



REDISTRICTING



FEDERAL AND STATE
REQUIREMENTS

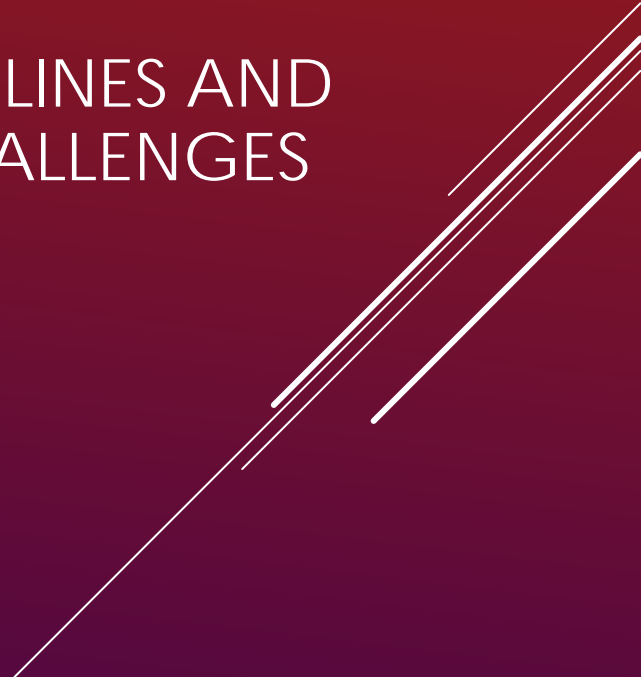


COURT
REQUIREMENTS



TIMELINES AND
CHALLENGES

OVERVIEW



APPORTIONMENT V. REDISTRICTING

- ▶ Apportionment relates to federal representation
 - ▶ Redistricting relates to state representation
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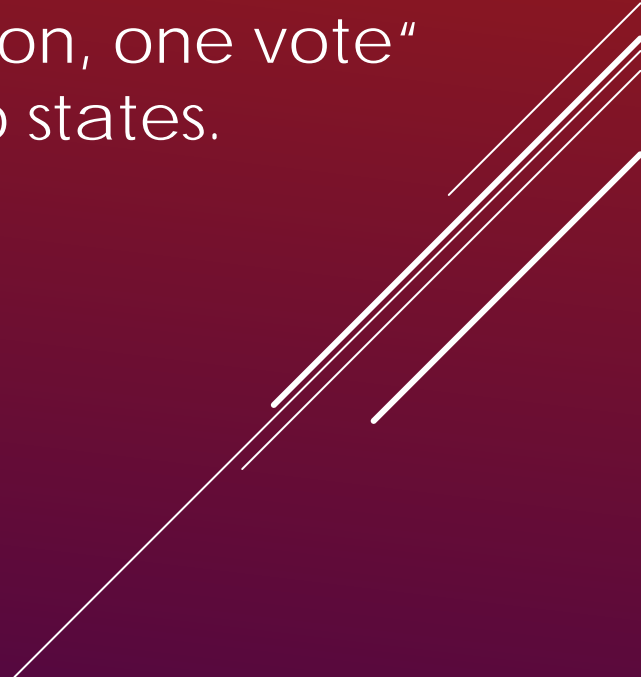


WHAT THE LAW SAYS

UNITED STATES CONSTITUTION (ART. I, SEC 2)

- ▶ “ Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers[.]
- ▶ The **actual Enumeration** shall be made... every subsequent Term of ten Years, in such Manner as they shall by Law direct.

UNITED STATES CONSTITUTION (AMEND. XIV)

- ▶ In *Reynolds v. Sims* (1964), the court established the “one person, one vote” principle and applied it to states.
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- ▶ (a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 10303(f)(2) of this title, as provided in subsection (b).
- ▶ (b) A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: Provided, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population

VOTING RIGHTS ACT

52 U.S.C. 10301



- ▶ “After the Legislature elected for the years 1937 and 1938 the number of members of the house of representatives shall not be less than fifty nor more than seventy-five and the number of members of the senate shall not be less than twenty-five nor more than thirty-five.”

STATE CONSTITUTION (ART. III, SEC. 2)



- ▶ “The Legislature shall apportion its membership by dividing the state into as many single-member, legislative districts as there are state senators. House districts shall be established wholly within senatorial districts and shall be either single-member or dual-member districts as the Legislature shall determine.
- ▶ Legislative districts shall consist of compact, contiguous territory and shall have population as nearly equal as is practicable, based on the last preceding federal census.
- ▶ An apportionment shall be made by the Legislature in 1983 and in 1991, and every ten years after 1991.
- ▶ Such apportionment shall be accomplished by December first of the year in which the apportionment is required. If any Legislature whose duty it is to make an apportionment shall fail to make the same as herein provided, it shall be the duty of the Supreme Court within ninety days to make such apportionment.”

STATE CONSTITUTION (ART. III, SEC. 5)



Legislative Policy in Redistricting

- ▶ The Legislature, in making the 2011 redistricting, determines, as a matter of policy, that the following principles are of primary significance:
- ▶ (1) Adherence to standards of population deviance as established by judicial precedent and to standards of population deviance as prescribed by S.D. Const., Art. III, § 5;
- ▶ (2) Protection of communities of interest by means of compact and contiguous districts;
- ▶ (3) Respect for geographical and political boundaries; and
- ▶ (4) Protection of minority voting rights consistent with the United States Constitution, the South Dakota Constitution, and federal statutes, as interpreted by the United States Supreme Court and other courts with jurisdiction.

STATE LAW
(SDCL 2-2-41)





WHAT THE COURTS SAY

GENERAL OVERVIEW

Determine the ideal size for a legislative district =

Total Population / Total Number of Legislative Districts

Deviation Between Districts =

10% +/- from the smallest district from the largest district

Example of Deviation Range =

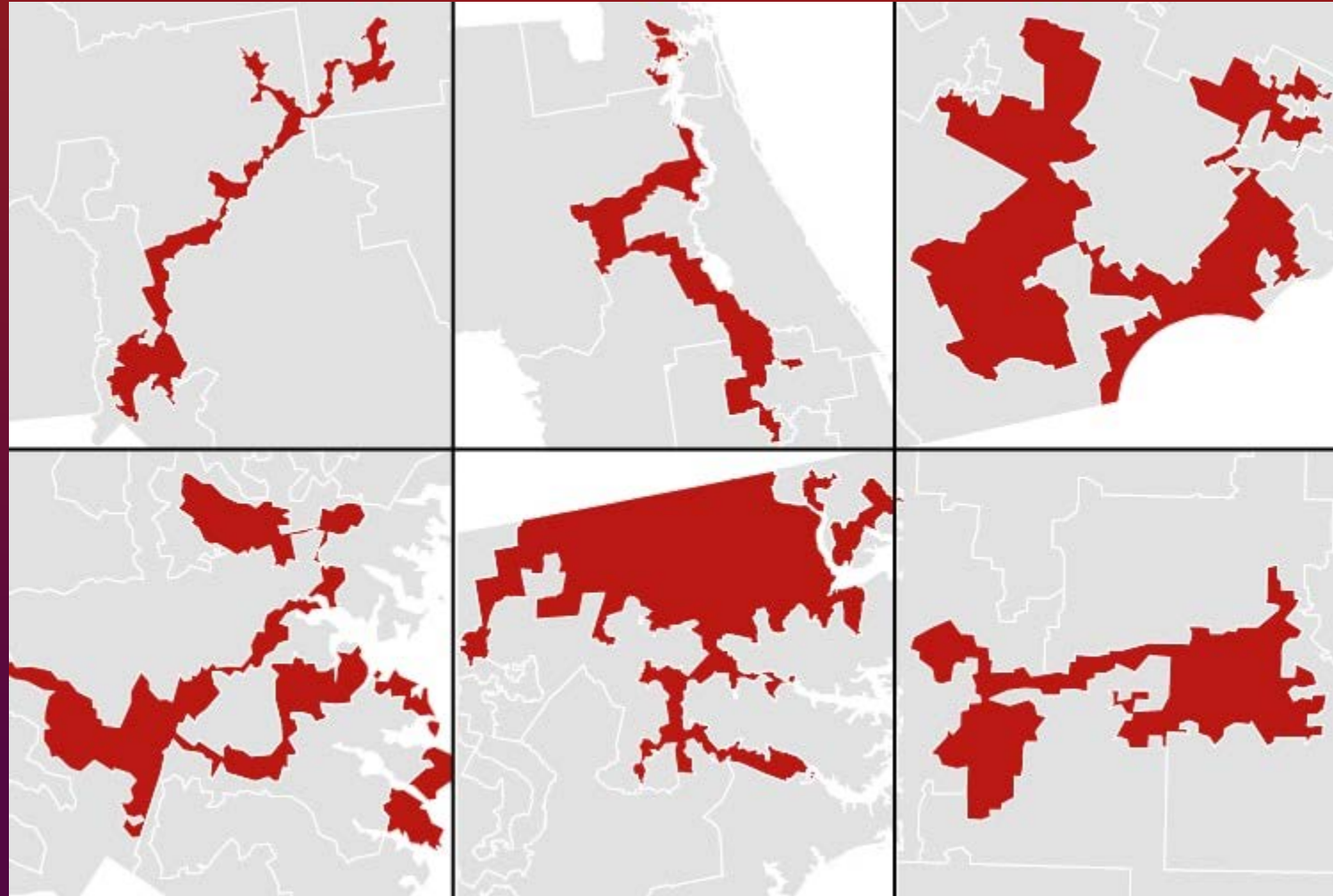
Ideal Size = 10,000

Acceptable Range = 9,500 to 10,500 (+/-5%) = 10%

Acceptable Range = 9,700 to 10,700 (-3%/+7%) = 10%

Not Acceptable = 9,200 to 10,300 (-8%/+3%) = 13%

WAYS STATES GET IN TROUBLE



WAYS STATES GET IN TROUBLE

Minority Populations

Race cannot be a primary factor, but you have to factor it in

Packing of a District -- Dilution of a Minority -- Retrogression

MAJORITY-MINORITY DISTRICTS

Factors to Consider:

- ▶ Young Population
 - ▶ Low Voter Registration
 - ▶ Low Voter Turn-Out
 - ▶ Other Voters
-

Example District #1

- ▶ 51% Minority
- ▶ 49% Majority

Example District #2

- ▶ 65% Minority
 - ▶ 5% Young Population
 - ▶ 10% Lower Turnout
 - ▶ 35% Majority
-

Example District #3

- ▶ 40% Minority
- ▶ 60% Majority
 - ▶ 30% Silver Party
 - ▶ 30% Gold Party

- ▶ **Summary of Case:** Texas redistricted its state into a combination of multi-member and single-member legislative districts.
- ▶ **Lesson to Be Learned:** Multimember districts are not per se unconstitutional, nor are they necessarily unconstitutional when used in combination with single-member districts in other parts of the State. However, they must not be used to minimize the strength of minorities.

WHITE V. REGESTER (1973)

A 3D illustration of a puzzle. The puzzle pieces are dark red and are arranged in a rectangular block. The top surface of the block is missing a section, revealing a dark grey surface underneath. The dark grey surface is covered with a pattern of puzzle pieces, some of which are missing, creating a grid of holes. The lighting is dramatic, with strong shadows and highlights, giving the puzzle a sense of depth and texture. The overall composition is centered, with the puzzle block occupying most of the frame. The text 'THE CHALLENGES' is overlaid on the puzzle in a white, sans-serif font.

THE CHALLENGES

Almost certain we will receive it on September 30, 2021.

Sept 30 2021


Dec 1 2021

Required by S.D. Constitution to have districts by December 1, 2021.


GETTING THE DATA

Timeline	Steps
During Session	<ul style="list-style-type: none"> • Creation of body handling redistricting. Schedule Special Session.
First Meeting (March/April)	<ul style="list-style-type: none"> • Adoption of governing principles to guide redistricting. The 2011 guidelines are codified in SDCL 2-2-41.
Second Meeting (June)	<ul style="list-style-type: none"> • Discussion of legal requirements, Supreme Court guidance, and demographics of the state. • Creation of subcommittees for creating maps for major urban areas within South Dakota.
Third Meeting (July)	<ul style="list-style-type: none"> • Reports of urban area subcommittees. • Discussion of initial maps regarding minority populations within South Dakota. • Creation of subcommittees for creating maps for minority populations within South Dakota.
Fourth Meeting (August)	<ul style="list-style-type: none"> • Reports of minority area subcommittees. • Discussion and adoption of maps for minority areas.
September/October	<ul style="list-style-type: none"> • Deadline for submission of maps to the LRC.
Fifth Meeting (September)	<ul style="list-style-type: none"> • Discussion and adoption of maps for major urban areas. • Complete petitions for special session to approve redistricting maps.
Sixth Meeting (October)	<ul style="list-style-type: none"> • Final discussion of maps and next steps.
October/November	<ul style="list-style-type: none"> • Special Session for Redistricting.
December 1st	<ul style="list-style-type: none"> • Redistricting complete. • If not, Supreme Court shall complete redistricting with ninety days.

QUALITY OF THE DATA

- ▶ Required by S.D. Constitution to use Census data as basis for redistricting.
 - ▶ Concerns about accuracy and quality of the data.
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CHANGES TO FEDERAL LAW

- ▶ *Shelby County v. Holder* (2013) eliminated requirement to preclear certain districts with DOJ.
 - ▶ Still time for Congress to address before redistricting.
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QUESTIONS

