



Redistricting for Journalists  
South Carolina Press Association  
March 26, 2021

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# Redistricting: The Process

# Process: Data

- Already released, 2020 Census Geography
- By the end of September 2021, the Census Bureau will deliver to the General Assembly and publicly release data used for redistricting: the Public Law 94-171 files.

# Process: Redistricting Criteria

The redistricting subcommittees of House and Senate Judiciary will review and adopt the criteria to be used in drawing maps. The two Houses usually differ on criteria.

# Process: Drawing the Maps

As soon as the PL 94-171 is loaded onto computers, staff and members will one-by-one or by delegation retreat to the Map Rooms to draw maps using Caliper's Maptitude for Redistricting software.

## Who's in Charge?

- House
  - Judiciary Cttee., Elections Laws Subcommittee, Rep. Wallace H. "Jay" Jordan, Jr., Chair
  - Staff: Patrick Dennis, General Counsel
- Senate
  - Judiciary Committee, Reapportionment Subcommittee, TBD
  - Staff: Andy Fiffick, Chief of Staff
    - Charles Terrini, attorney
    - Will Roberts, demographer

# Process: Public Hearings

The Redistricting committees typically hold public hearings around the state to hear from voters about desires, communities of interest and so forth.

*Watch for: The lateness of redistricting data in 2021  
may result in fewer public hearings.*

# Process: Submission of Plans by Other Parties

- The two bodies will establish procedures for submission of proposed plans by outside parties, typically before the subcommittees start amending staff plans.
- In 2011, the ACLU and the Republican Party submitted proposed Senate plans.
- The ACLU, NAACP, Congress member James Clyburn, Congress members Mick Mulvaney and Joe Wilson and John Kuhn submitted proposed Congressional plans.
- As mapping software becomes more accessible, more private parties, like the League of Women Voters of South Carolina, will likely submit plans.

# Process: Passage

- Redistricting plans progress from subcommittee to Full Judiciary Committees and then to the Floor just like other pieces of legislation with amendments considered through the process.
- Senate Rules don't allow Calendar games on a reapportionment bill. Any such bill is placed in the masthead position and must be taken up daily after the conclusion of the Uncontested Local Calendar.
- The House and the Senate typically don't touch one another's redistricting bills. They simply pass them.
- The Governor may sign or veto a reapportionment bill.
- If the Governor vetoes, someone will bring a lawsuit under One Person One Vote.



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# Redistricting: The Legal Foundation

# The Legal Foundation: Federal Constitution

## 14<sup>th</sup> Amendment

- One Person, One Vote or Equipopulous Districts
  - Baker v. Carr, 369 U.S. 186 (1962) – redistricting is a justiciable question
  - Reynolds v. Sims, 377 U.S. 533 (1964)—state legislative districts should be roughly equal in population
- Equal Protection
  - Racial Gerrymandering, *Shaw v. Reno*, 509 U.S. 630 (1993). Redistricting based on race must be held to a standard of strict scrutiny under the equal protection clause.

# The Legal Foundation: Federal Constitution, cont.

## Fifteenth Amendment

- **Section 1:** “The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.”
- **Section 2:** “The Congress shall have the power to enforce this article by appropriate legislation.”

# The Legal Foundation: Voting Rights Act

## Voting Rights Act of 1965, as amended

Section 2 prohibits voting practices or procedures that discriminate on the basis of race, color, or membership in one of the language minority groups identified in Section 4(f)(2) of the Act. Those involve:

1. Vote Denial
2. Vote Dilution

Section 5, which formerly required preclearance of any South Carolina change in voting practice or procedure by the U.S. Department of Justice or the Washington, D.C., District Court, was effectively nullified in *Shelby County v. Holder*, 570 U.S. 529 (2013). South Carolina jurisdictions do not currently have to submit redistricting plans for preclearance.

# The Legal Foundation: Voting Rights Act, cont.

## Section 2 Vote Dilution:

- “[The] essence of a Section 2 claim is that a certain electoral law, practice, or structure interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by black and white voters to elect their preferred representatives.” *Thornburg v. Gingles*, 478 U.S. 30, 47 (1986).
- Courts evaluating a districting plan under Section 2 currently look to whether, given the totality of circumstances, a districting plan *results* in a dilution of the ability of minority voters to elect candidates of the choice. Courts are bound by Section 2 in drawing maps.
- Typically vote dilution results from at-large elections or packing or cracking single-member districts. *Packing* far more minority voters into a district than is required to elect a candidate of choice reduces the ability of minority voters to elect candidates of their choice in other districts. *Cracking* concentrations of minority voters into adjoining districts deprives them of the ability to elect candidates of their choice.

# The Legal Foundation: VRA vs. Racial Gerrymandering

“Avoiding minority vote dilution under § 2 may require the creation or maintenance of particular majority-minority districts, even on a predominately racial basis, if this can be done in a reasonably compact manner, taking into account traditional districting principles.”

*Colleton County Council v. McConnell*, 201 F. Supp. 2d 618 (D.S.C. 2002), 44

However, those districts must be narrowly tailored to avoid liability under Section 2. In the 90s and into the early 2000s, litigation challenging majority minority districts focused on compactness and “bizarre” district shapes, efforts to create as many majority minority districts as possible and putting race ahead of traditional districting principles. See, *Smith v. Beasley* and *Able v. Wilkins*, 946 F. Supp. 1174 (D.S.C. 1996).

# **The Legal Foundation: VRA vs. Racial Gerrymandering, cont.**

In the past decade, minority advocates have used the failure of legislatures to narrowly tailor majority-minority districts to challenge legislative districts. The successful challenges focused on:

- Plans that set an overall minority target for majority-minority districts resulting in districts “packed” with minority populations in excess of populations need to narrowly tailor a Section 2 remedy.
- Plans drawn without conducting racial bloc voting analyses or presenting other evidence to determine the levels of minority populations needed to provide an equal opportunity for minority populations to elect candidates of their choice.

# The Legal Foundation: Wither the VRA

Although focused on vote denial claims, cases are making their way through the federal Courts which challenge Voting Rights Act protections for minority voters.

The U.S. Supreme Court recently heard *Brnovich v. Democratic National Committee* and *Arizona Republican Party v. Democratic National Committee* (Docket No. 19-1258). Those consolidated cases could result in major changes to Voting Rights law, for example by replacing a results standard with an intent standard, requiring minority citizens to prove that the legislature intended to dilute minority voting strength. That's a very high bar.

Redistricting in 2021 may be operating under a very different legal framework than has been the case since the 1990s.



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# Redistricting: The Census

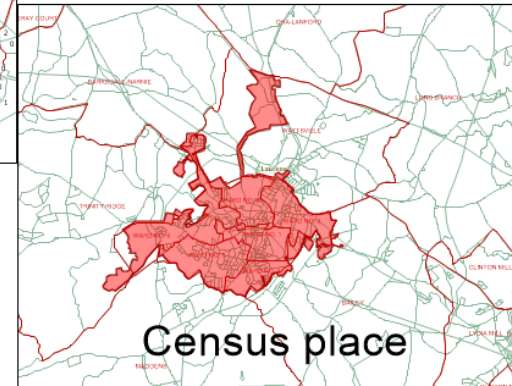
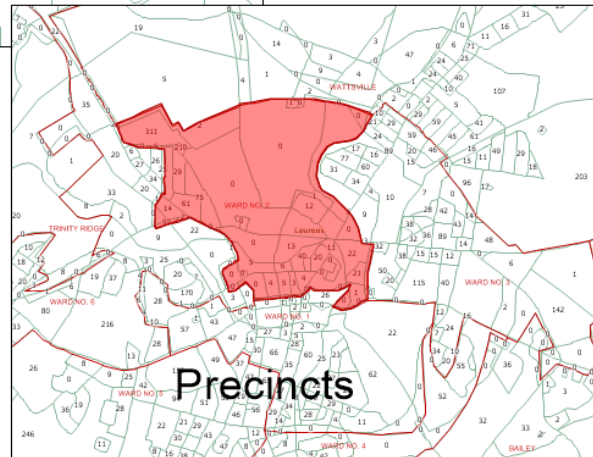
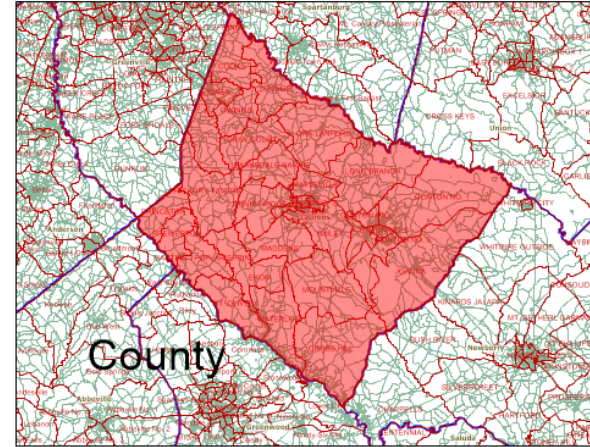
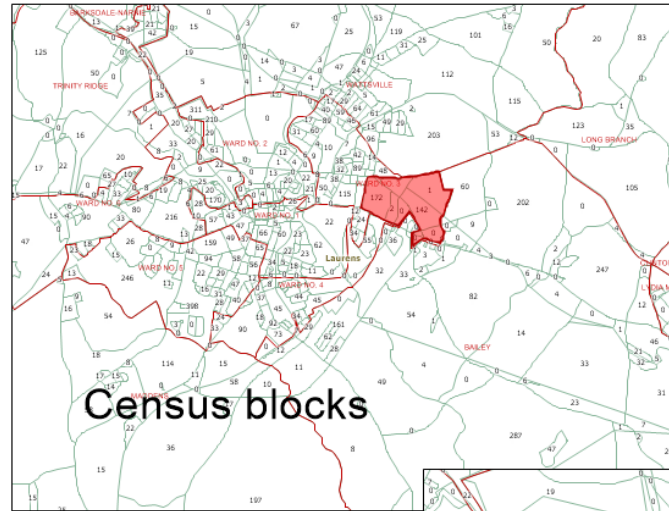
# The Census: Who Is Counted?

- “Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed.” –U.S. Constitution, Fourteenth Amendment, Section 2
- Also, summaries for the major race groups specified by OMB directive:
  - White, Black/African American, American Indian/Alaska Native, Asian, Native Hawaiian/Other Pacific Islander, plus ‘some other race’
  - Multi-racial combinations
  - Cross-tabulated by Hispanic/Non-Hispanic origin, voting age.
- Trump administration’s attempt to include citizenship in the survey was blocked. Attempts to infer citizenship data were not implemented.

# The Census: When, How?

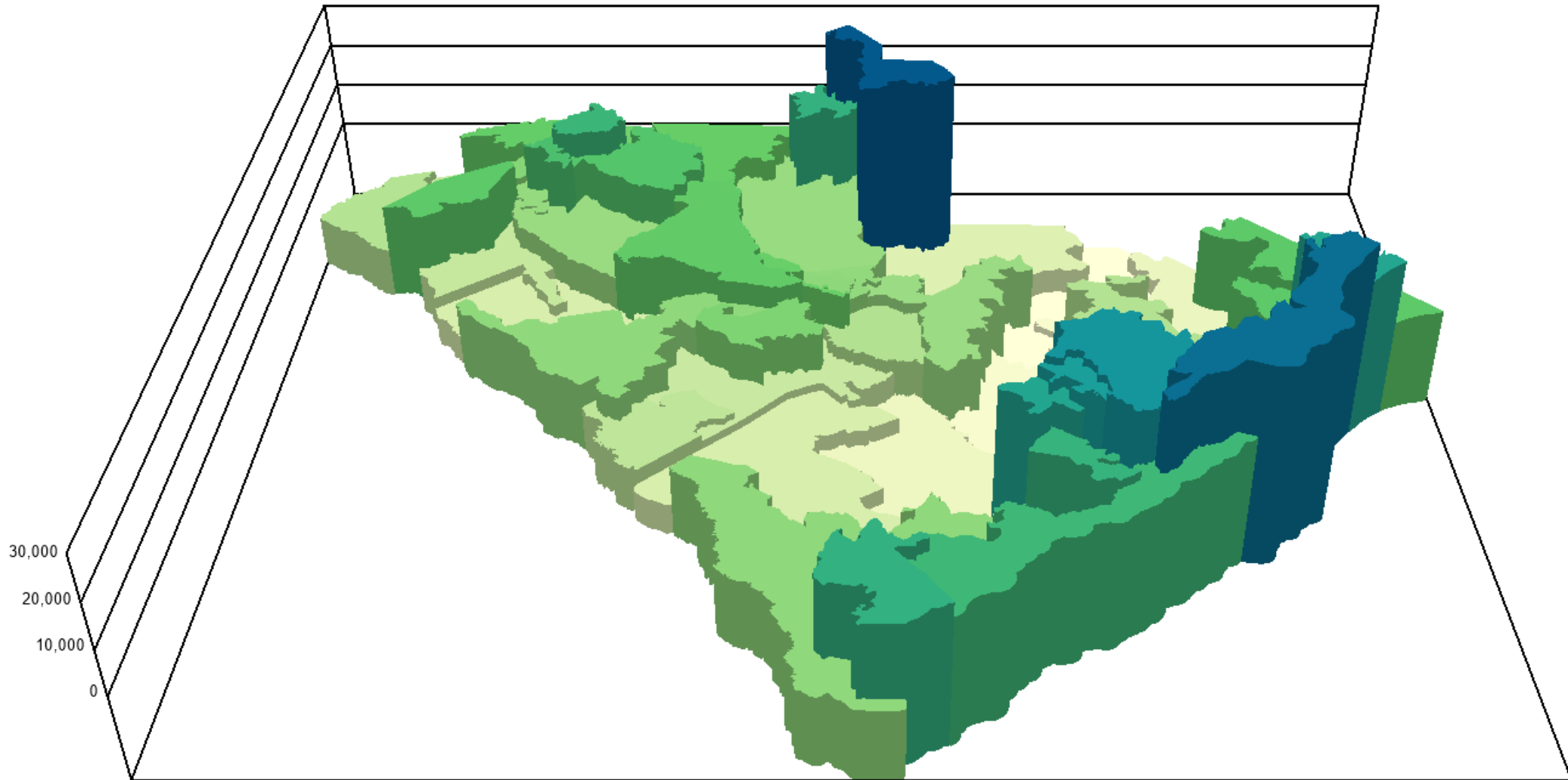
- Geographic data available now
  - Blocks, block groups, tracts, voting districts, etc.
- Counts to Congress for apportionment in April
- Counts in “legacy format” may be released to states in mid-August
- Final delivery expected by September 30
- Published at <https://www.census.gov/programs-surveys/decennial-census/about/rdo/summary-files.html#P1>

Redistricting is based on Census blocks. But you can build a district by adding a precinct, a Census place or a county to your plan.

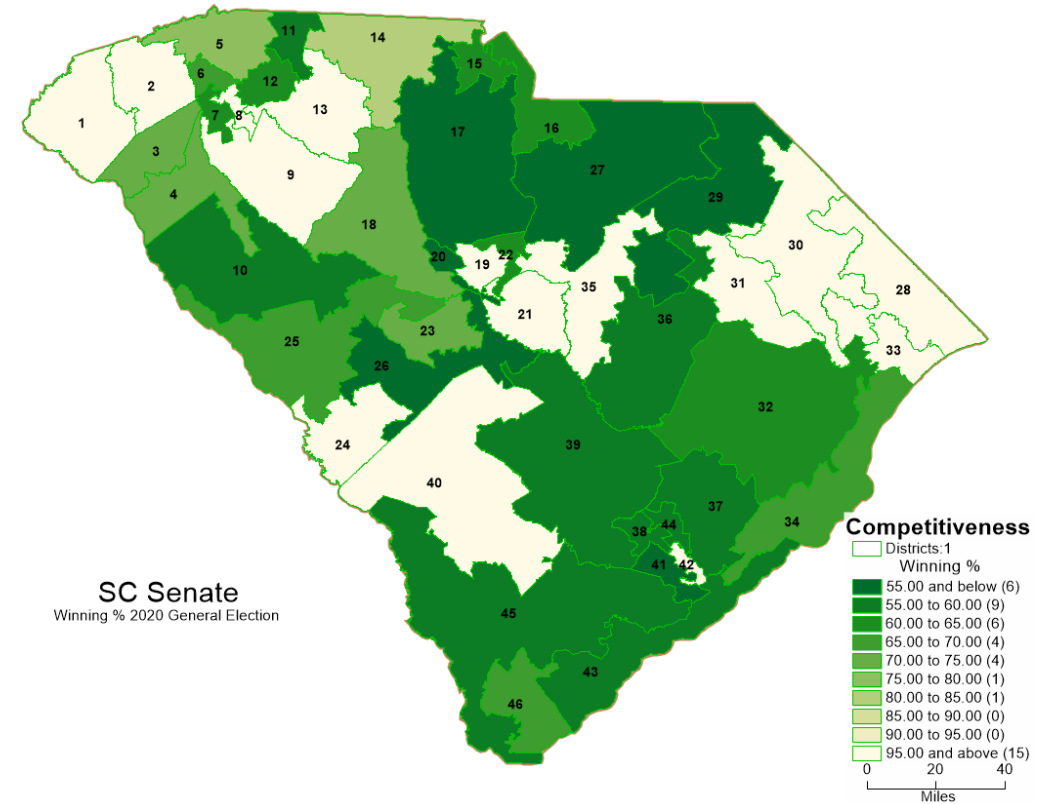
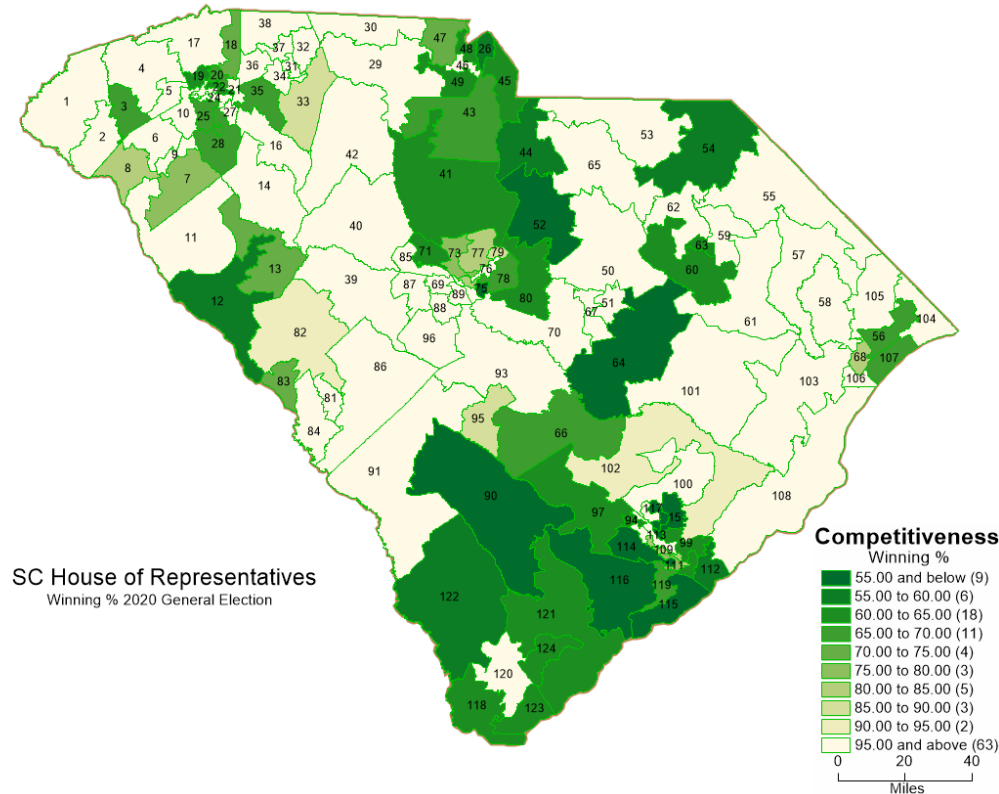


Building blocks for districts

Where population is flowing to and from requiring more or fewer districts.



# How We Draw Districts Matters to Voters



**In 2020, 65 House seats and 15 Senate seats were uncontested even by minor party opponents.**

- When incumbents or parties draw the districts, voters may have no choice in General Elections. That reduces participation.
- Candidates don't need to appeal to the middle--leading to more polarization.

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# Redistricting: Criteria

# Criteria: Required

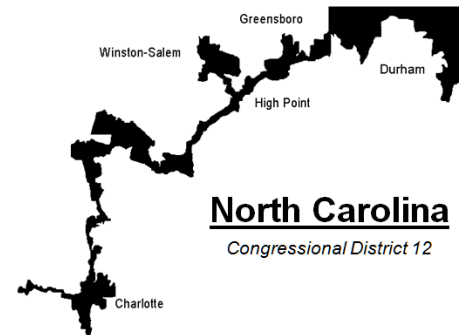
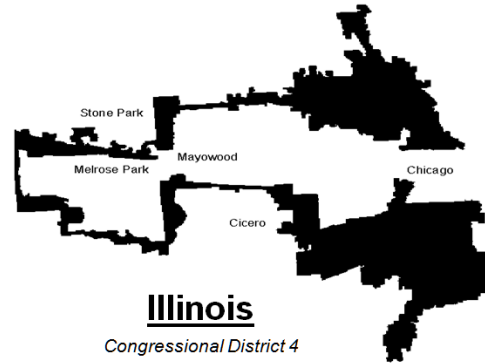
- One representative per district (Congress)
- Equal populations
  - Congressional districts: within a few persons
  - Legislative districts: within a few percent
- Contiguous (SC)
  - By water OK along the coast or rivers
- Voting Rights Act requirements
- Communities of Interest



# Criteria: Desirable

- Respect
  - Political boundaries
  - Precinct boundaries
- Compact
- Partisan Gerrymandering
  - Minimize partisan bias
  - Maximize competitiveness
  - Avoid incumbent protection

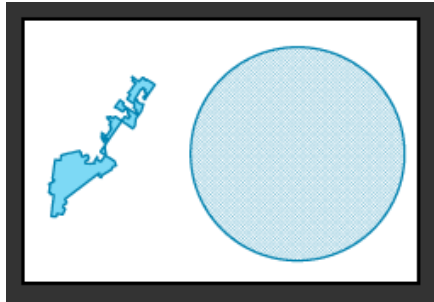
# Compact?



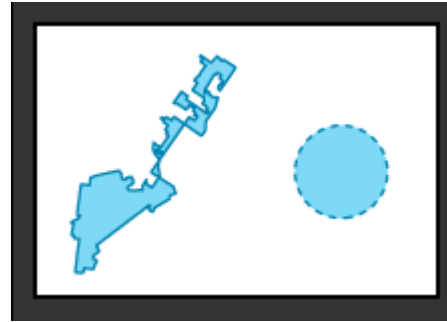
...graphics from *1990s Supreme Court Redistricting Decisions*, Peter S. Wattson  
[www.senate.leg.state.mn.us/departments/scr/REDIST/red907.htm](http://www.senate.leg.state.mn.us/departments/scr/REDIST/red907.htm)

# Measuring Compactness

- **Polsby-Popper**



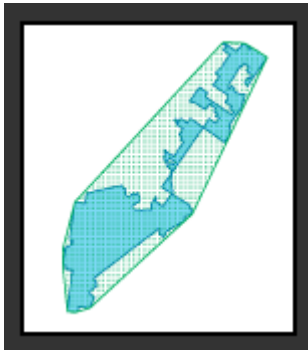
- **Schwartzberg**



- **Eyeball Test**

I don't know what it is, but I know it when I see it.

- **Convex Hull**



- **Reock**



# Compactness Summaries

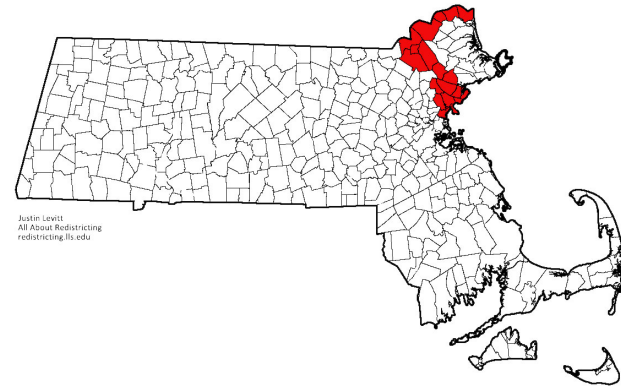
	Compactness Measures			
District Plans	Inverse Polsby-Popper	Inverse Schwartzberg	Inverse Convex Hull	Inverse Reock
Current State House	4.06	1.98	1.42	3.57
Current State Senate	4.96	2.19	1.46	2.56
Current Congress	6.19	2.41	1.37	2.56
House Exemplar	3.56	1.86	1.34	2.33
Senate Exemplar	3.92	1.96	1.36	2.38
Congress Exemplar	3.95	1.98	1.31	2.17

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**Redistricting:  
When does it result in  
gerrymandering?**

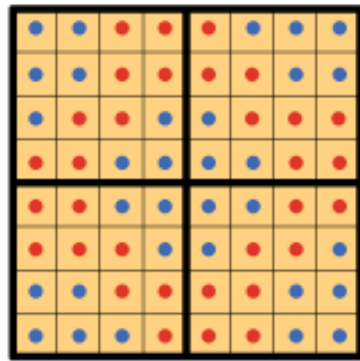
# Partisan Gerrymandering

- Drawing district lines to advantage one party
- Now can achieve very precise mixes using computers and public or proprietary data
  - Party registration
  - Primary ballot selection
  - Demographic data

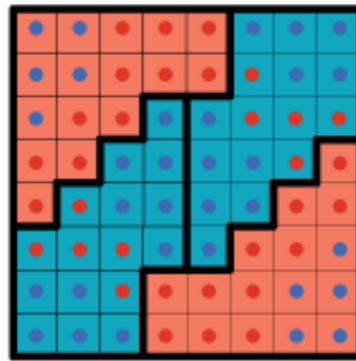


# How to Gerrymander

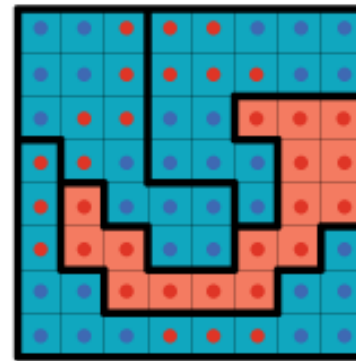
- ***Packing***: Concentrating communities into a few districts where they win overwhelmingly, but not enough seats to have influence
- ***Cracking***: Splitting communities among several districts to ensure they don't constitute a majority in any



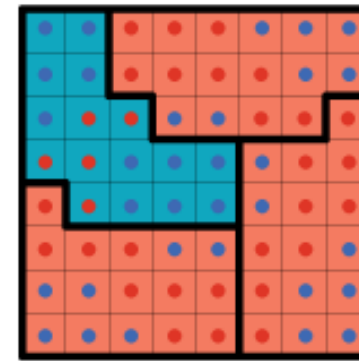
1. COMPETITIVE



2. SWEETHEART



3. PACKING



4. CRACKING

# How to Gerrymander

## Gerrymandering by the Numbers

From the film *Line in the Street*



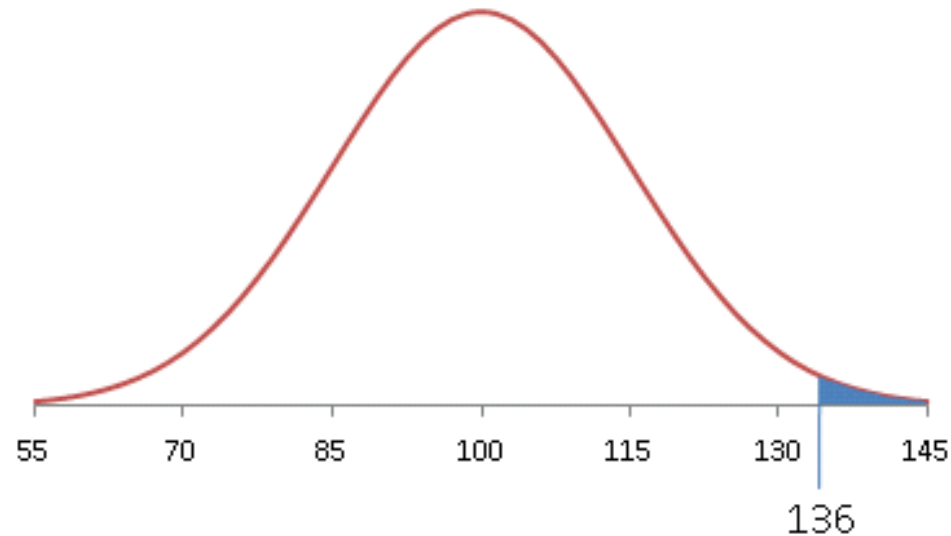


# Measuring Partisan Gerrymandering

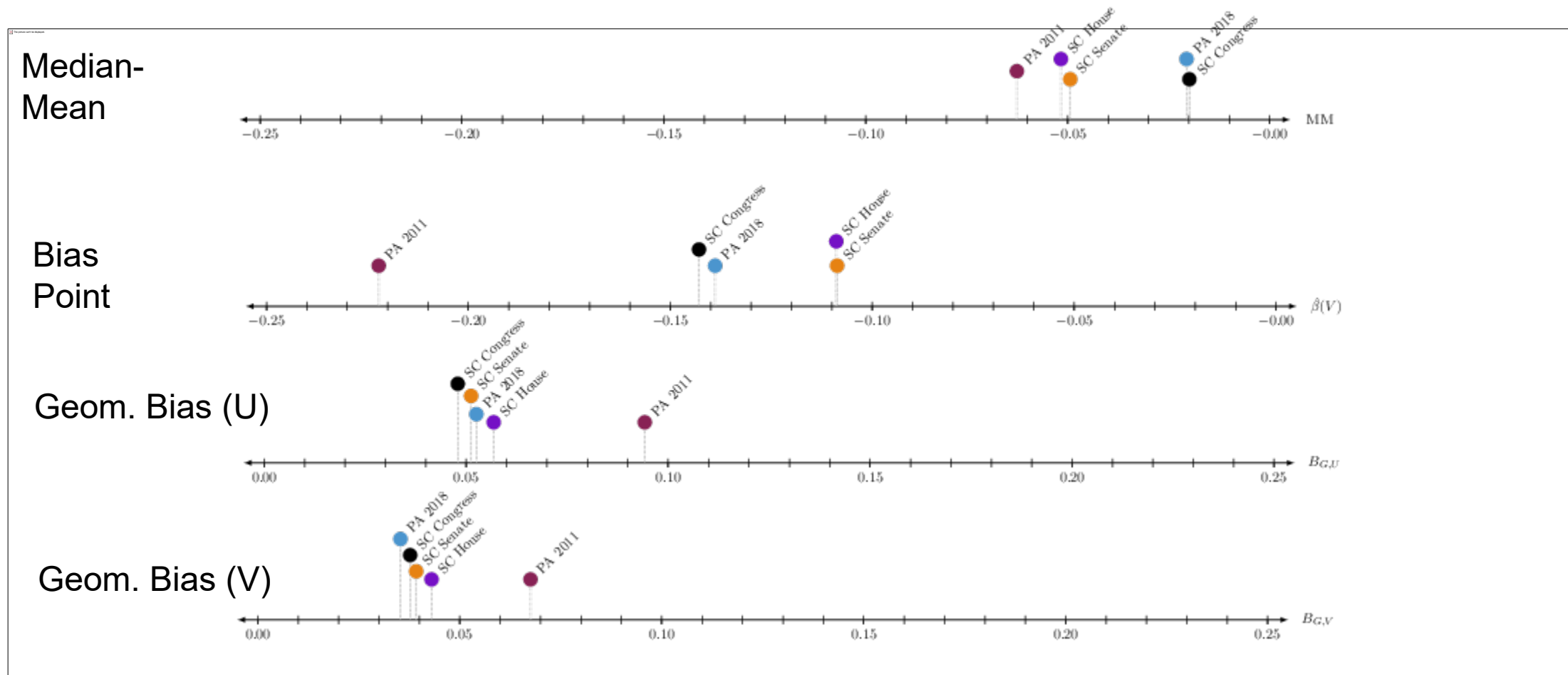
- ***Efficiency gap***
  - Compare *wasted votes* (votes for losers, excess votes for winners)
- ***Median-Mean***
  - Skew in distribution of votes (mean larger than median)
- ***Partisan symmetry***
  - Compare how easy it is for each party to accumulate additional seats as they gain hypothetical voters

# How Do You Know You've Been Gerrymandered?

- Measures can be influenced by overall party split and natural geographic sorting
- Just computing a measure for a single map doesn't really tell you if it's manipulated
- Solution: Outlier analysis
  - Draw lots of random maps
  - Compute measures for all
  - How unusual is your map?
    - *p-value*



# How Gerrymandered is SC Now?



# Criteria For Redistricting in SC

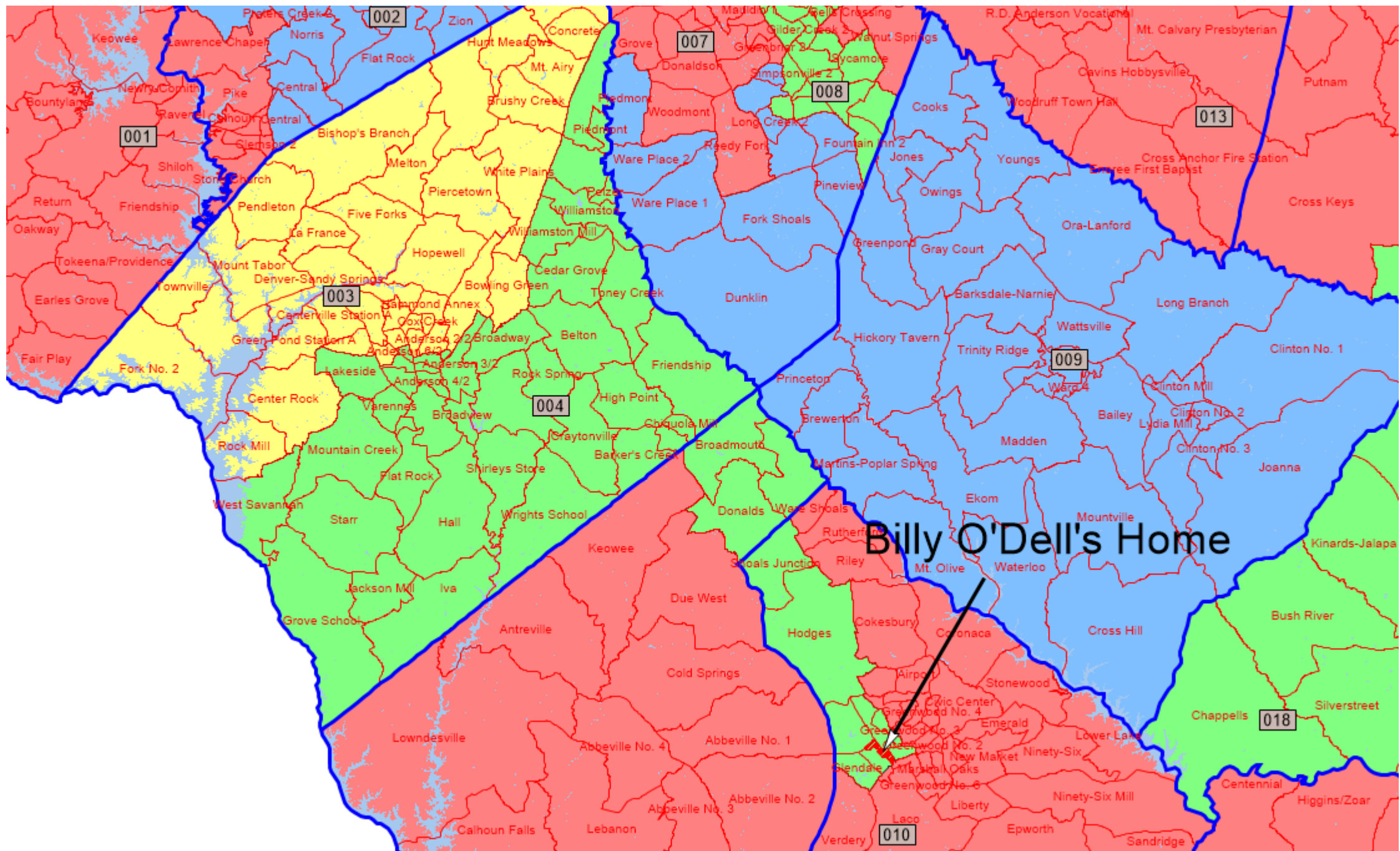
- ***SC House (2011)***
  - Population +/- 2.5%
  - Contiguity by water
  - Compactness
    - “Bizarre shapes are to be avoided except...” geography, population, VRA
    - Compare to prior plans, not mathematical formulas
  - Communities of interest
  - Protect incumbents

# Criteria For Redistricting in SC

- ***SC Senate (2011)***
  - Population +/- 5%
  - Contiguity: No X boundaries
  - Other criteria
    - Communities of interest
    - Constituent consistency
    - County and municipal boundaries, precinct boundaries
    - Compactness

# Criteria For Redistricting in SC

- ***LWVSC (Proposed 2020)***
  - Population +/- 5%
  - Contiguity by water, no X boundaries
  - Must not intend to discriminate for or against an incumbent, party, or candidate
  - Must not intend to reduce competitiveness
  - Compactness: avoid bizarre shapes
  - Respect county, municipality, precinct boundaries
  - Communities of interest
    - Economic, social/cultural, historic, geographic, gov't services, media markets
    - *Not* partisan

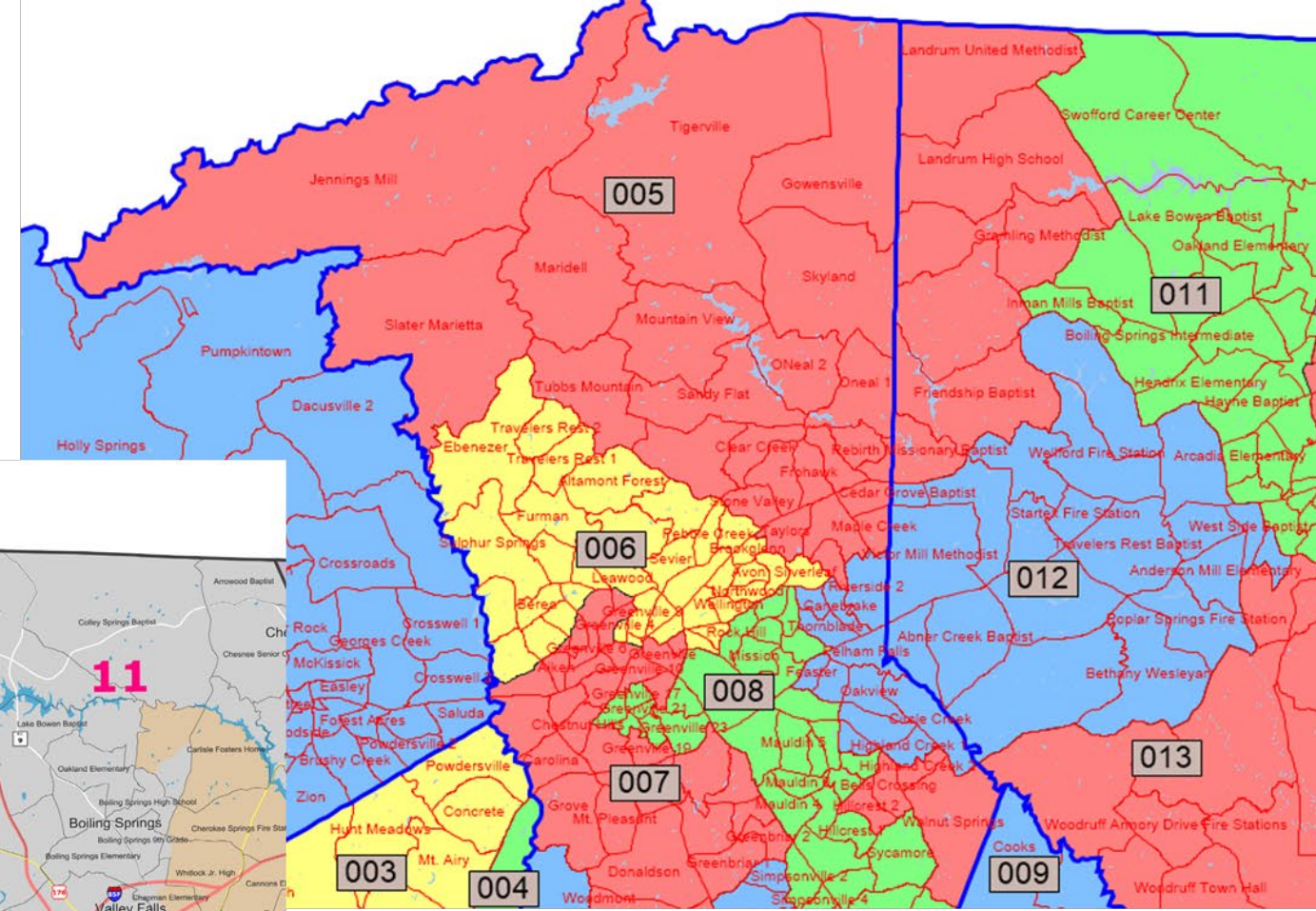
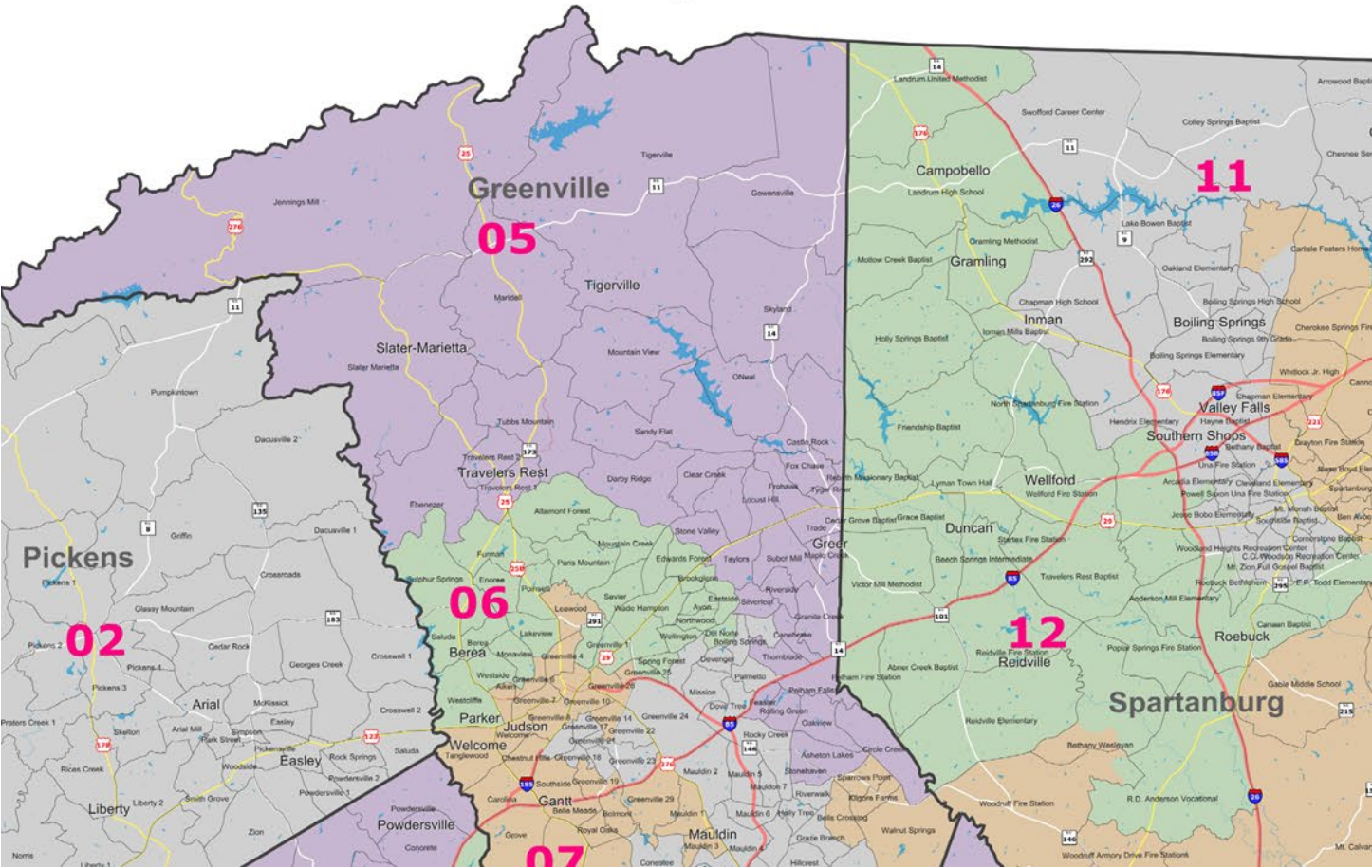




“Bright’s new district also leaves out all of the area of House District 38, represented by Rep. Doug Brannon, R-Landrum.”

S. Lagen, Bright, Greenville senator would trade portions of areas in Senate redistricting plan, GoUpstate.com (June 28, 2011) at <https://www.goupstate.com/news/20110628/bright-greenville-senator-would-trade-portions-of-areas-in-senate-redistricting-plan>

## 2003 Redistricting



## 2011 Redistricting



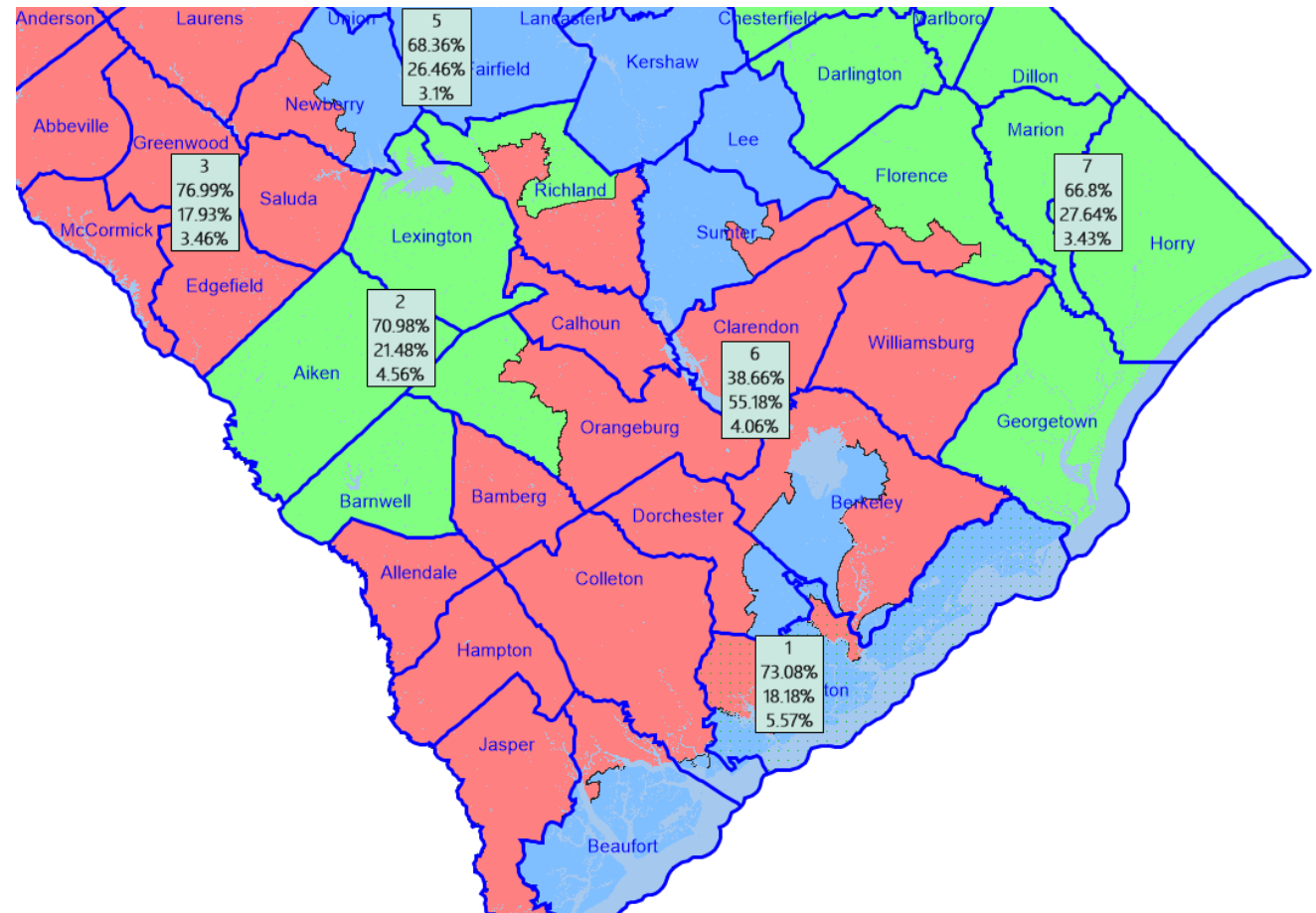
# Packing Districts by Ignoring Other Minority Groups

The 6<sup>th</sup> Congressional District appears like a somewhat competitive district at 55 % NonHispanic BVAP.

But the district's VAP is 4 % Hispanic and 2 % Native American, Asian or Other Multi-Race.

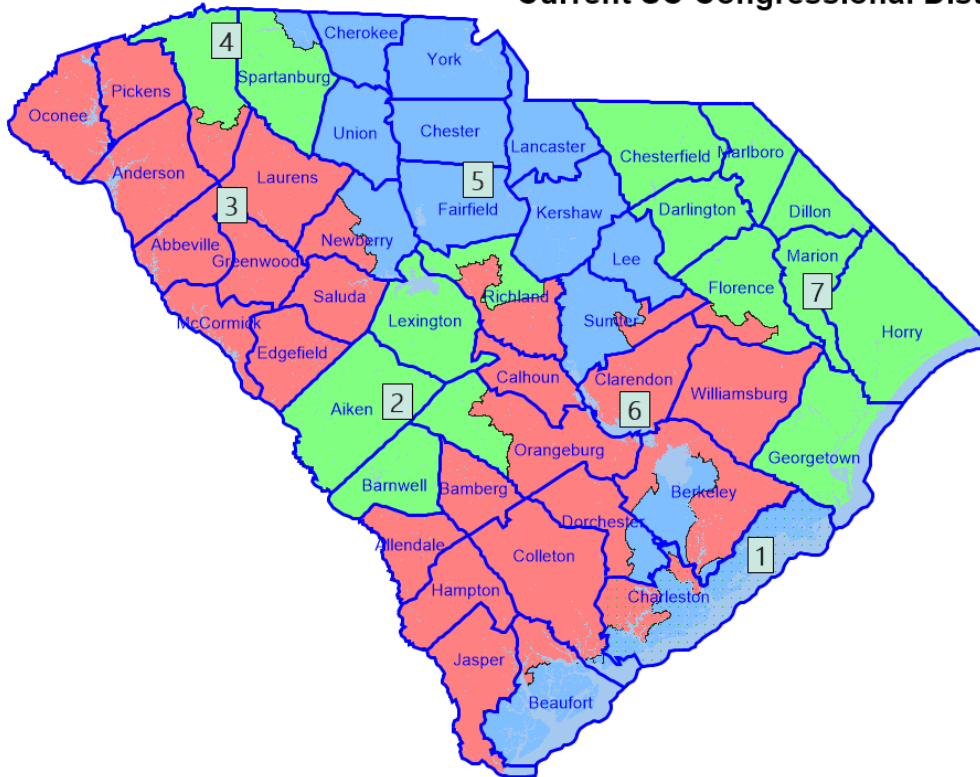
So, NonHispanic Whites are only 39 % of the VAP.

This district is not narrowly tailored to provide minority voters with an opportunity to elect candidates of their choice.

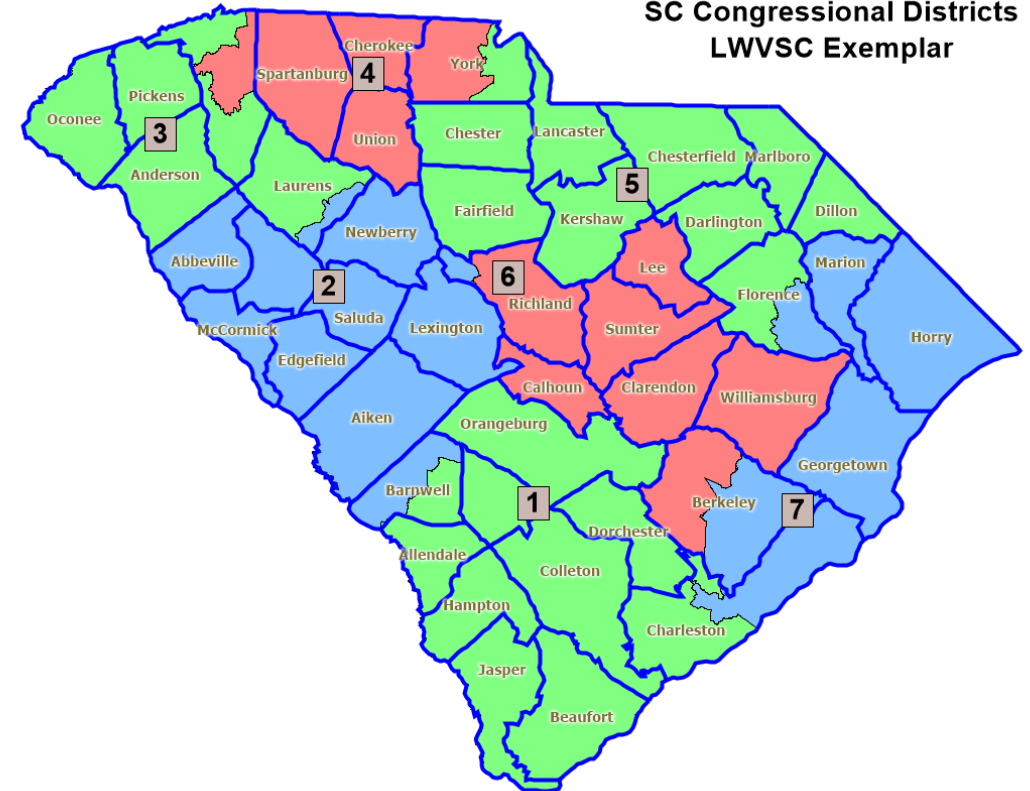


# Current Congressional Districts compared to LWVSC Exemplar

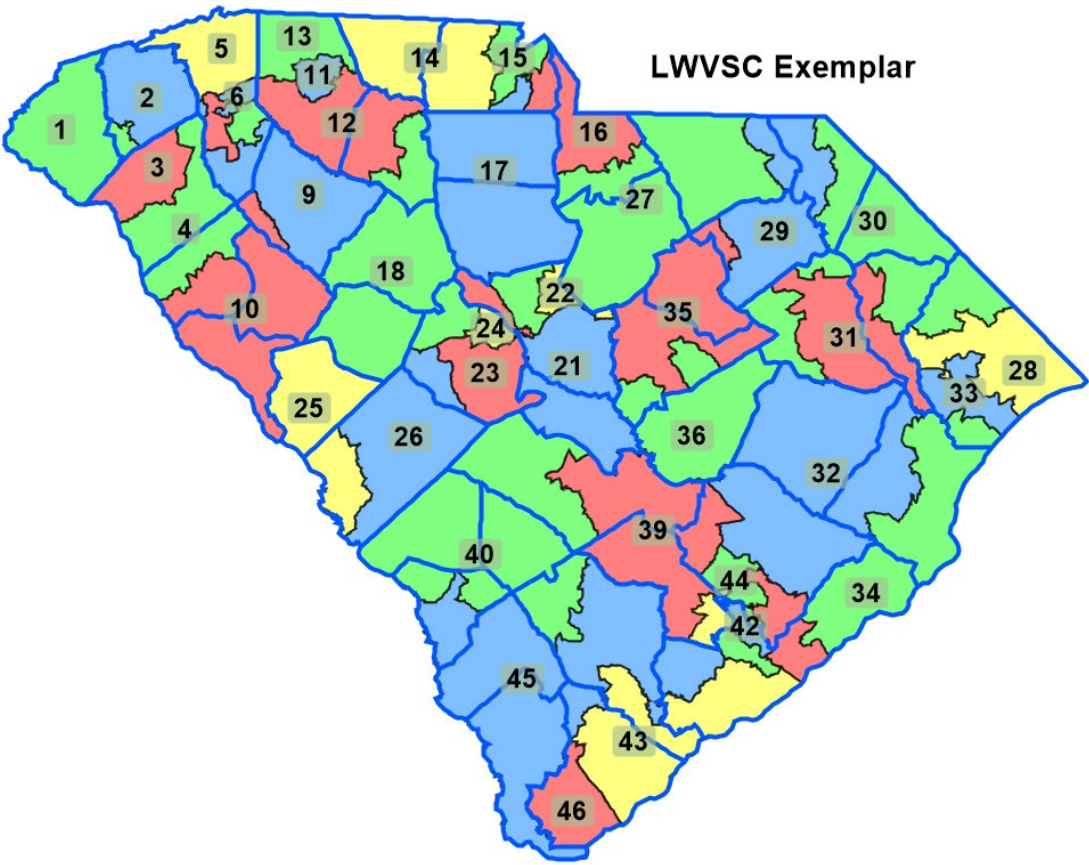
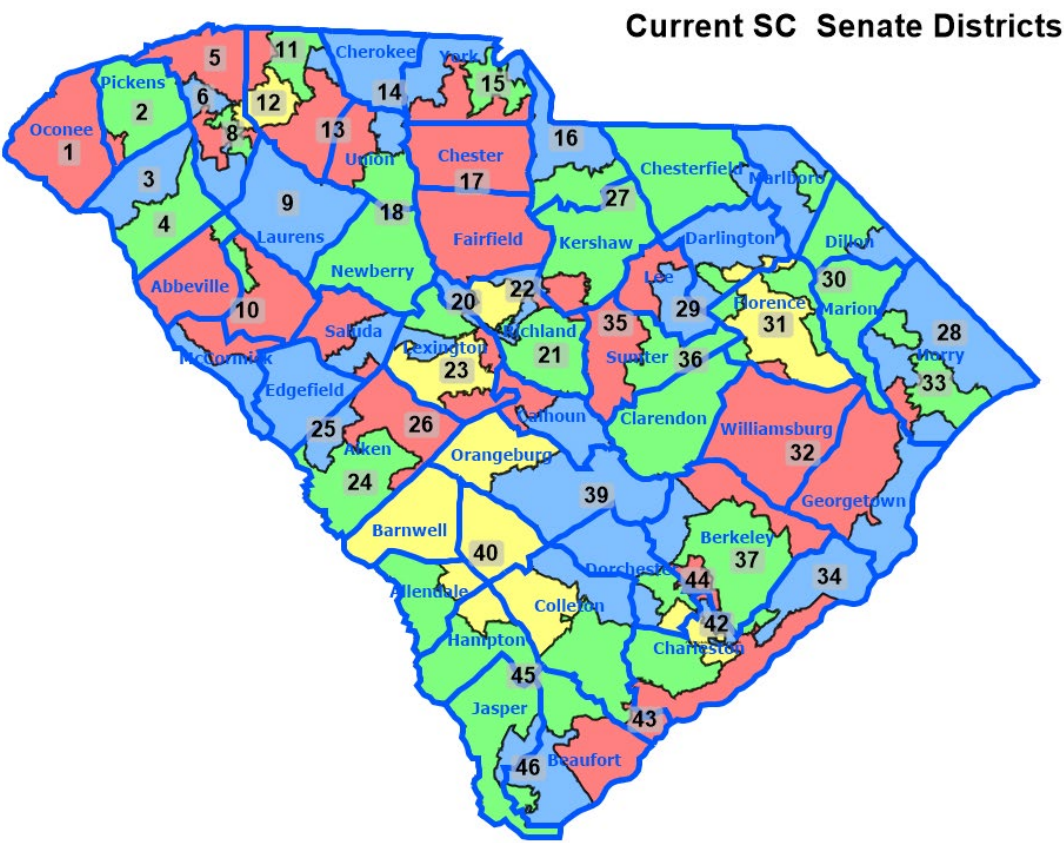
Current SC Congressional Districts



SC Congressional Districts  
LWVSC Exemplar



# Current SC Senate Districts compared to LWVSC Exemplar





# Current SC House plan compared to LWVSC Exemplar

