

# Drawing Maps That Will Stand Up in Court

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## Definitions

- Reapportionment
- Redistricting

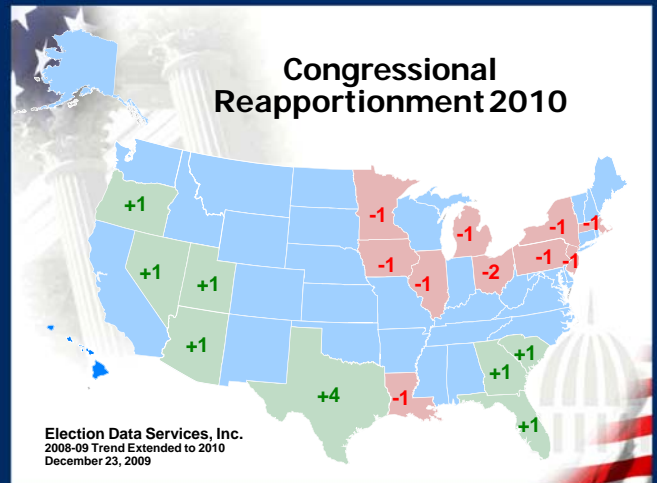
2

## Why Redistrict?

- Reapportionment of Congressional Seats

3

## Congressional Reapportionment 2010



## Why Redistrict?

- Population Shifts within State

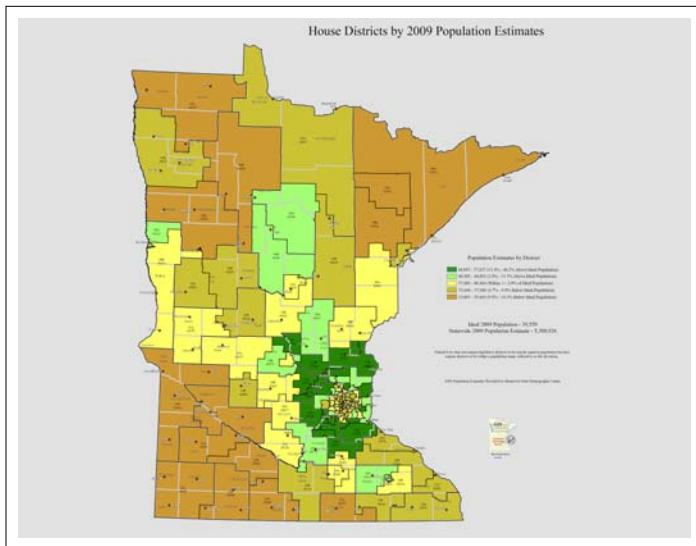
5

## 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

6



## The Facts of Life

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Gerrymandering

- Packing
- Fracturing
- Creating a Gerrymander

8

## The Need for Limits

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

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## Limits on Gerrymanders

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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

10

## Limits on Gerrymanders

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Data that May be Used

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

11

## Limits on Gerrymanders

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Review by Others

- Public hearings
- Preliminary plans
- Judicial review

12

## Limits on Gerrymanders

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### 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

13

## The Census

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- Use Official Census Bureau Population Counts

14

## Equal Population

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

15

## Congressional Districts

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- 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

16

## Legislative Districts

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- 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

17

## Racial and Language Minorities

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## Data on Race and Language

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- 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

19

## Voting Rights Act § 2

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- 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

20

## Voting Rights Act § 5

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- "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

21

## Equal Protection Clause of the 14th Amendment

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

22

## Racial Gerrymanders

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- Don't Draw Districts With Bizarre Shapes

23

## North Carolina

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Congressional District 12 - 1992



Election  
Data  
Services  
Inc.

24

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

Redistricting is one area in which appearances do matter

## North Carolina

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Congressional District 12 - 1992



Election  
Data  
Services  
Inc.

27

## Racial Gerrymanders

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- Draw Districts that are “Reasonably Compact”

28

## Texas

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Congressional District 30 - 1992



29

## Texas

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Congressional District 30 - 1996



30

## Texas

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Congressional District 18 - 1992



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## Texas

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Congressional District 18 - 1996



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## Texas

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Congressional District 29 - 1992



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## Texas

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Congressional District 29 - 1996



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## Louisiana

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Congressional District 4 - 1992



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## Louisiana

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Congressional District 4 - 1994



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## Louisiana

Congressional District 4 - 1996



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## Florida

Congressional District 3 - 1992



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## Florida

Congressional District 3 - 1996



39

## North Carolina

Congressional District 12 - 1997



40

## North Carolina

Congressional District 12 - 1998



41

## North Carolina

Congressional District 12 - 2000 (1997)



42

## Racial Gerrymanders

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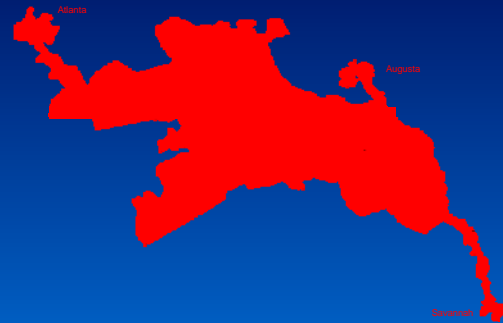
- Don't Let Race Be Your Dominant Motive

43

## Georgia

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Congressional District 11 - 1992



44

## Georgia

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Congressional District 4 - 1996



45

## Racial Gerrymanders

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

46

## Traditional Districting Principles

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- 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

47

## Strict Scrutiny

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

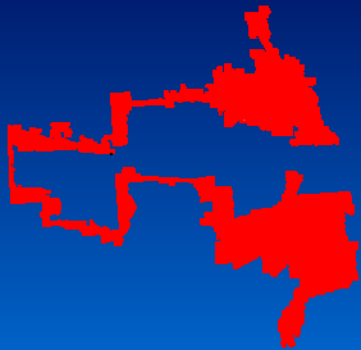
48



## Illinois

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Congressional District 4 - 1992



49

## Partisan Gerrymandering

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## Partisan Gerrymandering

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

51

## Federalism in Redistricting

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## The Minnesota Experience

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- 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)

53

## Federalism in Redistricting

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- 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

54

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[www.senate.leg.state.mn.us/departments/scr/REDIST/Draw/Draw.pdf](http://www.senate.leg.state.mn.us/departments/scr/REDIST/Draw/Draw.pdf)