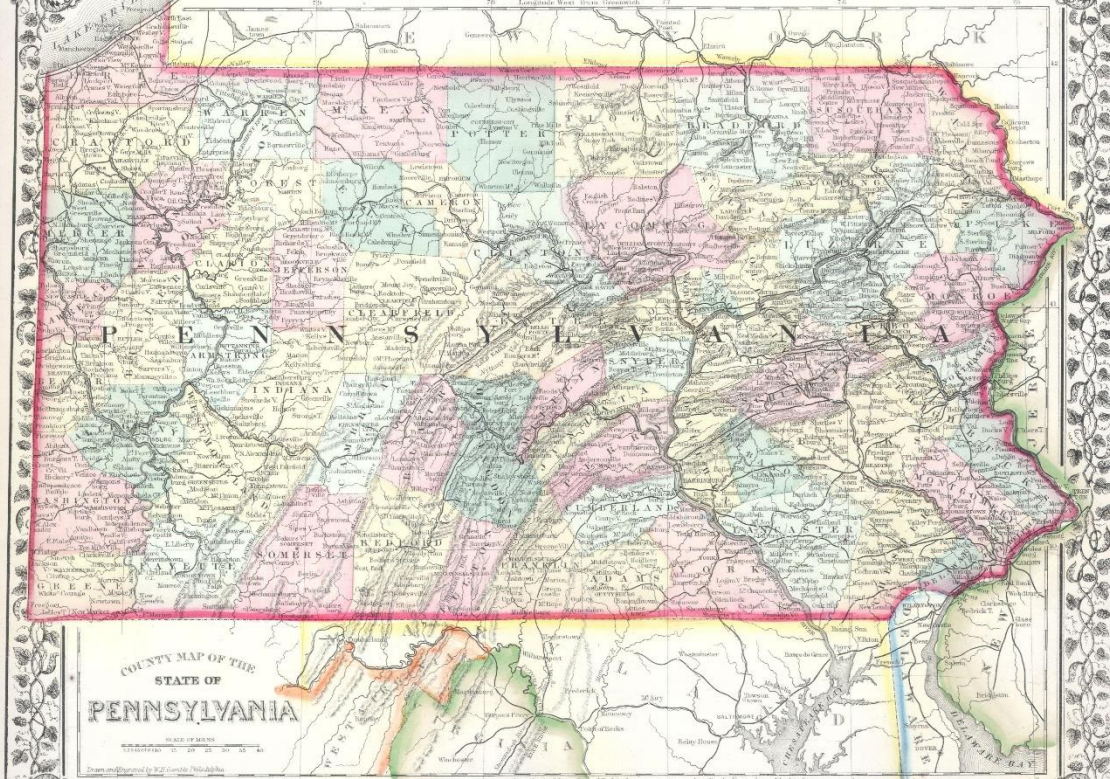
SHELBY COUNTY, ALABAMA *v.* HOLDER, ATTORNEY
GENERAL, ET AL.

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

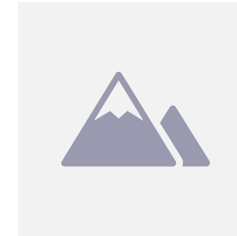




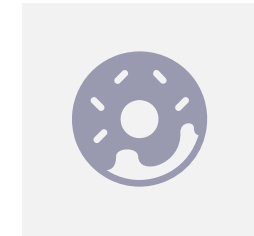
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Pennsylvania's Criteria

Additional congressional criteria can be found in *League of Women Voters v. Commonwealth of Pa.* (2018).



Compactness



Contiguity



Preserve Political
Subdivisions



Others Can Be
Considered

State Constitution: Compactness

- Common traditional principle (40 states)

- Two common ways to measure:

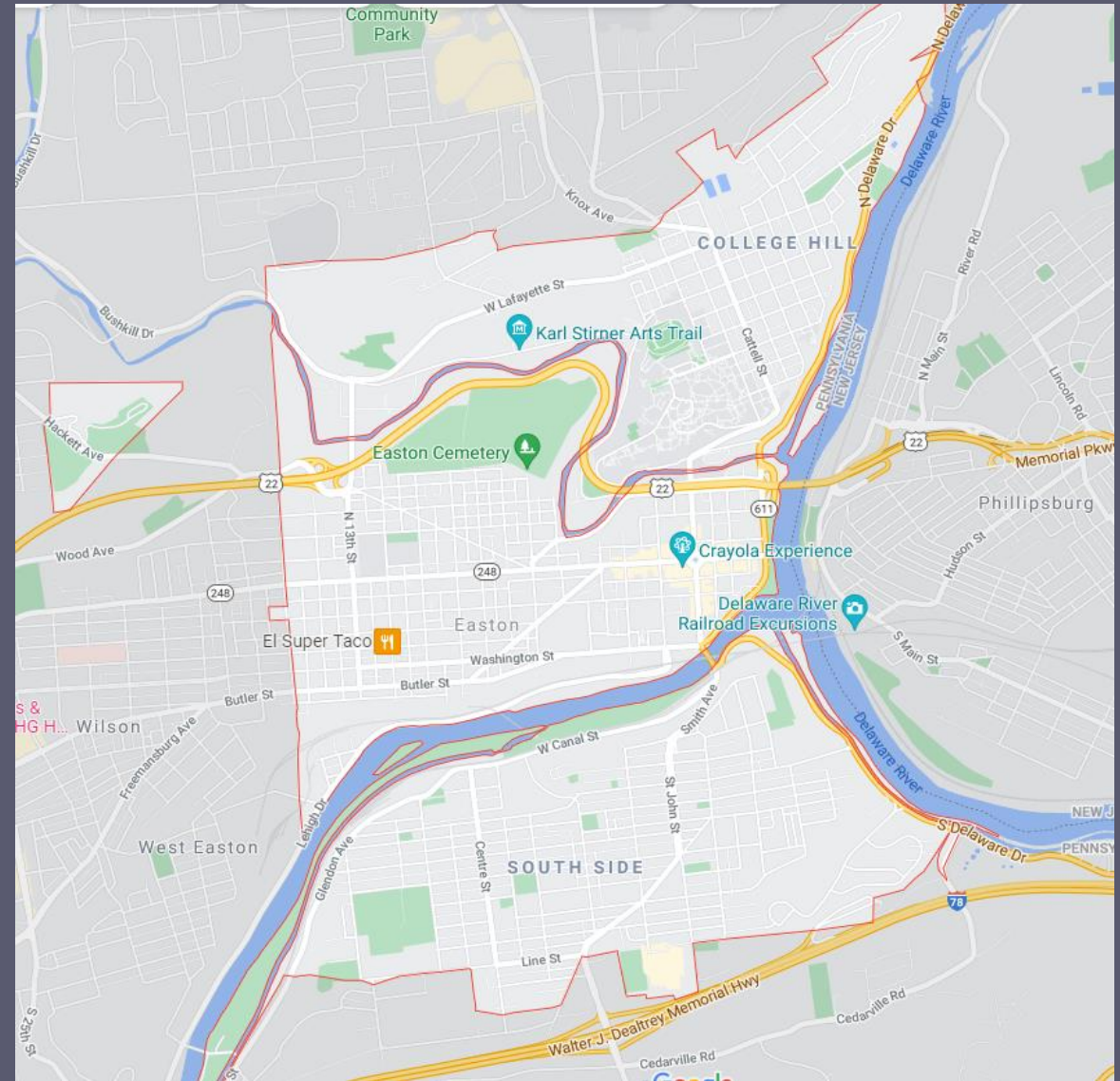
- Polsby-Popper : $\frac{\text{Area of District}}{\text{Area of Circle with Same Perimeter as District}}$

- 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
 - 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

Non-PA Criteria

- Preserving communities of interest (25 states)
- Prohibition on drawing districts to favor or disfavor an incumbent, candidate or party (18 states)
- Preserving cores of prior districts (10 states)
- Prohibiting use of political data (5 states)
- Competitiveness (5 states)
- Proportionality (2 states)



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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
- **Pennsylvania Constitution Art. I, Section 5:** “Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.”
- Why it’s significant: Adequate & Independent State Grounds Doctrine

In Summary, With Redistricting...



Criteria Can Conflict

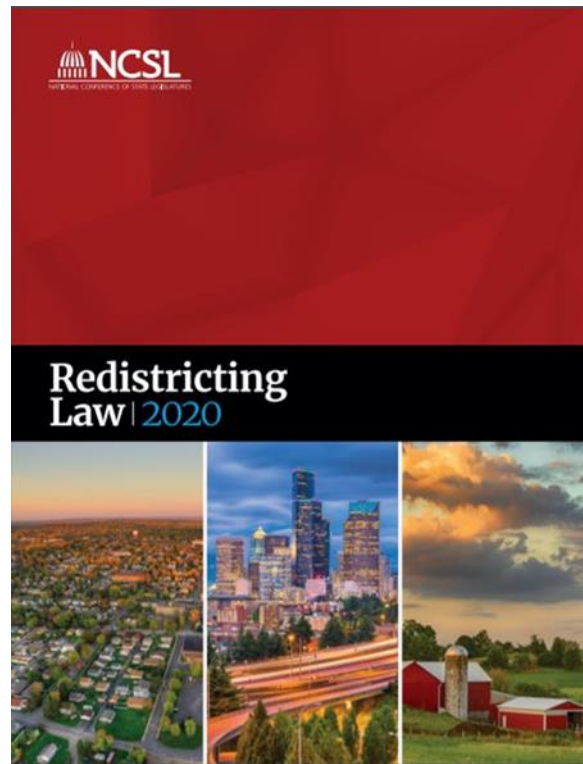


Law Can Be Ambiguous



Impossible to Please Everyone

Questions?



Reach out anytime!

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