

Power Point Presentation

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Rhode Island Commission on Reapportionment

Legal Briefing
September 23, 2021

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Legal Considerations

- Population Equality
- Minority Vote Dilution
- Racial Gerrymandering
- Traditional Redistricting Principles
- Partisan Gerrymandering

Enabling Legislation

- 75/38/2 single-member districts
- Comply with all legal requirements
- Population equality requirements
- Compactness and contiguity
- Reflecting natural, historical, geographical and political lines, and communities of interest
- Fair representation and equal access
- Nesting to avoid small voting districts

Population Equality ⁽¹⁾

Two Congressional Districts:

Total Population: 1,097,379

Ideal District Size: 548,689.5

Strict range requirements: < 1.00%

Population Equality

State Legislative Districts:

	<u>House</u>	<u>Senate</u>
Ideal District Size:	14,632	28,878

Maximum permissible deviation: $\pm 5\%$

Max Range: 1,464 2,888

Largest: 15,364 30,322

Smallest: 13,900 27,434

Minority Vote Dilution

U.S. Constitution, Equal Protection Clause

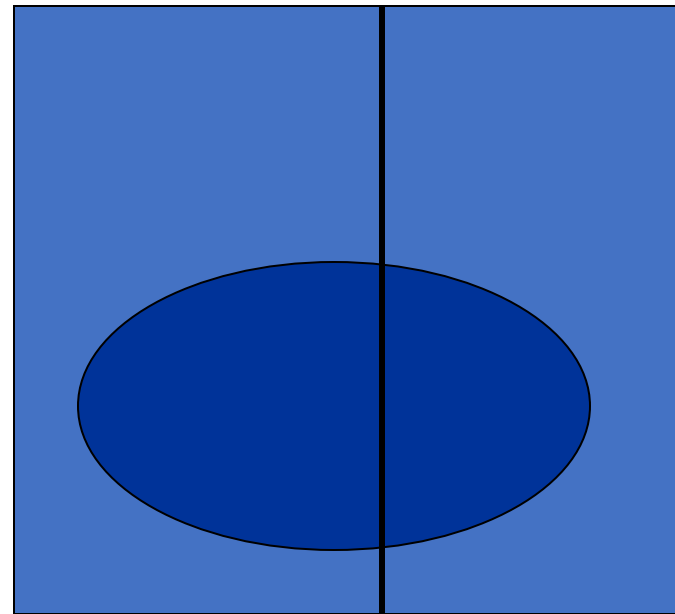
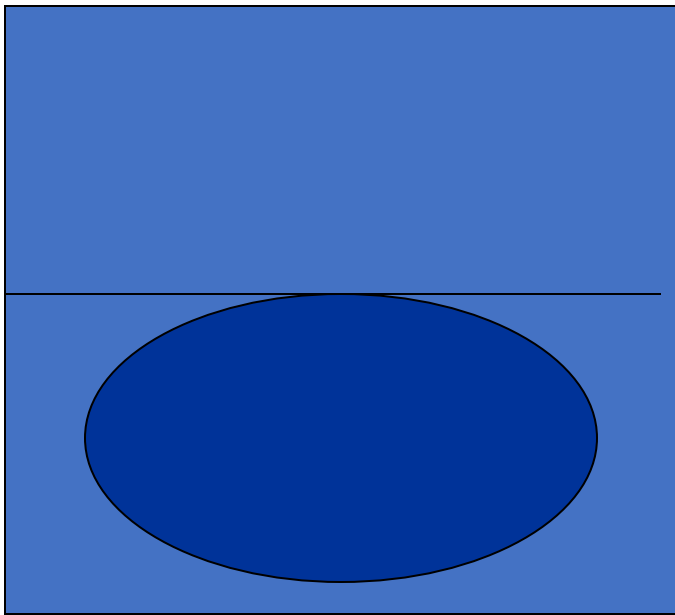
Prohibits intentional discrimination against racial and language minority groups

Federal Voting Rights Act of 1965, § 2:

Prohibits plans that result in unequal electoral opportunities, regardless of intent

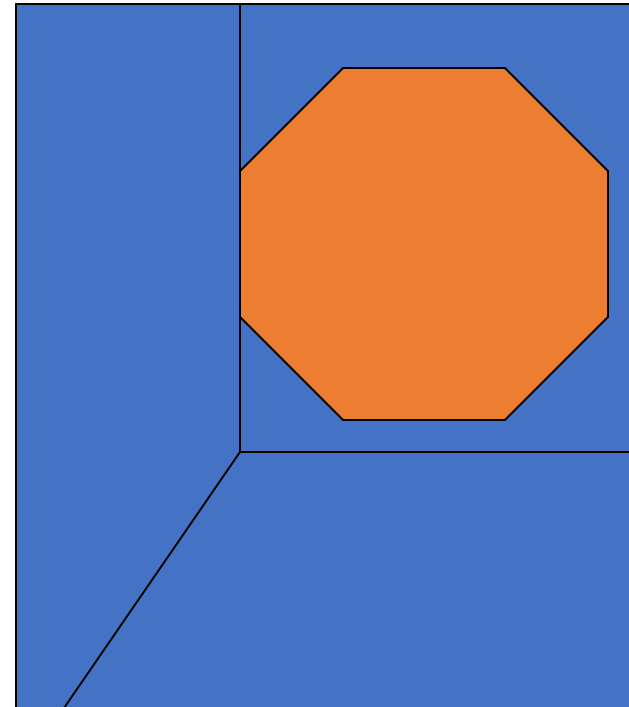
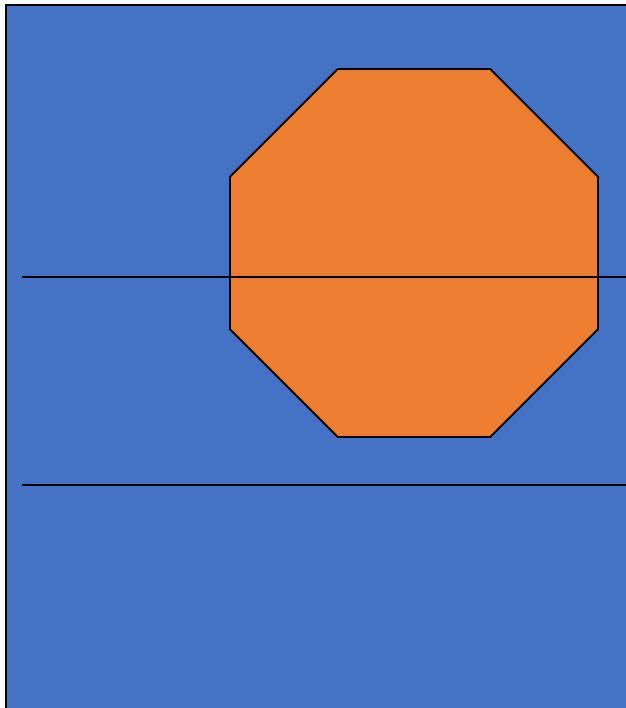
Minority Vote Dilution

-- Cracking



Minority Vote Dilution

-- Packing



Minority Vote Dilution

Two-step process for minority vote dilution claims. Plaintiffs must satisfy three preconditions:

1. The minority group must be sufficiently large and geographically compact to constitute a majority in a single-member district.
2. The group must be politically cohesive.
3. The majority must vote sufficiently as bloc to enable it usually to defeat the minority's preferred candidate.

Minority Vote Dilution

These three preconditions, if met, show (1) that the minority group has the potential to elect a representative of their choice in a redrawn district, but (2) that the challenged plan thwarts a distinctive minority vote by submerging it within a larger white voting population, thereby diluting the minority vote.

Minority Vote Dilution

The Second Step: If the three preconditions are met, *Gingles* requires a searching judicial inquiry into local social and political realities to determine whether or not members of the minority group have an equal opportunity to participate in the political process and to elect representatives of their choice.

Minority Vote Dilution – 2021

1. Is it possible to draw a district in which the protected minority group constitutes a majority (50%)?
2. Is the minority group politically cohesive, and does the white majority vote sufficiently as a bloc usually to defeat the minority's preferred candidates?
3. Assessment of totality of the circumstances

Racial Gerrymandering

In the early 1990's, the U.S. Department of Justice demanded as many minority-majority districts as possible. Some states responded with districts that were minority-majority but obviously at the expense of traditional redistricting principles, especially compactness. The Supreme Court struck most of those plans down on the grounds that they were Racial Gerrymanders in violation of Equal Protection. Some examples:



North Carolina

Congressional District 12 - 1992



Election
Data
Services
Inc.

7

Texas

Congressional District 30 - 1992



Texas

Congressional District 18 - 1992



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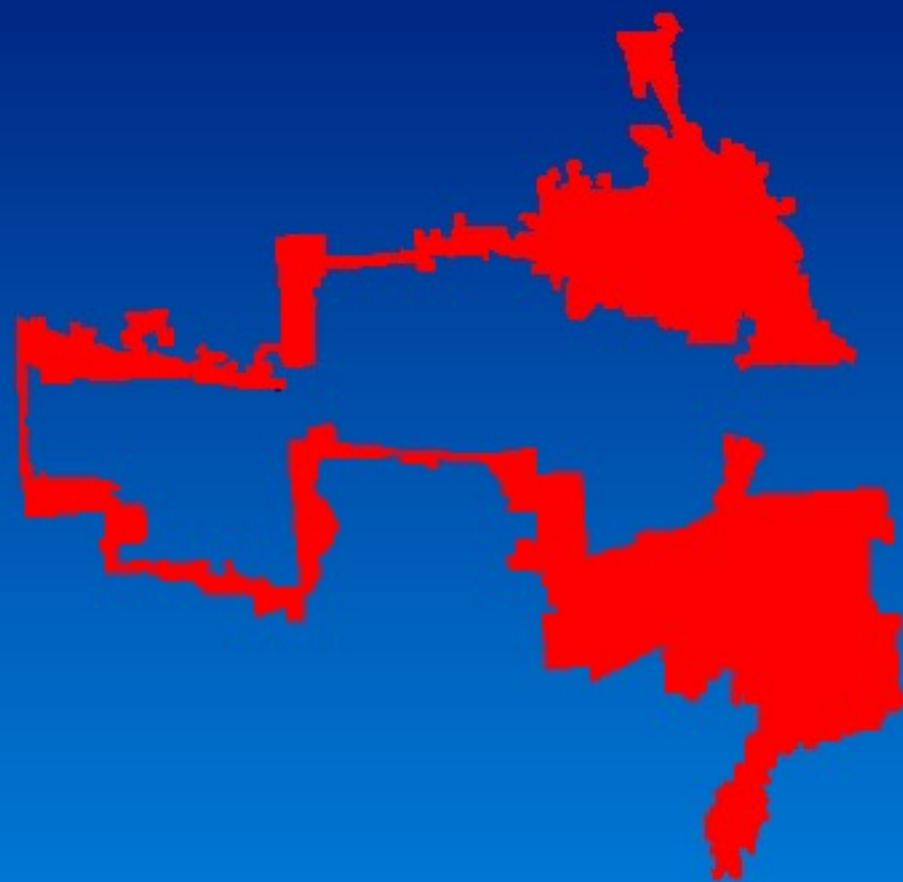
Texas

Congressional District 29 - 1992



Illinois

Congressional District 4 - 1992



Racial Gerrymandering

1. Was race the predominant factor in drawing a minority-majority district (i.e., is it a racial classification subject to strict judicial scrutiny)?
2. If so, the burden of proof shifts to the State to prove that it had a "strong basis in evidence" for believing that it needed a minority-majority district in order to avoid liability under § 2.

Traditional Redistricting Principles

- Contiguous Territory
- Natural, historical, geographical and political subdivision lines
- Communities of Interest
- Population Equality
- Compactness and cognizability
- Continuity of representation

Rhode Island Constitution

House and Senate shall be constituted “on the basis of population,” and the districts “shall be as nearly equal in population and as compact in territory as possible.”

Compactness clause is violated “only when a reapportionment plan creates districts solely for political considerations, without reference to other policies, in such a manner that the plan demonstrates a complete abandonment of any attempt to draw equal, compact and contiguous districts.” *Parella v. Montalbano* (2006), quoting *Holmes v. Farmer* (1984).

Partisan Gerrymandering

United States Constitution

U.S. Supreme Court: Excessive partisan gerrymanders are incompatible with democratic principles, but non-justiciable.

Rhode Island Constitution

Rhode Island Supreme Court has held that the State Constitution's requirement of compactness prohibits partisan gerrymandering (but only when there is a "complete abandonment").

Good Luck!

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