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THE TERMINOLOGY OF DISTRICTING

Prepared for



CAPITOL FORUM - REDISTRICTING POST-CONFERENCE, PHOENIX AZ DECEMBER 12, 2019

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Ordering of Criteria

- Districting criteria can be ranked in their legal importance in terms of how courts treat compliance with them.
 - Criteria of the highest order are those which are constitutionally mandated as a matter of federal law, such as the “one person, one vote” standard, and the requirement that race not be the “preponderant motive” in line drawing.
 - Next would come compliance with federal statutes such as the Voting Rights Act.
 - Next come criteria that are found in state constitutions.
 - Finally, the rest come from statute and common practice

Focus of this panel

- In this panel, we focus on the criteria that a legislature either may be constrained by state law or may choose among on principle of `good governance'
- I will begin by giving some definitions of some traditional redistricting criteria
- I will show some examples of different types of gerrymanders
- I will finish my brief presentation and introduce my fellow panelist and open it up for discussion

Traditional Criteria

HIGHEST ORDER (MANDATED)

- **Contiguity** - refers to the drawing of districts whose parts are geographically connected with one another, i.e., not divided into multiple disconnected pieces. (how do we deal with issues like water contiguity)
- **One person, one vote** - population equality across districts (the courts have long held that districts must contain the same number of persons, regardless of voter turnout or voter eligibility)
- **Race as preponderant motive** – Race can not be used as the dominant criteria (multiple cases in the 2010 round of redistricting were struck down by SCOTUS based on this criteria)

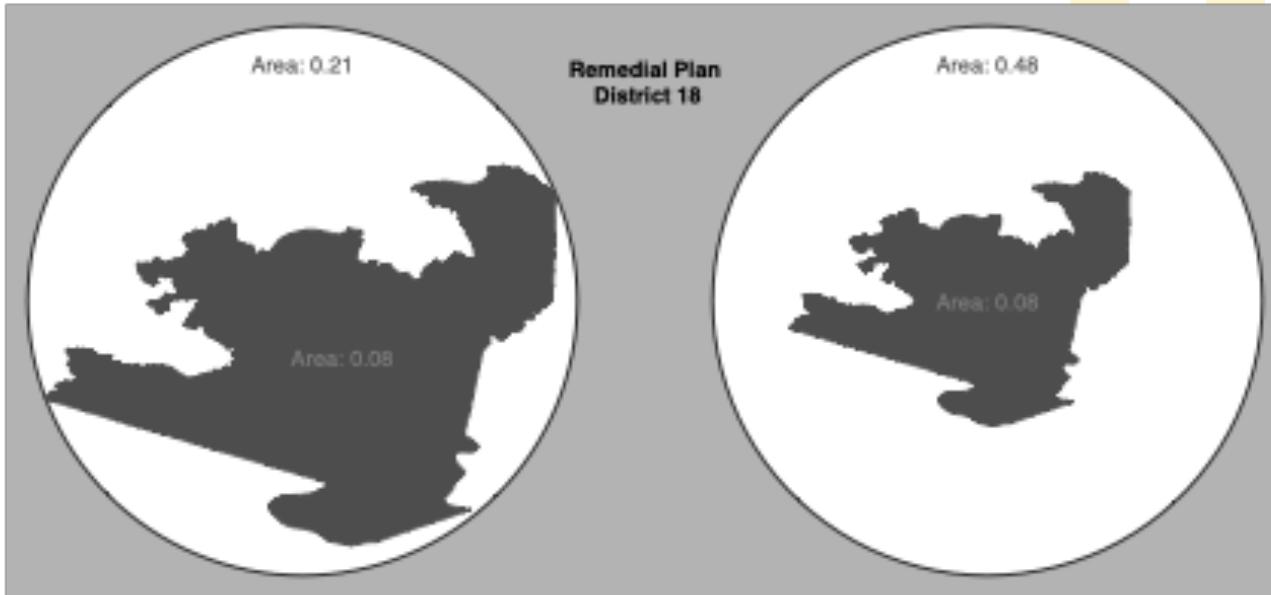
Traditional Criteria

LOWER ORDER (may or may not be mandatory)

- **Integrity of county and city boundaries** – minimizing the number of political sub-division splits
- **Preservation of District Cores** – Avoiding drawing districts that dramatically reconfigure the prior maps
- **Compactness** - degree of irregularity in the border of a district, or to the degree to which the district borders are not close to the geographic center of the district
- **Fracking** - Fracking occurs when population from given county or city is found in two or more discontiguous pieces within the same district

Compactness

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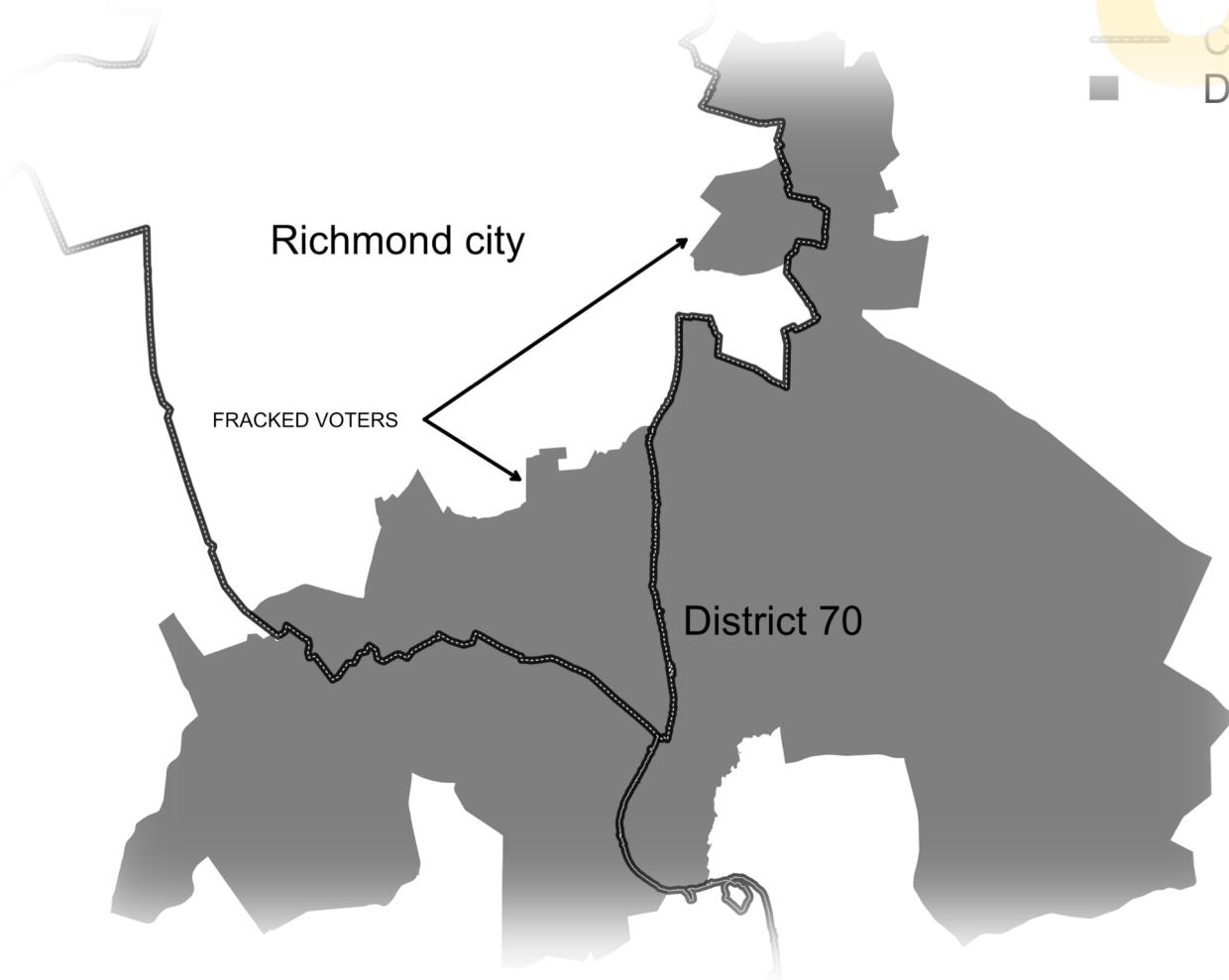


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Fracking



Traditional Criteria

LOWEST ORDER (unlikely to be mandatory)

- **Incumbent Pairings** - to the greatest extent feasible, incumbent homes should remain in a district with the same number
- **Competitiveness** - creation of competitive districts where there is no significant detriment to other goals (Ariz.)
- **Prohibiting Partisan data** - No apportionment plan or individual district shall be drawn with the intent to favor or disfavor a political party or an incumbent (FLA. CONST. art. III, § 20(a))

Traditional Criteria

LOWEST ORDER (unlikely to be mandatory)

- **Preserve Communities of Interest** – Communities of interest (however they are defined) should remain in one entire district, when applicable
- **Proportionality/Symmetry** - Districts must be drawn in ways that seek to achieve either particular outcomes or political opportunities

Traditional Criteria

OTHER TERMS

- **Stealth Gerrymander** - is a plan that satisfies traditional districting criteria to a considerable extent but still minimizes/dilutes the voting strength on the less favored group.
- **Dummymander** - arises when the party doing the line-drawing has cut the margins too thin in many districts (and relies overmuch on the power of incumbency advantage) so that, if there is an electoral tide favoring the other party, there can be a dramatic reversal in party fortunes.

Traditional Criteria

OTHER TERMS

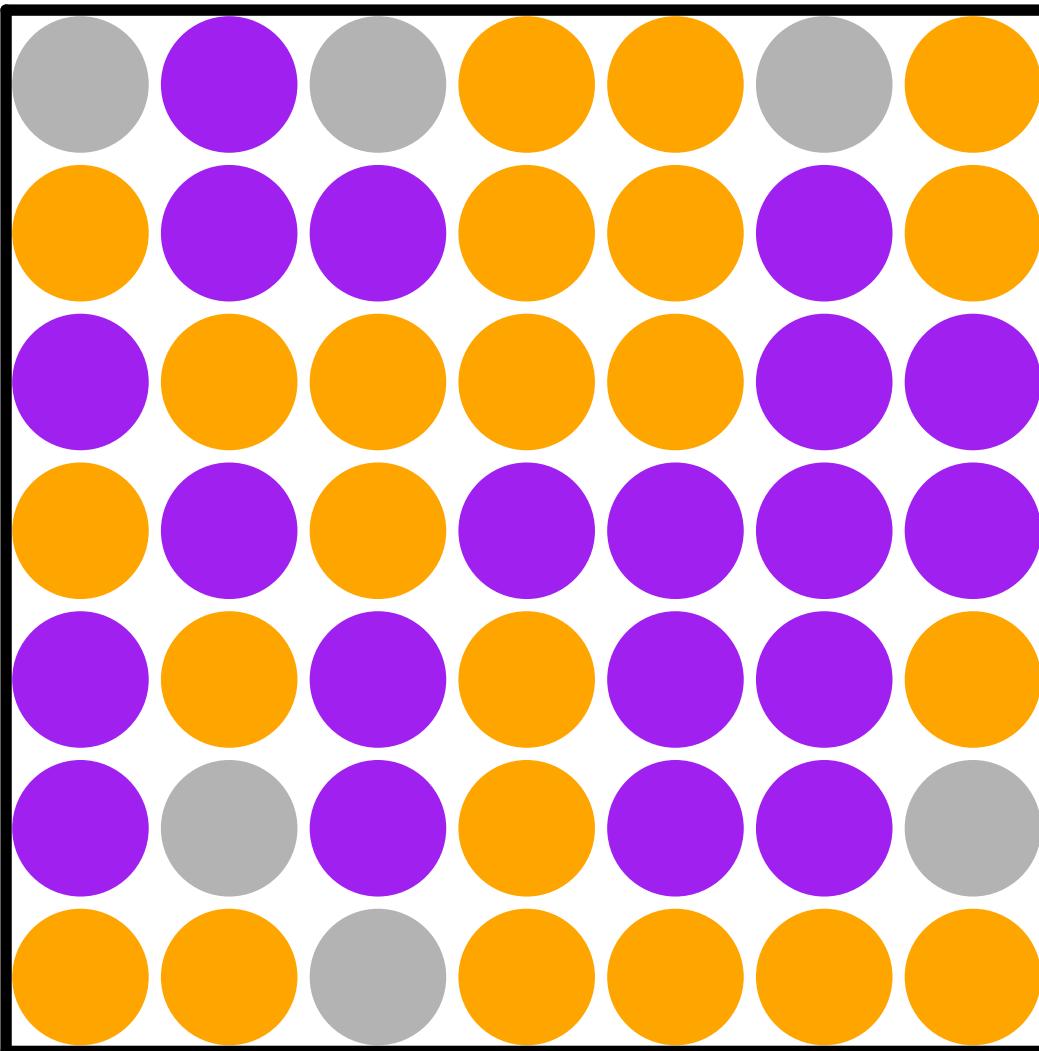
- **Cracking** - involves dispersal of a group's electoral strength so as to dilute the group's political power. Districts that have been cracked are ones where voters of one partisan or racial or ethnic group have had their share of the district's electorate reduced so as to make it impossible (or unlikely) that candidates preferred by this group will be able to win the district.
- **Packing** - involves concentrating a group's electoral strength so as to dilute the group's political power. Districts that have been packed are those which have had voters from one partisan or racial or ethnic group grouped together in the district in such a fashion that the group's candidate of choice wins the district by an overwhelming majority. Packing ``wastes'' votes of the group and costs them potential victories in other districts.

Types of Gerrymanders

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**GERRYMANDERS COME IN MULTIPLE FORMS, SOME PARTISAN,
SOME RACIAL, SOME INTENTIONAL, SOME ACCIDENTAL, AND
YET OTHERS NATURALLY.**

LET'S SHOW A FEW...

**49 Total Voters – 7 Districts**

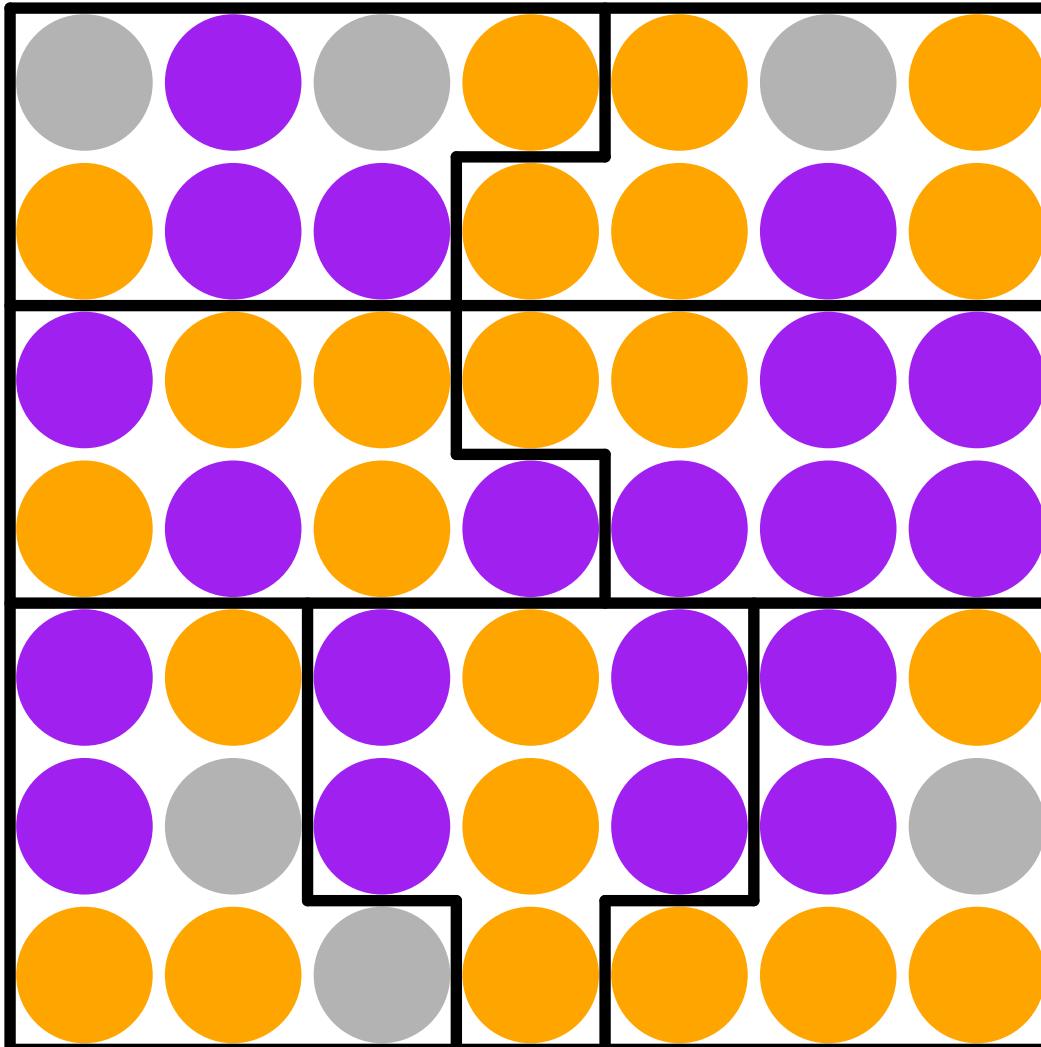
Orange and Purple vote 100% with their party, gray votes 50% of the time for either Orange or Purple.

Voter matrix draw randomly
Districts must have equal population (7 persons).

Votes	Seats
	20 (41%)
	23 (47%)
	6 (12%)

Gray seats are those that the undecided voters cast the pivotal vote

Majoritarian Principle – Competitive (w/ no bias)

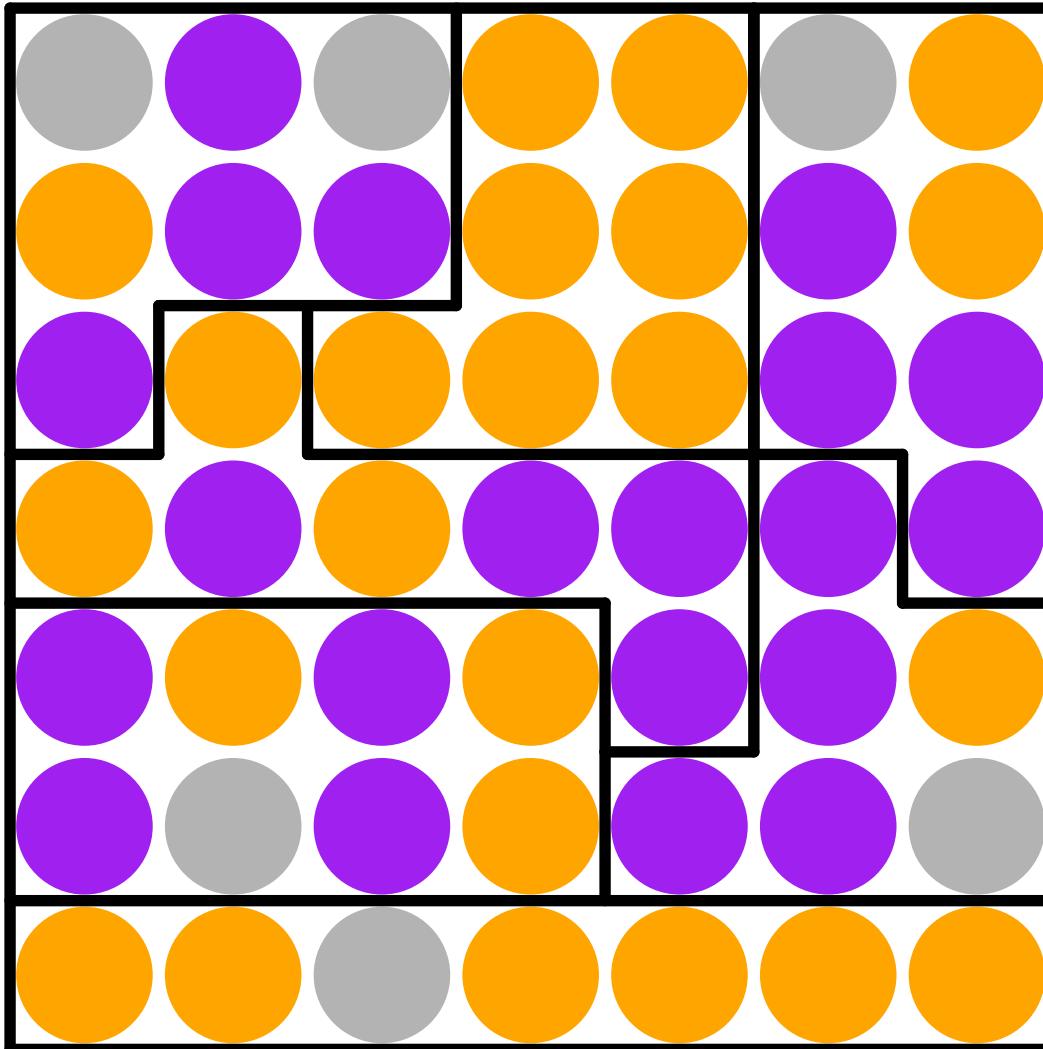


Neutrally drawn with compact boundaries. The majority party wins 3, the minority party wins 2, one competitive district is favored by purple and one favors the orange party

Votes	Seats
20 (41%)	2
23 (47%)	3
6 (12%)	2

Gray seats are those that the undecided voters cast the pivotal vote

Anti-Majoritarian – Not Competitive (w/ bias)

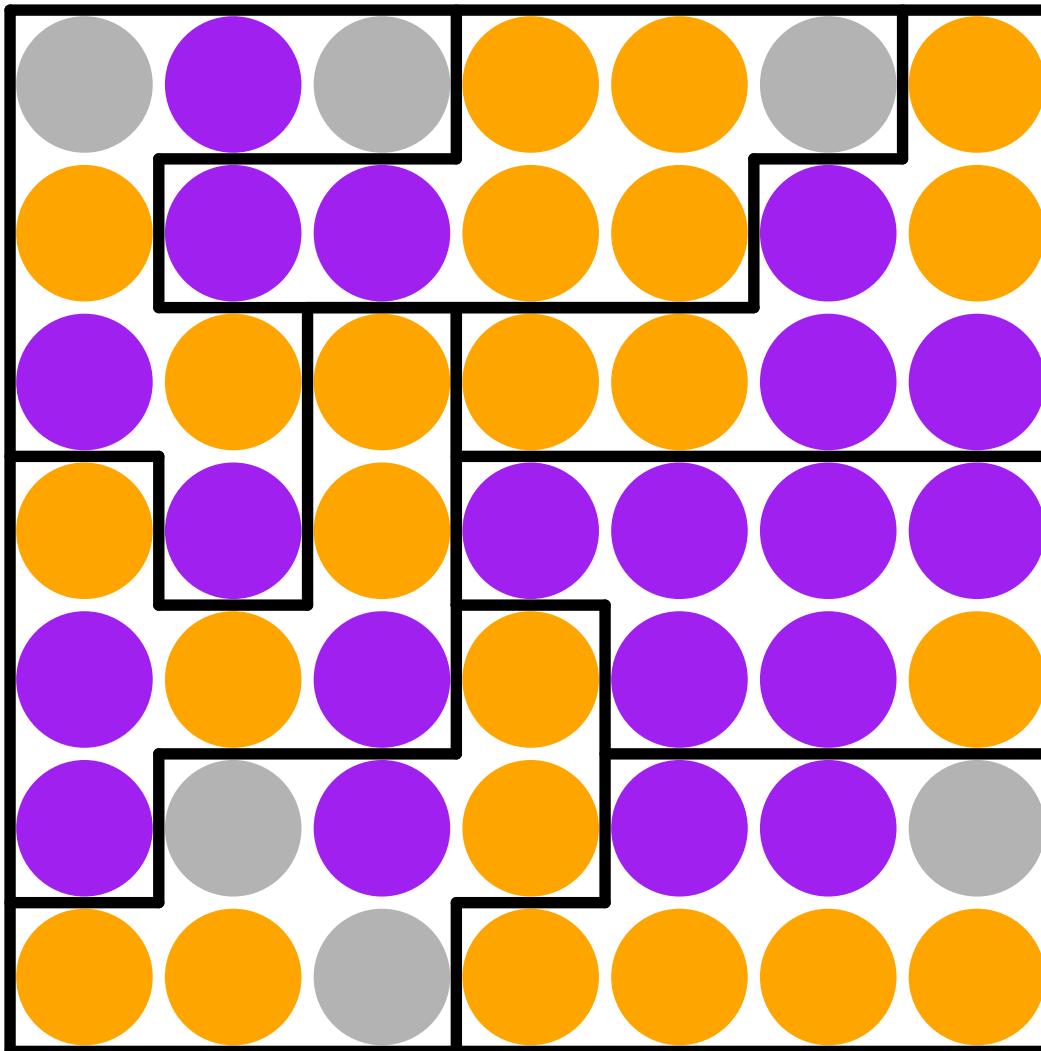


Plan is drawn to maximize the total number of seats for the minority party. It is not possible for them to get more than 5/7.

Votes	Seats
20 (41%)	5
23 (47%)	2
6 (12%)	0

Gray seats are those that the undecided voters cast the pivotal vote

Egregious Gerrymander – Low responsiveness (w/ bias)

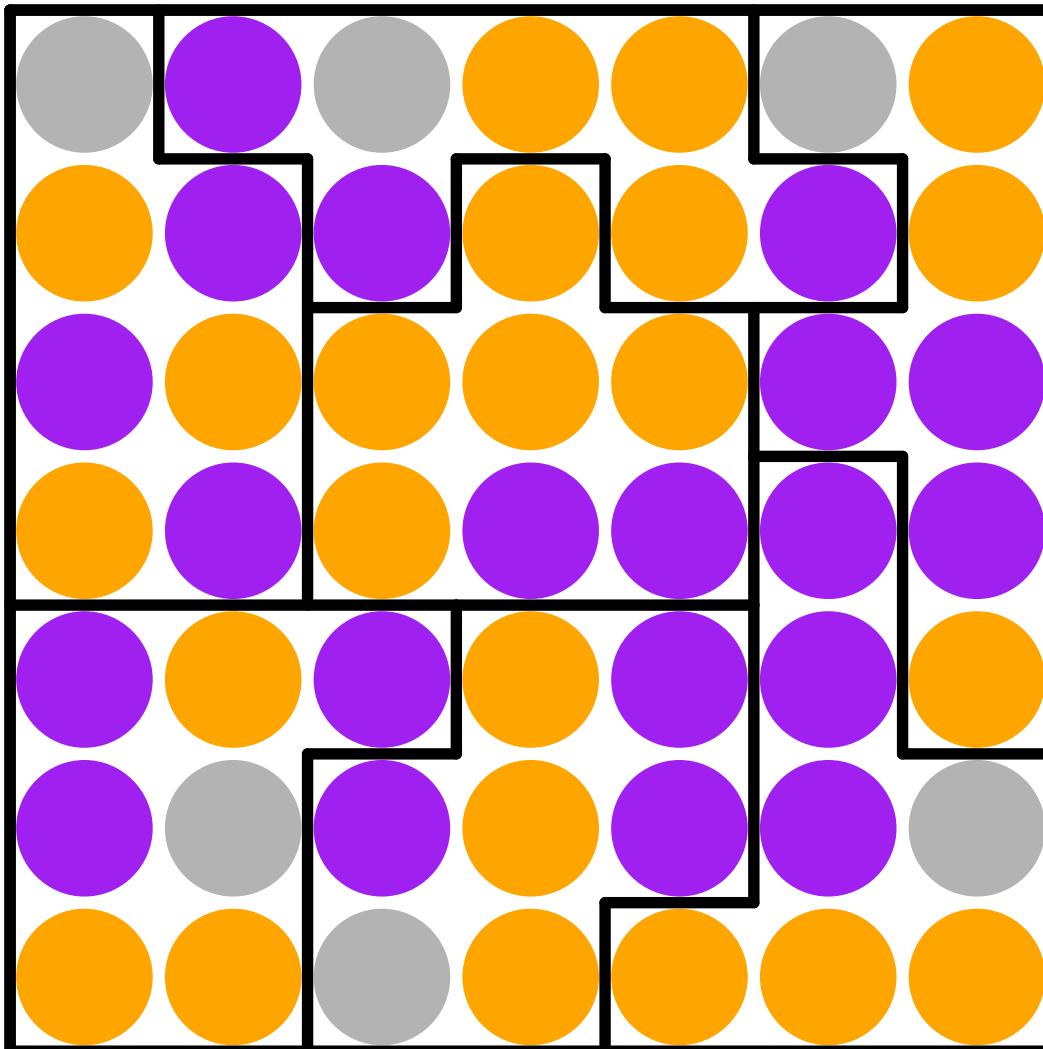


This plan maximizes the majority party's seat share. Given the concentration of purple voters on the right, it is unavoidable that they win at least one seat. (Perhaps the one virtue of being 'naturally' packed)

Votes	Seats
20 (41%)	1
23 (47%)	5
6 (12%)	1

Gray seats are those that the undecided voters cast the pivotal vote

Highly Competitive (w/ no bias)

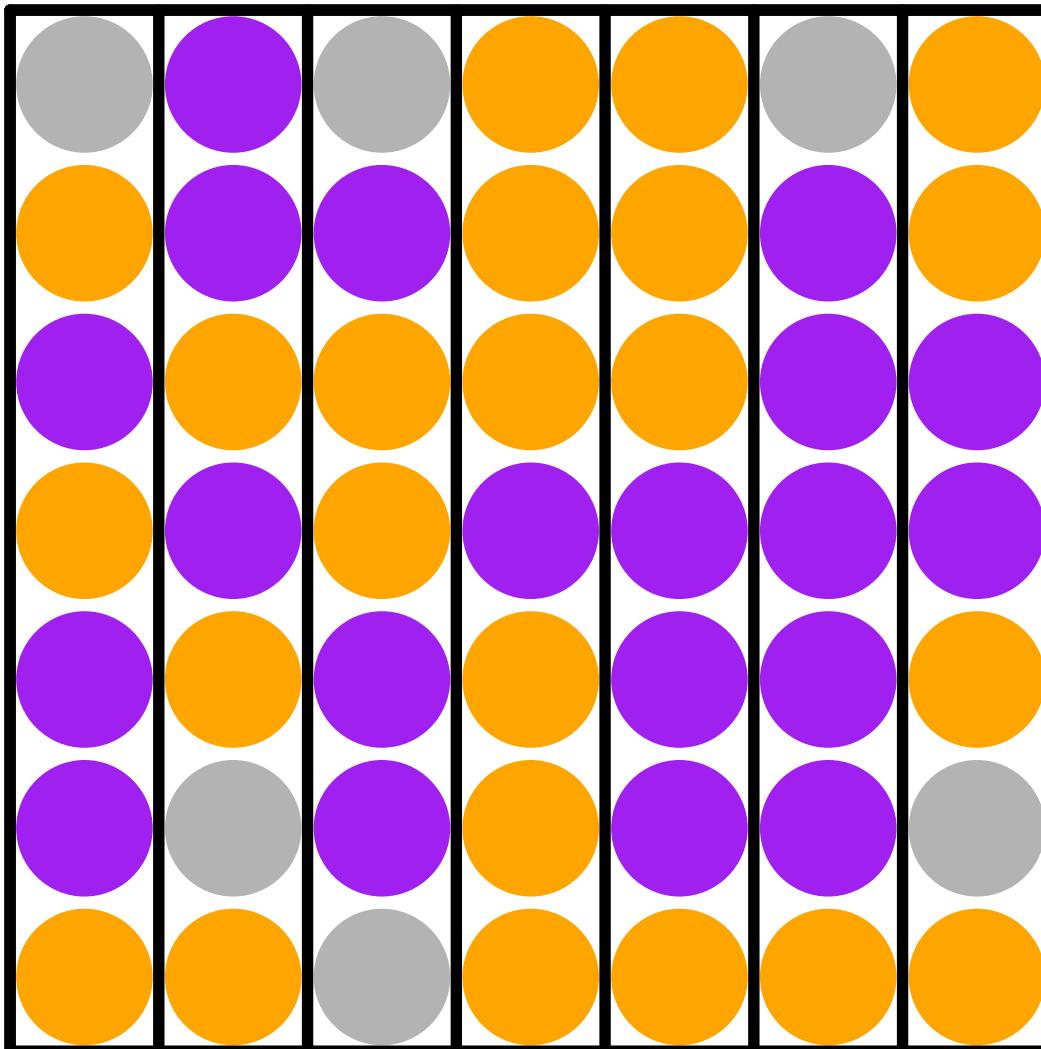


This plan is drawn to maximize competitiveness, with unaffiliated voters deciding 6/7 contests.

Votes	Seats
20 (41%)	0
23 (47%)	1
6 (12%)	6

Gray seats are those that the undecided voters cast the pivotal vote

Neutral Plan (vertical – responsive but slightly bias)

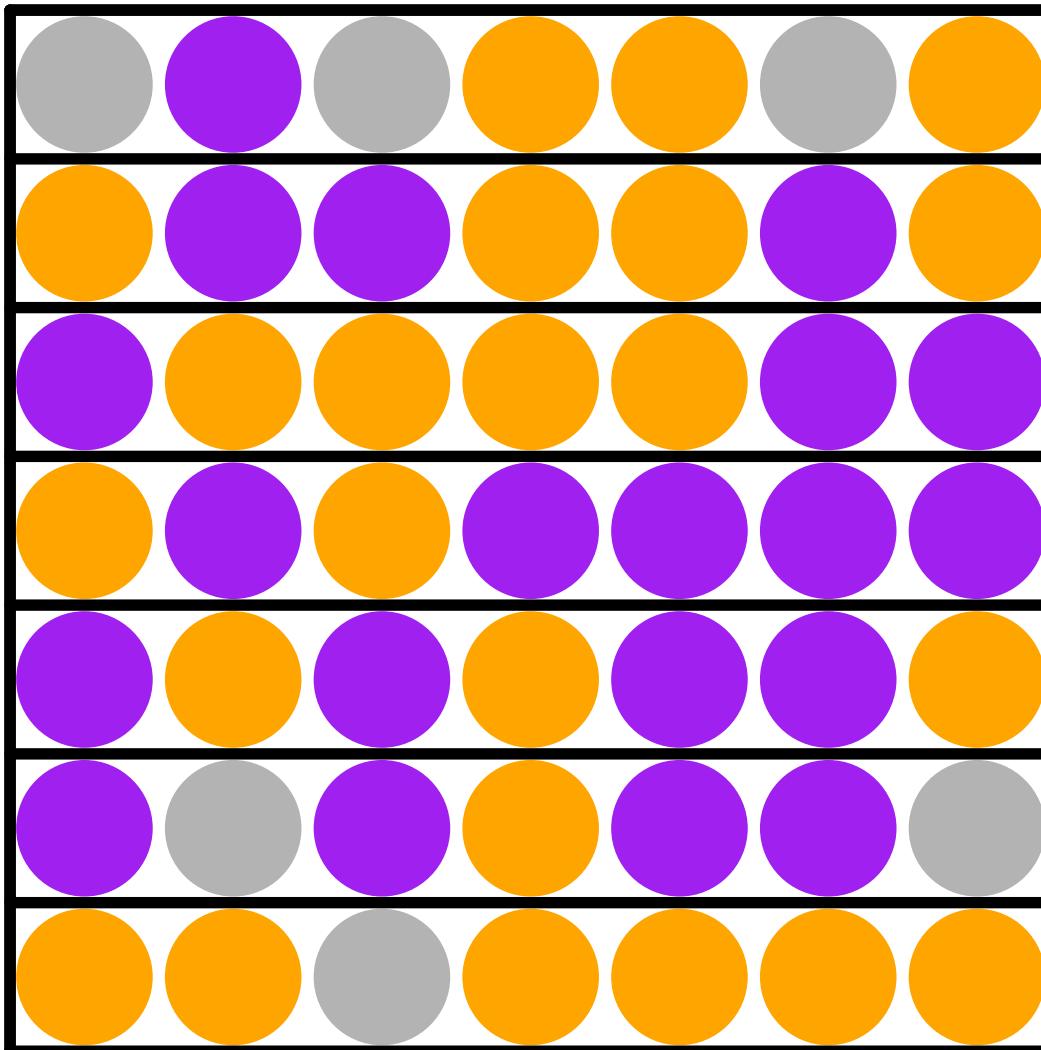


49 Total Voters – 7 Districts
Orange and Purple vote
100% with their party, gray
votes 50% of the time for
either Orange or Purple

Votes	Seats
20 (41%)	1
23 (47%)	3
6 (12%)	3

Gray seats are those that the undecided voters cast the pivotal vote

Neutral Plan (horizontal w/ no bias)



49 Total Voters – 7 Districts
Orange and Purple vote
100% with their party, gray
votes 50% of the time for
either Orange or Purple

Votes	Seats
20 (41%)	3
23 (47%)	3
6 (12%)	1

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Conclusions

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**THE UPSHOT FROM THIS EXERCISE IS THAT THE LINES MATTER!
SOMETIMES EVEN UNINTENTIONAL DECISIONS CAN LEAD TO
SUB-OPTIMAL, OR PERHAPS EVEN UNCONSTITUTIONAL
OUTCOMES.**

- Let's meet our Panelists!

Kathay Feng



- National Redistricting Director for Common Cause
- Leads Common Cause's work to challenge partisan and incumbent gerrymandering,
- Kathay is the architect of California's Citizens Redistricting Commission
- She also led efforts that secured passage of California laws bringing online voter registration and same day registration (called conditional voter registration) to the state.

Rep. Tyler Vorpagel



- Represents the 27th Assembly District of Wisconsin
- Received a Bachelor's Degrees in Public Administration and Political Science
- Most recently served as District Director for Congressman Tom Petri
- Worked with numerous state, county, and community leaders across Wisconsin and throughout Sheboygan and Manitowoc Counties
- Chairs the Federalism and Interstate Relations committee
 - Serves on the Children and Families, Energy and Utilities, International Affairs and Commerce, State Affairs, and Transportation Committees



NATIONAL CONFERENCE OF STATE LEGISLATURES

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**REP.
VORPAGEL**



Common Cause has been involved with some high profile court cases (see *Common Cause v. Lewis*, N.C 2019) -- going into the next decade of redistricting, especially now that Section 5 **preclearance** is no longer a constraint, and SCOTUS **non-judiciable** ruling in *Rucho* (2019), how do you expect states to respond? Should we expect more or less litigation after 2021?

Wisconsin was the subject of a very high profile federal Partisan Gerrymander case (Gill v. Whitford (2016)) -- going into 2021, how do you expect public scrutiny to change compared to previous districting cycles. Do you expect the process to be more open, take more public testimony?

*How much weight should the legislature give
communities of interest/how should they be
determined/ranked in importance. what input should
the public have in constructing these communities?*

Some criteria run into conflict with others, such as maintaining political sub-divisions and compactness; what criterion should be given the highest priority, and what happens if certain traditional criteria lead to partisan/racial gerrymanders (stealth gerrymanders)?

*Other than the traditional criteria, there are some newer criteria that states have begun adopting in recent decades. These include things like requiring that districts be **competitive**, prohibitions on drawing districts to **favor or disfavor incumbents, parties, or candidates**, or prohibiting the use of **partisan data** in redistricting. In your opinion, is it a good idea for states to adopt these criteria? Do you believe more states will adopt them in the future?*

*How much deference should be given to incumbents in the districting process? Are **incumbent protection**/maintaining district cores worthy goals in terms of creating good governance?*

*Increasing the **competitiveness** is sometimes have been a goal of redistricting commission or even statutes -- some alternatively have argued that competitive districts are bad for America (Redistricting and Representation: How Competitive Elections are Bad for Democracy New York: Routledge (2008).) Should legislatures favor **competitive districts**, **competitive chambers**, some form of **proportionality** (including non-competitive districts), or ignore partisan politics altogether?*

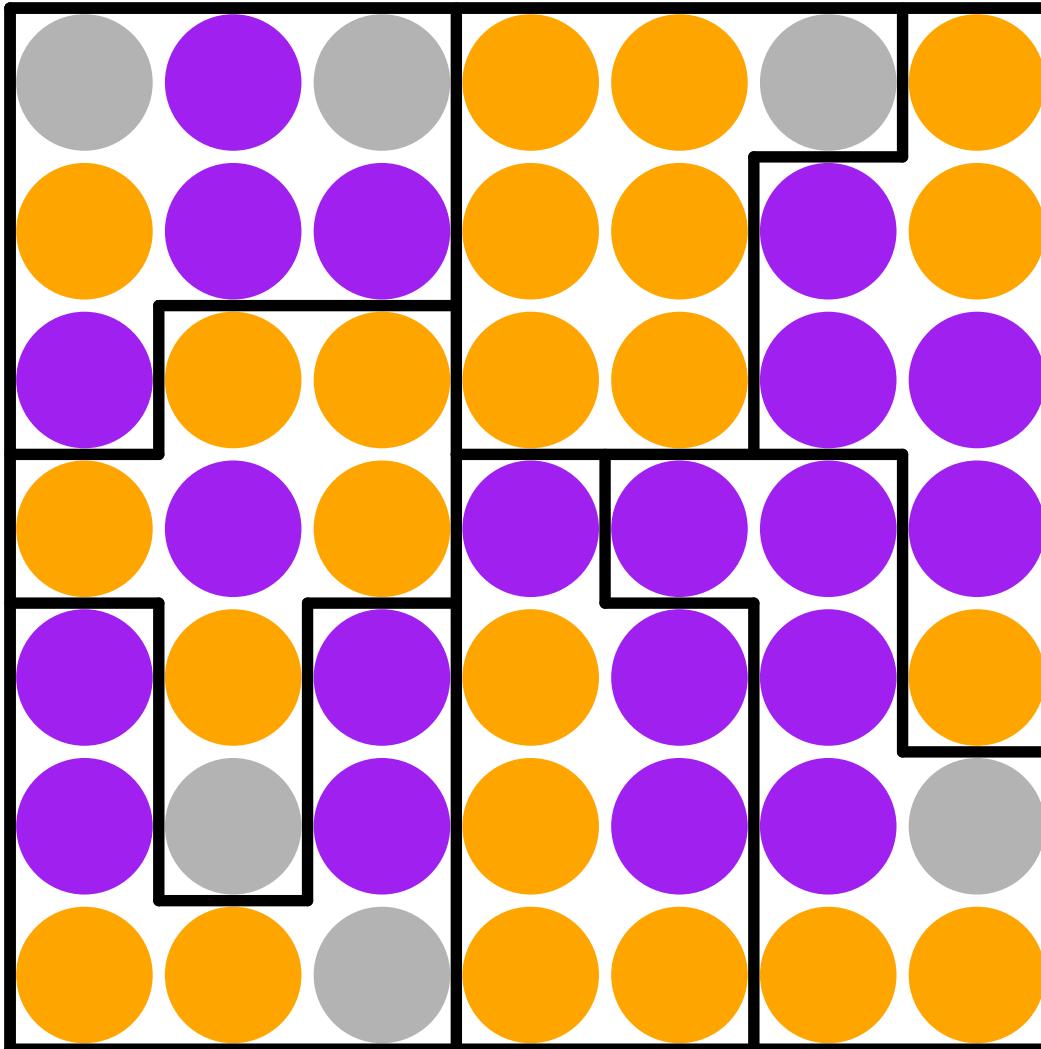
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THE TERMINOLOGY OF DISTRICTING



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Anti-Majoritarian – Not Competitive (w/ bias)

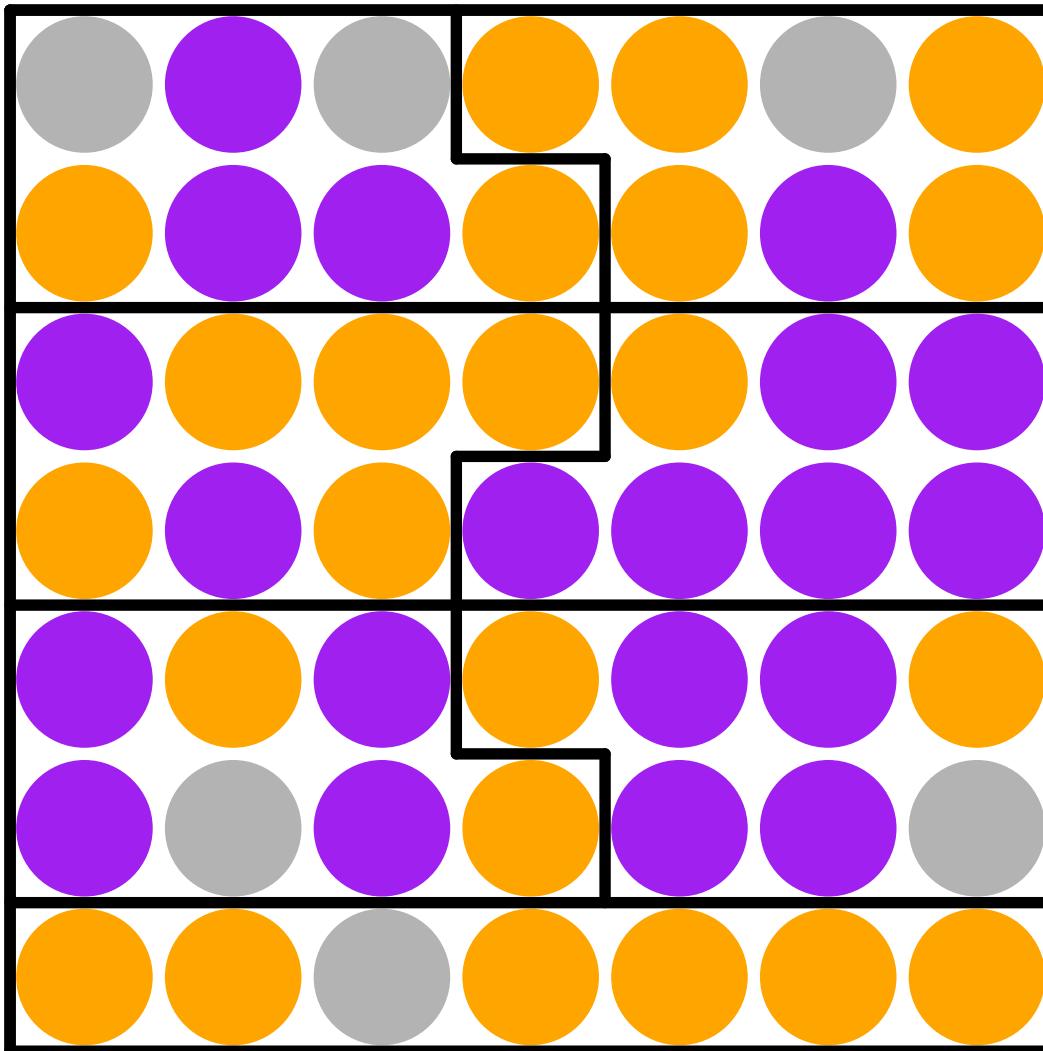


Not neutrally drawn and relatively ill-compact districts. Minority party wins the majority of the seats, and none are competitive.

Votes	Seats
20 (41%)	4
23 (47%)	3
6 (12%)	0

Gray seats are those that the undecided voters cast the pivotal vote

Neutral Plan (w/ bias)



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Votes	Seats
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