



# The Voting Rights Act: Presentation to the Minnesota House of Representatives

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Elections and Redistricting Program

August 18, 2021



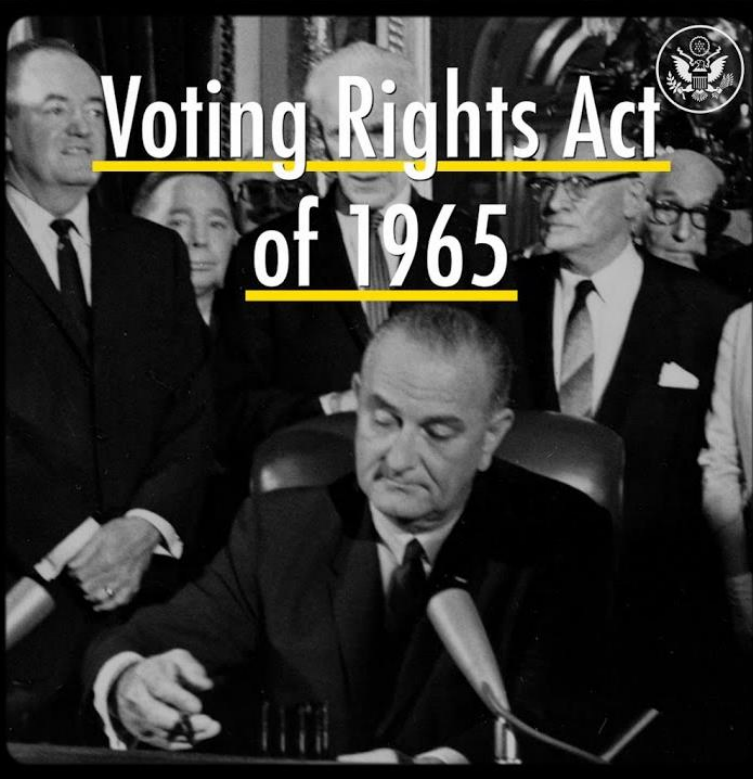


Strengthening  
the legislative  
institution.

Serving 7,383  
legislators and  
25,000 staff.



# Voting Rights Act of 1965



## Key Sections of the VRA



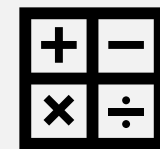
### Section 2

Private and Federal  
Cause of Action



### Section 3

The “Bail-In” Remedy for  
Violations of the VRA



### Section 4

The Preclearance  
Coverage Formula

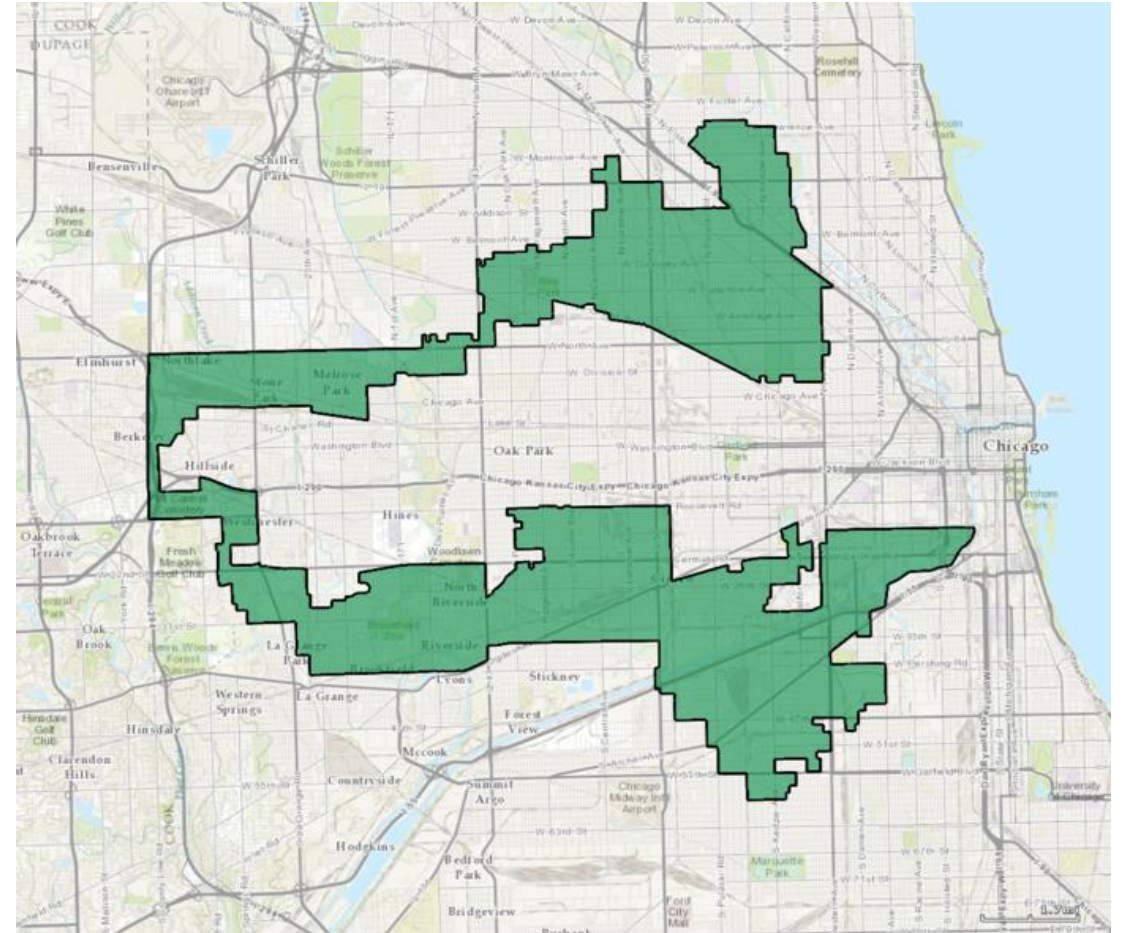


### Section 5

The Preclearance  
Regime

# Section 2: Overview

- Prohibits Vote Dilution
- Applies Nationwide
- Requires litigation (not prophylactic)
- Burden of Proof: Discriminatory Effect
  - Plaintiffs do not need to prove discriminatory intent



## Section 2: When Applies

### *Gingles* Preconditions

**Sufficiently large and geographically compact** to constitute majority

Minority group is **politically cohesive**

**White voters act as a bloc** to defeat minority group's candidate of choice

### Senate Factors

- History of official discrimination
- Racially polarized voting in the state
- Minority vote diluting election procedures
- Minority exclusion from the candidate slating process
- Discrimination in health education and employment
- Subtle or overt racial appeals in campaigns
- Extent of minority success being elected to public office

# Key Distinction: Vote Denial vs. Vote Dilution

## Vote Denial (Elections)

- Applies to laws denying or abridging the right to vote on account of race or color
- Localized or statewide impact of challenged law on denial of right to vote
- Key Supreme Court case:
  - *Brnovich v. Democratic National Committee* (2021)

## Vote Dilution (Redistricting)

- Applies to districting plans that hinder a minority group's opportunity to elect its candidate of choice
- Individual district-by-district analysis
- Some key Supreme Court cases:
  - *Mobile v. Bolden* (1980)
  - *Thornburg v. Gingles* (1986)
  - *Bartlett v. Strickland* (2009)

## Section 3: “Bail-In”

- **What:** Remedy available from courts who find violation Fourteenth or Fifteenth Amendments to U.S. Constitution.
- **How:** Judge orders jurisdiction subject to preclearance for future election law changes *if* it finds proof of discriminatory intent by a defendant.
- **When:** Limited duration set by judge; not permanent like Sections 4 and 5. Judge has significant discretion in crafting remedy.
- **Prevalence:** Rare





# Sections 4 and 5

## SUPREME COURT OF THE UNITED STATES

Syllabus

SHELBY COUNTY, ALABAMA *v.* HOLDER, ATTORNEY  
GENERAL, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR  
THE DISTRICT OF COLUMBIA CIRCUIT

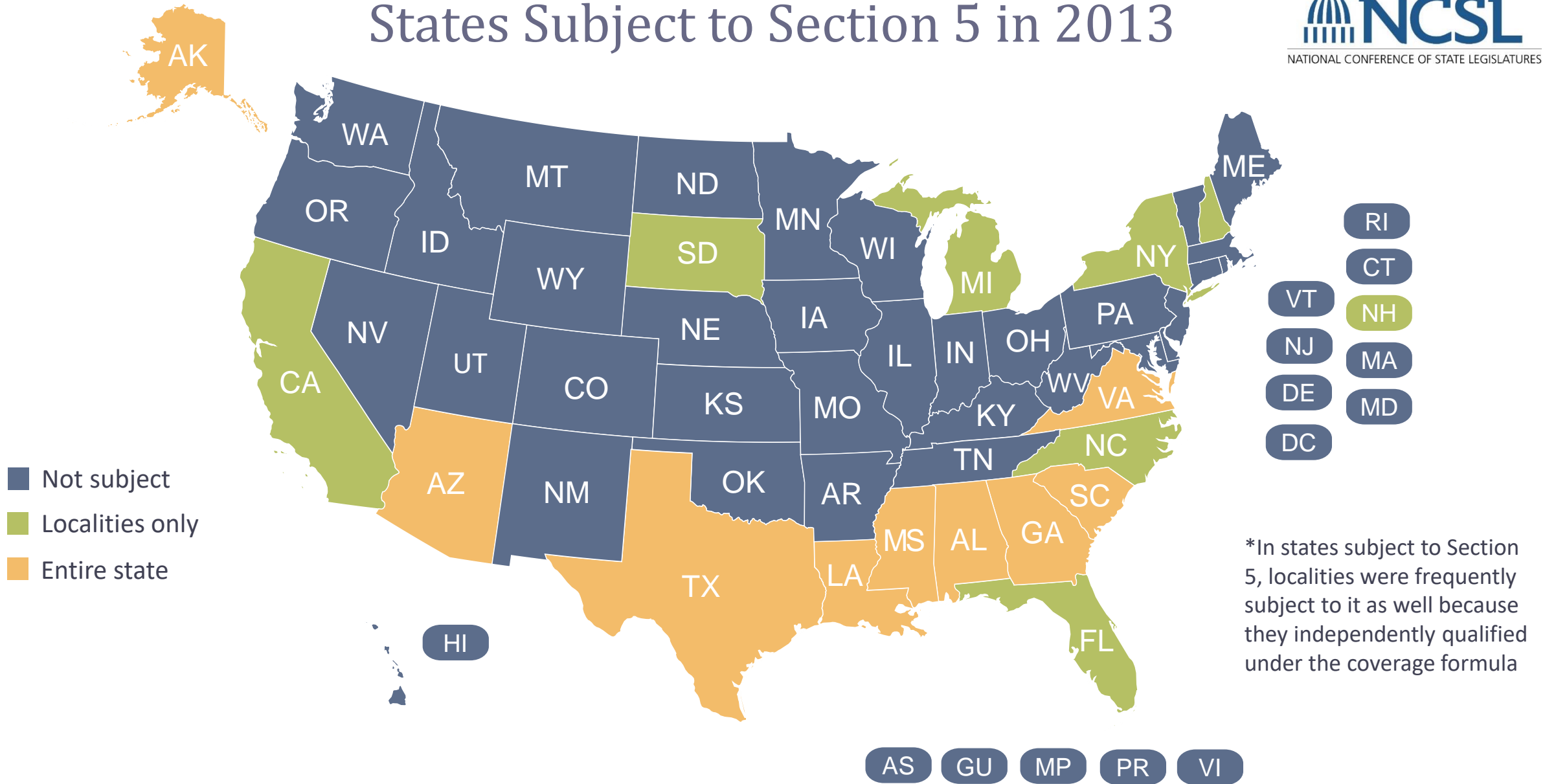
No. 12–96. Argued February 27, 2013—Decided June 25, 2013

The Voting Rights Act of 1965 was enacted to address entrenched racial discrimination in voting, “an insidious and pervasive evil which had been perpetuated in certain parts of our country through unremitting and ingenious defiance of the Constitution.” *South Carolina v. Katzenbach*, 383 U. S. 301, 309. Section 2 of the Act, which bans any “standard, practice, or procedure” that “results in a denial or abridgement of the right of any citizen . . . to vote on account of race



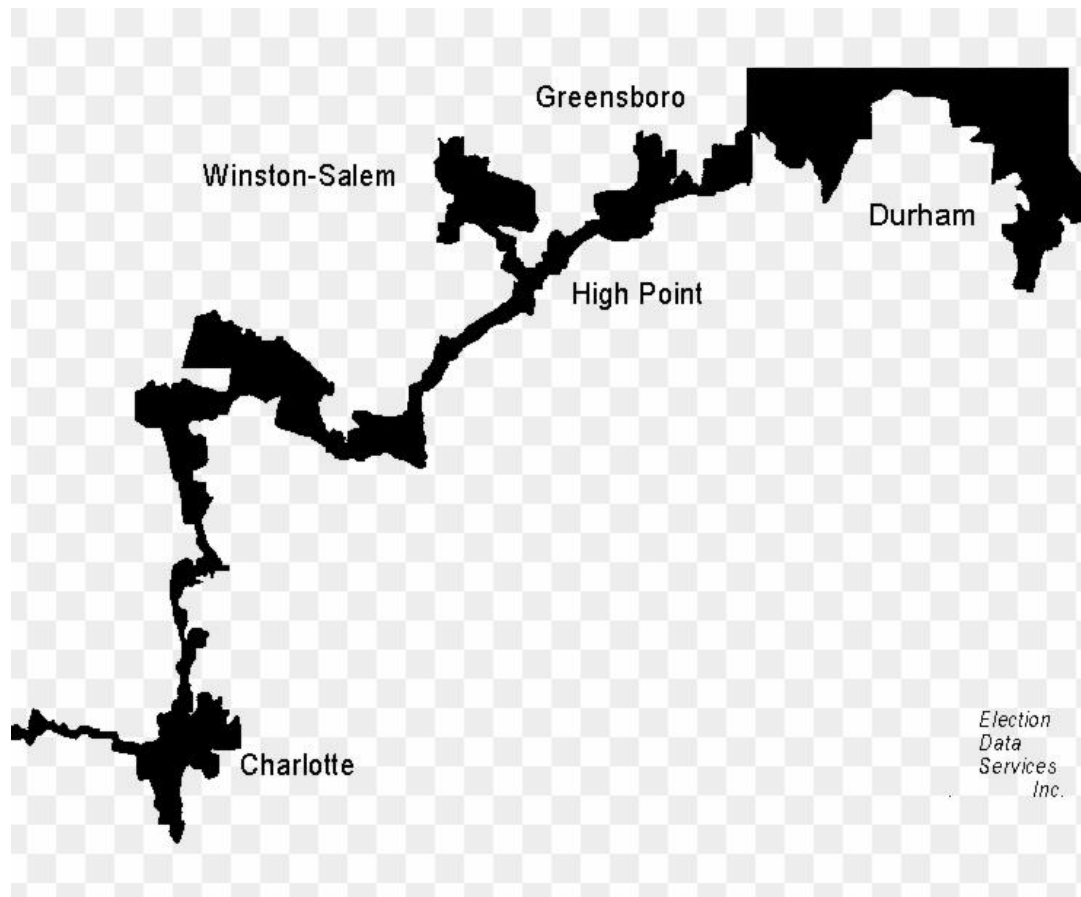


# States Subject to Section 5 in 2013



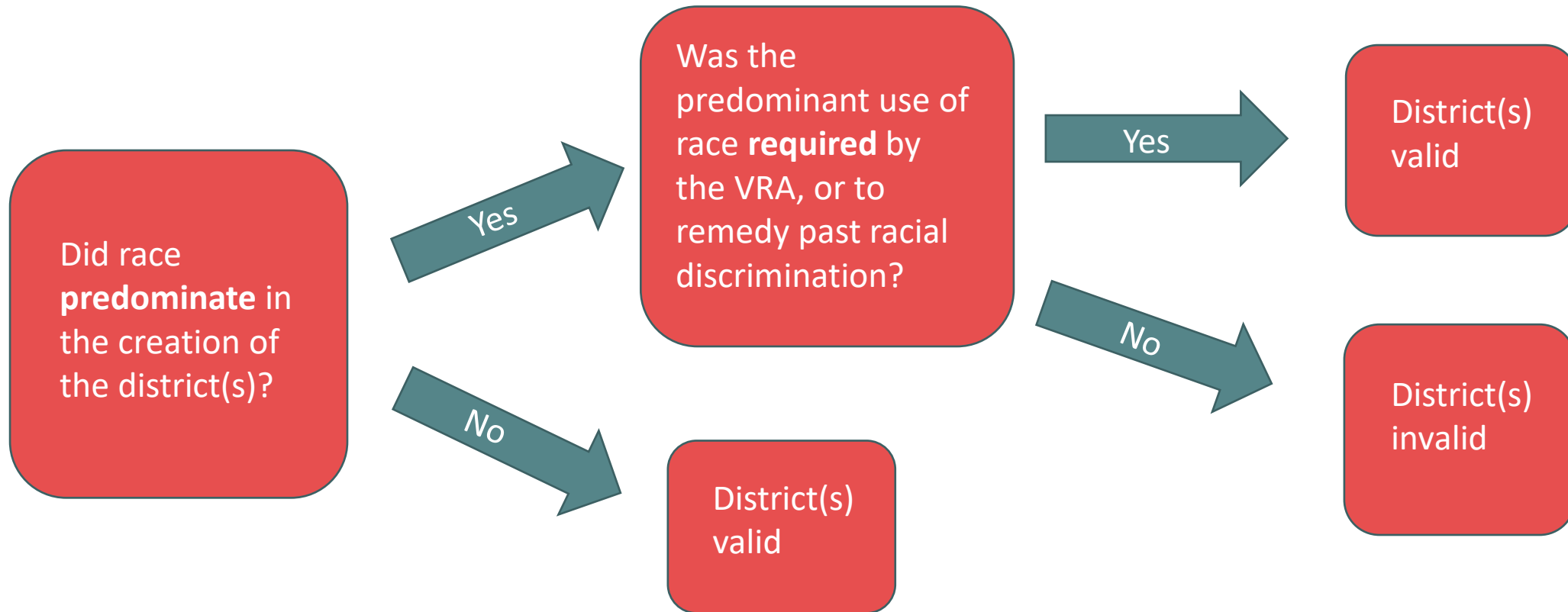
\*In states subject to Section 5, localities were frequently subject to it as well because they independently qualified under the coverage formula

# The Flipside: Racial Gerrymandering



- Equal Protection Clause claim
- Origin: *Shaw v. Reno* (1993)
- Claim has evolved over time
  - 1990s: white plaintiffs suing for lack of compliance with traditional principles
  - 2010s: black plaintiffs suing on vote dilution claims outside scope of Voting Rights Act

# Racial Gerrymandering: Legal Analysis





- Build a record to justify decisions
- Understand the dual mandates
- Ask your counsel about areas of your state requiring further investigation
- Previous court findings may hold little weight this time



## How to balance?

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Threading the needle

# Minnesota-Specific Considerations

Land of 10,000 communities of interest?

## Know who counts

- “Minority” could refer to individual Native American tribes or to “Native Americans” generally
- Scope can vary depending on type of redistricting plans (House, Senate, Congress)

## Demographics change

- State experts like your State Demographer Brower can help you understand how districts may need to change
- Forecasting future trends can be challenging

## Know your priorities

- Must comply with federal law before state law or committee guidance may be considered
- Courts will look to your records to determine liability



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**Reach out anytime!**

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# Communities of Interest

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August 18, 2021

# Preserving Communities of Interest

- 25 states have this traditional principle
- No agreed-upon definition
- Some states specify in constitution
  - **Alaska:** “Each house district shall . . . contain as nearly as practicable a relatively integrated socio-economic area”
  - **Missouri:** “Preserve long-standing communities of interest based on social, cultural, ethnic and economic similarities.”
  - **California:** “Communities of interest shall not include relationships with political parties, incumbents, or political candidates”



# Minnesota's 2011 language (not in constitution)

“Communities of interest’ include, but are not limited to, groups of Minnesota citizens with clearly recognizable similarities of social, geographic, political, cultural, ethnic, economic, or other interests...”

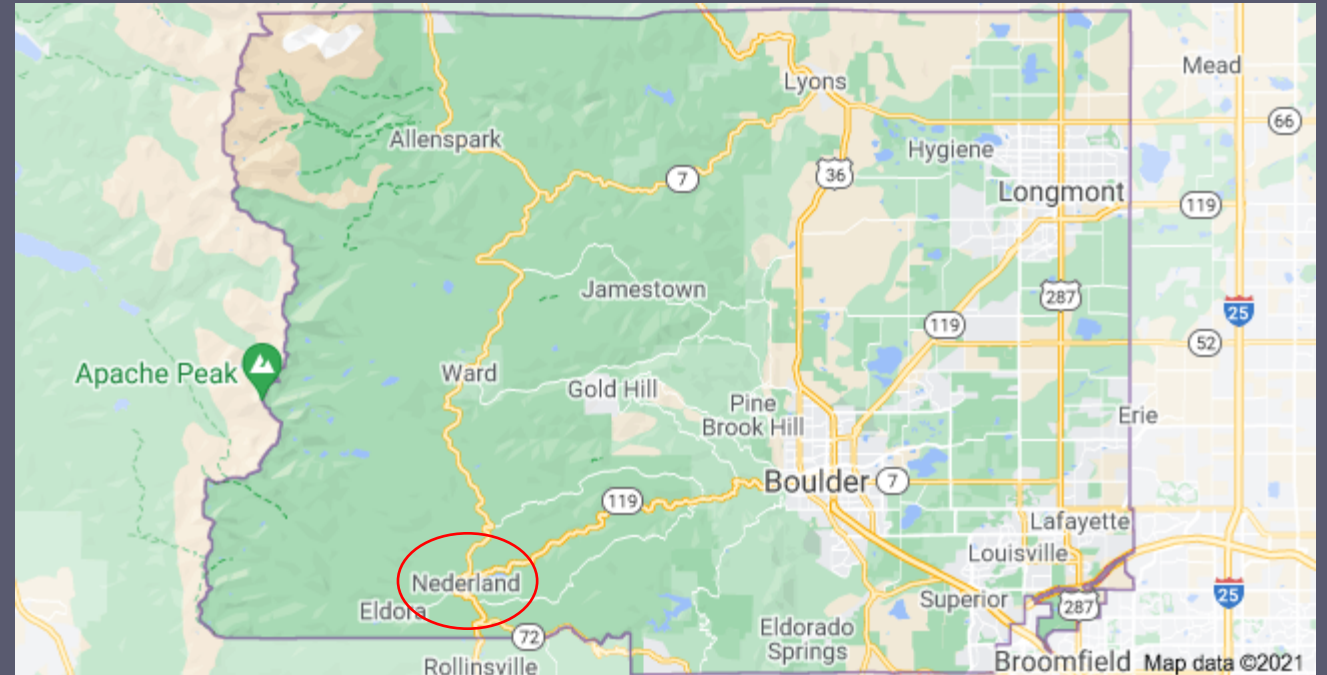




# Nederland, Colo.

Tentatively connected to a county over the Continental Divide. Yet ...

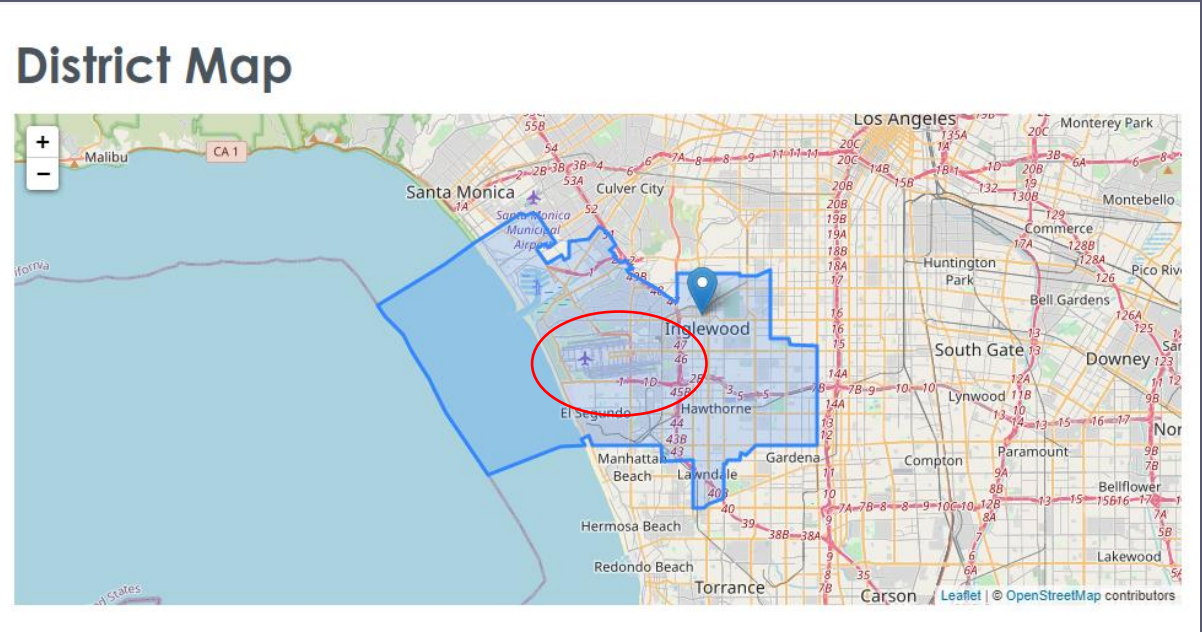
- in Boulder county, and Boulder county school district;
- in Boulder watershed;
- and the only highway goes to Boulder.



# Los Angeles, Cal.

District drawn to protect community impacted by noise at Los Angeles International Airport.

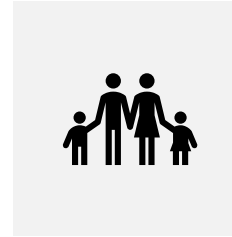
Was drawn to include residents impacted by sound of airplanes approaching Santa Monica Airport as well.





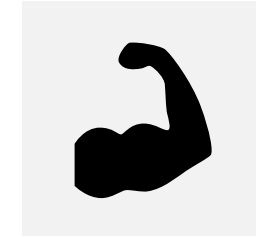
# Communities of Interest: Potential Conflicts

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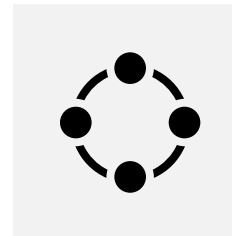
Preserving  
Counties

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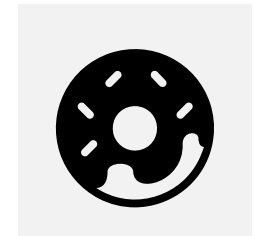
Competitiveness

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Compactness

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Cores of Districts

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# Public Input & Communities of Interest

Keeping track of submissions is part of the process.

## Maps

Constituents draw communities of interest (or map) and submit them for consideration

## Testimony

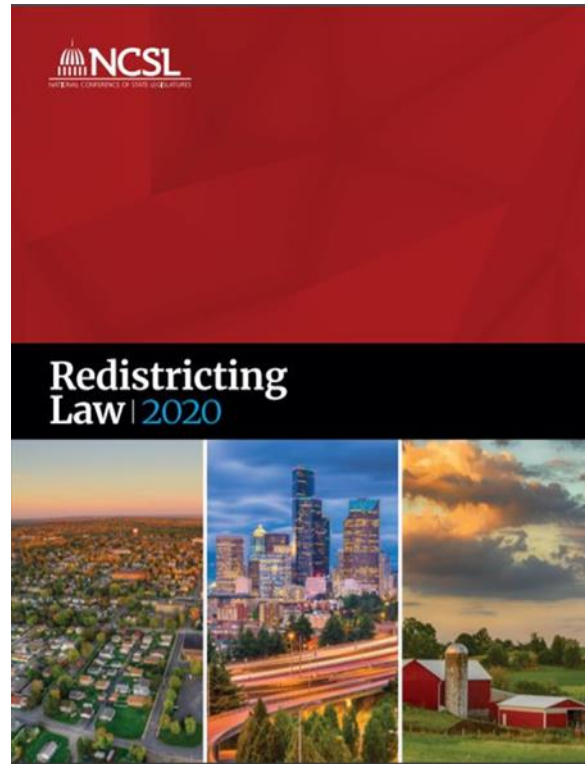
At a public hearing, constituents tell their story and what their priorities are

## Written Comments

Submit written testimony through online portals or email



# Questions?



Reach out anytime!

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