

Voting Rights Act Overview

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March 21, 2011

Voting Rights in the U.S. Constitution

- **14th Amendment, Section 1 (ratified 1868):**
 - “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”
- **15th Amendment, Section 1 (ratified 1870):**
 - “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...”

Voting Rights Act of 1965

- Enforcement of the U.S. Constitution, particularly 14th and 15th amendments, and other federal laws related to voting rights and elections proved difficult in certain regions of the United States
- Congress enacted Voting Rights Act of 1965, after significant debate, to enforce constitutional rights
 - Pub. L. No. 89-119, 79 Stat. 437 (1965)
- Congress has amended the Voting Rights Act four times since 1965
 - 1970 (temporary ban on tests as a qualification for voting)
 - 1975 (permanent ban on tests; covers for language minority groups)
 - 1982 (intent to discriminate not required for violation to occur)
 - 2006 (clarifications to section 5)



Voting Rights Act in 2011: Major Provisions in Redistricting

- **Section 2**

“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 [because he is a member of a language minority group].

- 42 U.S.C. sec. 1973(a); 42 U.S.C. sec. 1973b(f)(2)

- **Section 2 applies to all jurisdictions, nationwide**



Voting Rights Act in 2011: Major Provisions in Redistricting

- Section 5
 - Requires covered jurisdictions to have changes in election laws and voting process (including redistricting) approved by the U.S. Department of Justice
 - A jurisdiction is subject to section 5 if it has a significant history of discrimination against racial minorities
 - 9 States are fully covered (primarily deep South)
 - 7 States (scattered) have local jurisdictions that are covered
- The State of Minnesota is NOT subject to Section 5.
- There are NO political subdivisions in Minnesota subject to section 5.

Voting Rights Act in 2011: Section 2

- Prohibition on denial or abridgment of a citizen's right to vote on the basis of race, color, or membership in a minority language group
 - Intent to discriminate is NOT required
- The U.S. Attorney General, or any affected person, is permitted to file suit to enforce Section 2
 - In redistricting, challenges typically allege that a district or set of districts unfairly reduce the voting strength of a minority group (vote “dilution”)

Voting Rights Act, Section 2:

What makes a successful challenge?

- A violation occurs if the minority group “do[es] not have an equal opportunity to participate in the political process and to elect candidates of their choice.”
 - *Thornburg v. Gingles*, 478 U.S. 30 , 44 (1986)
- A plaintiff must satisfy a multi-part test to succeed:
 - The minority group is sufficiently large enough to constitute a majority of the population of a district, and geographically compact so that a district with a majority of its members could be drawn
 - The minority group is “politically cohesive” (it would vote largely as a bloc for a favored candidate)
 - Bloc voting by the majority population of the district typically defeats the favored candidate of the minority group (“racially polarized voting”)



Voting Rights Act, Section 2: What makes a successful challenge?

- If a minority group succeeds in showing it is large and compact, votes as a politically cohesive bloc, and its preferred candidate usually loses...
 - ...then the court will review the “totality of the circumstances” to determine whether a court-ordered redrawing of districts is appropriate.

Voting Rights Act, Section 2: What makes a successful challenge?

- The *Gingles* Court set many factors to be considered in the “totality of the circumstances” analysis
 - History of institutionalized discrimination
 - Whether preferred candidates of the minority group have historically been elected to office
 - Proportion of elected offices held by members of the minority group relative to the proportion of the minority in the population as a whole
 - *Gingles*, 478 U.S. at 36-37
- Members of a protected class [minority group] do not have a right to a proportion of elected officials equal to the proportion of the group in the population
 - 42 U.S.C. sec. 1973(b)

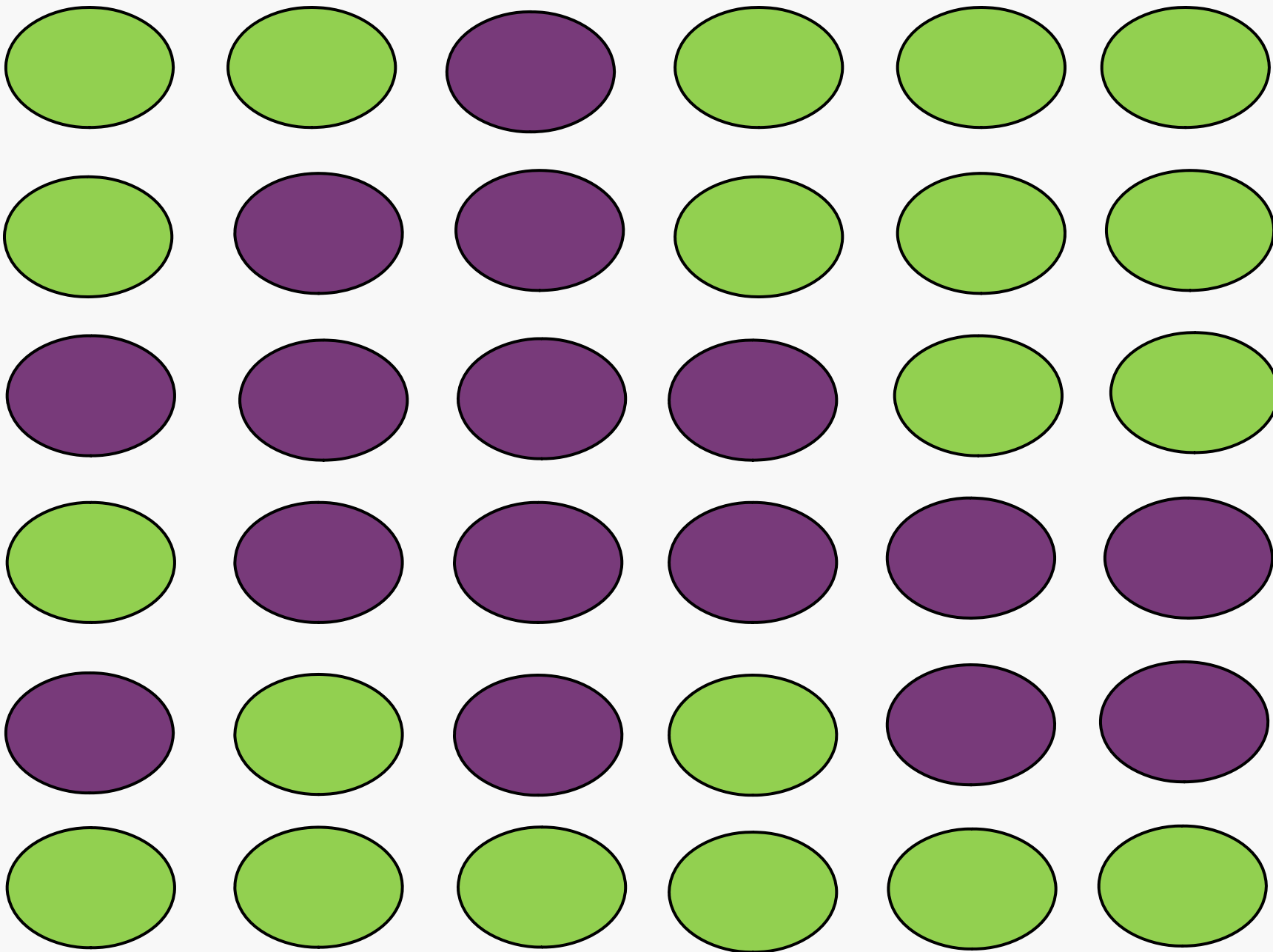
Voting Rights Act, Section 2:

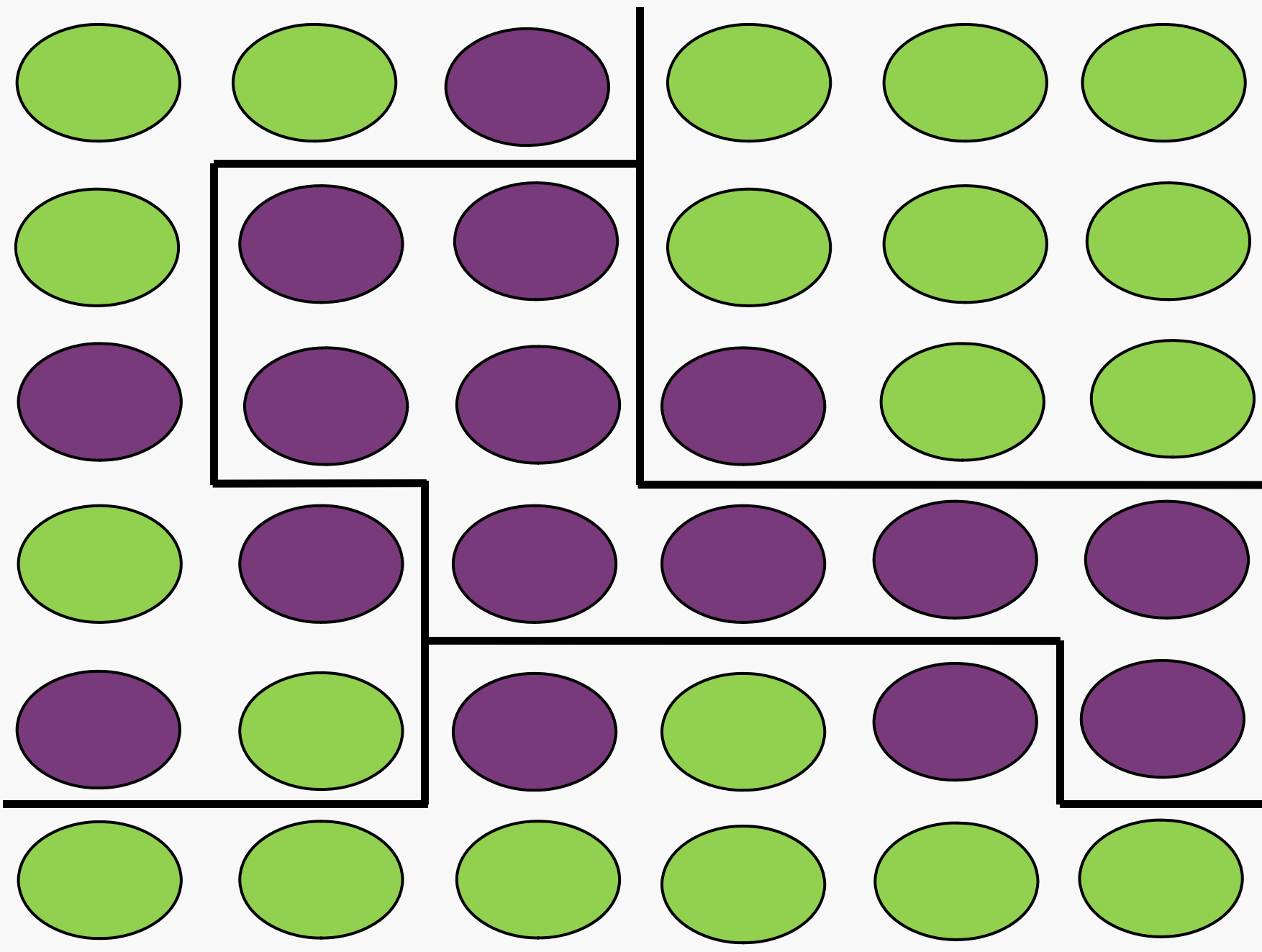
What might be a “bad” district?

- Often, vote dilution claims arise out of one of the following circumstances:
 - **Multimember districts**
 - Placing a minority group in a large multimember or at-large district may make prevent the group from electing its preferred candidates
 - **Single-member districts that are racially “packed”**
 - Significant concentration of a minority group in one district, allowing them more than enough voting strength to elect one preferred candidate in that district, but not in others
 - **Single-member districts that are racially “cracked” (or “fractured”)**
 - Split of a minority group into multiple districts, so it does not have significant voting power in any district



What is a “packed” district?



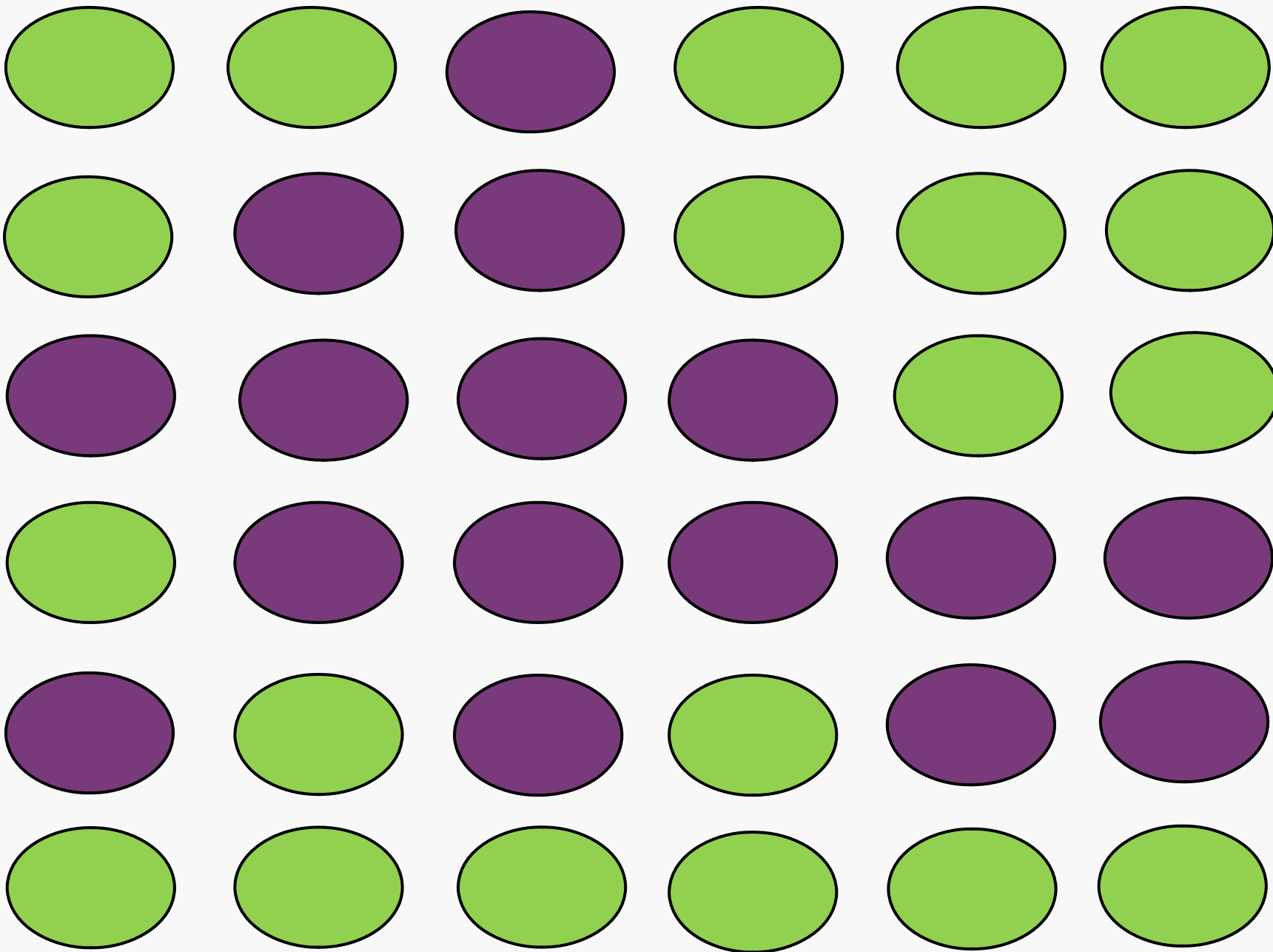


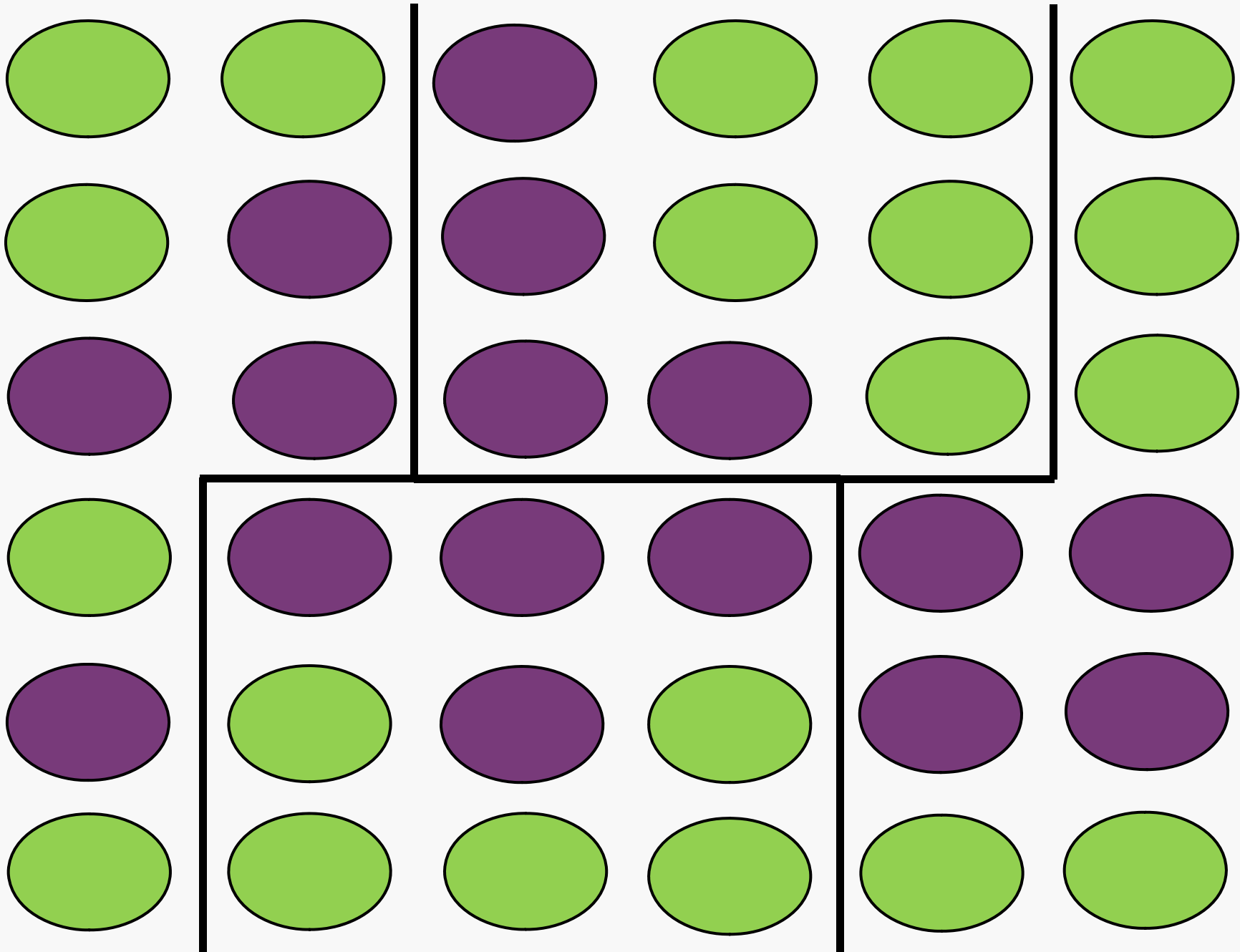
What is a “packed” district?

- The set of district boundaries on the previous slide “packed” the minority group in one central district
 - Virtual guarantee to win one seat (9-0) but the group is a minority in the other four districts (4-5, 1-8, 2-7)
- Likely result, if polarized voting is occurring: 3 seats for the majority group, 1 seat for the minority group, despite the minority group being 48% of the population



What is a “cracked” district?







What is a “cracked” district?

- The example set of boundaries on the previous slide “cracked” the minority group into minorities in each of the four districts (4-5, 4-5, 4-5, 4-5)
- Likely result, if polarized voting is occurring: 4 seats for the majority group, 0 seats for the minority group, despite the minority group being 48% of the population



Voting Rights Act, Section 2: Minimizing the risk



Voting Rights Act, Section 2: Minimizing the risk of challenge

- In the example on the following slide, the majority group holds an advantage in two districts (8-1, and 5-4) while the minority group holds an advantage in the other two (6-3, and 5-4)
- Likely result, if polarized voting is occurring: two seats for the majority and two seats for the minority

Voting Rights Act, Section 2: Minimizing the risk of challenge

- Don't "pack" or "crack" a minority population
 - Consider the context of surrounding districts
- Majority-minority districts
 - May be required, if the voting-age population of a minority group is large, compact, politically cohesive, and the group has traditionally failed to elect its preferred candidates
 - Voting-age minority population must actually constitute a majority for a majority-minority district to be required
 - *Bartlett v. Strickland*, 129 S.Ct. 1231 (2009)
 - Is 50% + 1 of the population enough?



Voting Rights Act, Section 2: Minimizing the risk of challenge

- Section 2 does not require that the number of majority-minority districts be the maximum number possible
 - *Johnson v. DeGrandy*, 512 U.S. 997 (1994)
- Section 2 does not require creation of effective minority districts if the minority group does not constitute a majority of the population in the potential district
 - *Bartlett v. Strickland*, 129 S.Ct. 1231 (2009)



Voting Rights Act, Section 2: Minimizing the risk of challenge

- While not required to be created, “effective minority districts” can help reduce the risk of a Section 2 violation
 - “Cross-over district”: A minority group may be able to elect its preferred candidate if it persuades enough members of the majority group to cross over and vote for that candidate
 - “Influence district”: Members of a minority group do not have a working majority of the population in the district, but the minority is strong enough to influence the policy choices of the elected official
 - “Coalitional district”: Members of more than one minority group in a district vote as a coalition, and that coalition constitutes a majority of the district strong enough to elect the preferred candidates of the coalition
- Statistical analysis of voting patterns is required to determine whether a district is an effective minority district.



Voting Rights Act, Section 2: Minnesota Statistics

- The districts ordered by the Minnesota Supreme Court's Special Redistricting Panel in 2002 include:
 - One majority-minority House district (58B), based on total population of one group (zero districts, based on voting-age population)
 - 11 minority-opportunity House districts, based on total population (nine, based on voting-age population)
 - Six majority-minority districts, if all minority racial groups are aggregated
 - Zero majority-minority Senate or Congressional districts
 - Six minority-opportunity Senate districts, based on total population (three, based on voting-age population)
 - Three majority-minority Senate districts, if all minority racial groups are aggregated



Voting Rights Act, Section 2: Minnesota Statistics

- 2010 Census Results:
 - Based on current district boundaries, Minnesota's population has grown and shifted so that there are:
 - Two Congressional districts that are minority opportunity districts (Districts 4 and 5)
 - Eight State Senate districts that are minority opportunity districts
 - Six of these are majority-minority districts
 - Note: For these statistics, minority population data are aggregated to include all minority groups within the district



Racial Gerrymandering

Racial Gerrymandering

- Beyond the Voting Rights Act
 - Typically a claim under the 14th Amendment
- Early history: used to exclude minority groups
- Recent history: used to increase minority representation
- U.S. Supreme Court:
 - “the 14th Amendment requires state legislation that expressly distinguishes among citizens because of their race to be narrowly tailored to further a compelling governmental interest”
 - *Shaw v. Reno*, 509 U.S. 630, 643 (1993)

Racial Gerrymandering

- To prove a district is the result of a constitutionally-suspect racial gerrymander, the challenger must show that race was the dominant motive in creating the district
 - Court will look to shape of district
 - Legislative history (statements of legislators and staff, public testimony, etc.)
 - Use of racial data in the process: when, and how much detail relative to other types of data?
 - Is district racially gerrymandered or politically gerrymandered?

Racial Gerrymandering

- If a plaintiff succeeds in showing that a district is racially gerrymandered, the court will use “strict scrutiny” analysis
 - Test: Did the government
 - (1) have a compelling interest in creating the district the way it did; and
 - (2) is the district narrowly tailored to achieve that interest?
 - Compelling interest may be: remedy of past discrimination, compliance with Voting Rights Act
 - Narrowly-tailored result: Does the district achieve the result the state is interested in? Does it go further?



Racial Gerrymandering:

Minimizing the Risk of Challenge

- Adoption of (and adherence to) “traditional districting principles” helps ensure that race is not the predominant motive in creating districts
- If a district may appear suspect, clear legislative history (on the record) explaining why it is necessary to draw the district in that manner
- Avoidance of bizarre shapes (this historically has not been an issue in Minnesota)
- Use of a variety of data in developing a plan



Questions?