

— Compliance with Federal Law

≤ 7% (46.5–53.5%)

Legal Considerations for Map-Drawers

— Compliance with federal law

- The Commission's maps must comply with federal law, including the U.S. Constitution and Voting Rights Act.
- Arizona's Constitution recognizes these obligations.
 - "Districts **shall** comply with the United States Constitution and the United States voting rights act." Ariz. Const. art. 4, pt. 2, sec. 1(14)(A) (emphasis added).
 - This is the only one of the Commission's six constitutional criteria that is **absolutely mandatory** and not "to the extent practicable."
- The Commission and its staff, counsel, and consultants have considered these obligations at every step of the map-drafting process.

— Potential claims

- There are two primary ways a map can violate federal law:
 - **Vote dilution** (Section 2 of the Voting Rights Act)
 - **Racial gerrymandering** (14th Amendment to the U.S. Constitution)
- Either claim can involve allegations of **packing** and/or **cracking**:
 - **Packing**— the minority group is packed into supermajorities in fewer districts than it could effectively control.
 - **Cracking**— the minority group is dispersed across multiple districts such that it does not control any of them.

— Vote dilution (VRA Section 2)

- Section 2 prohibits drawing a minority group that is sufficiently **populous, compact, and cohesive** to elect a candidate of its choice into a district where it is not able to.
- A plaintiff must establish three factors (*Thornburg v. Gingles*, 478 U.S. 30 (1986)):
 - the minority group is sufficiently large and geographically compact to constitute a majority in a single-member district;
 - the minority group is politically cohesive; and
 - the majority votes sufficiently as a bloc to enable it usually to defeat the minority's preferred candidate.
- If these factors are met, then the court considers **totality of the circumstances**, including present and historic discrimination against the minority group.

— Vote dilution (VRA Section 2)

- A minority group must comprise at least **50% + 1** of a hypothetical district's voting-age population to succeed on a Section 2 vote dilution claim. *Bartlett v. Strickland*, 556 U.S. 1 (2009)).
- The proper measure of the minority group is **citizen voting-age population** (“**CVAP**”), since that determines the group's actual ability to elect candidates of its choice. *See LULAC v. Perry*, 548 U.S. 399 (2006); *Luna v. Cty. of Kern*, 291 F. Supp. 3d 1088 (E.D. Cal. 2018).
- States can defend against vote dilution claims if **crossover voting** enables the minority group to elect candidates of its choice.
- The map-drawer's motive is irrelevant.

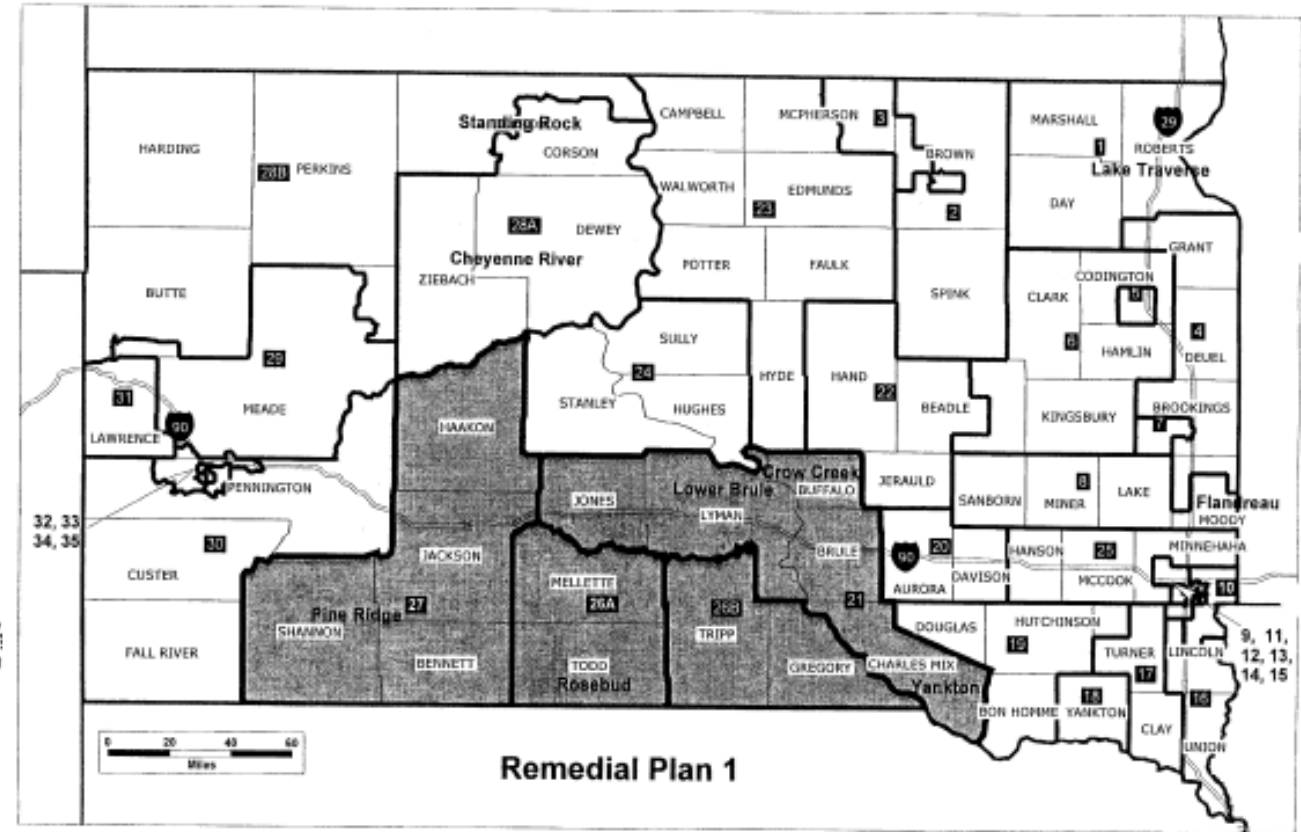
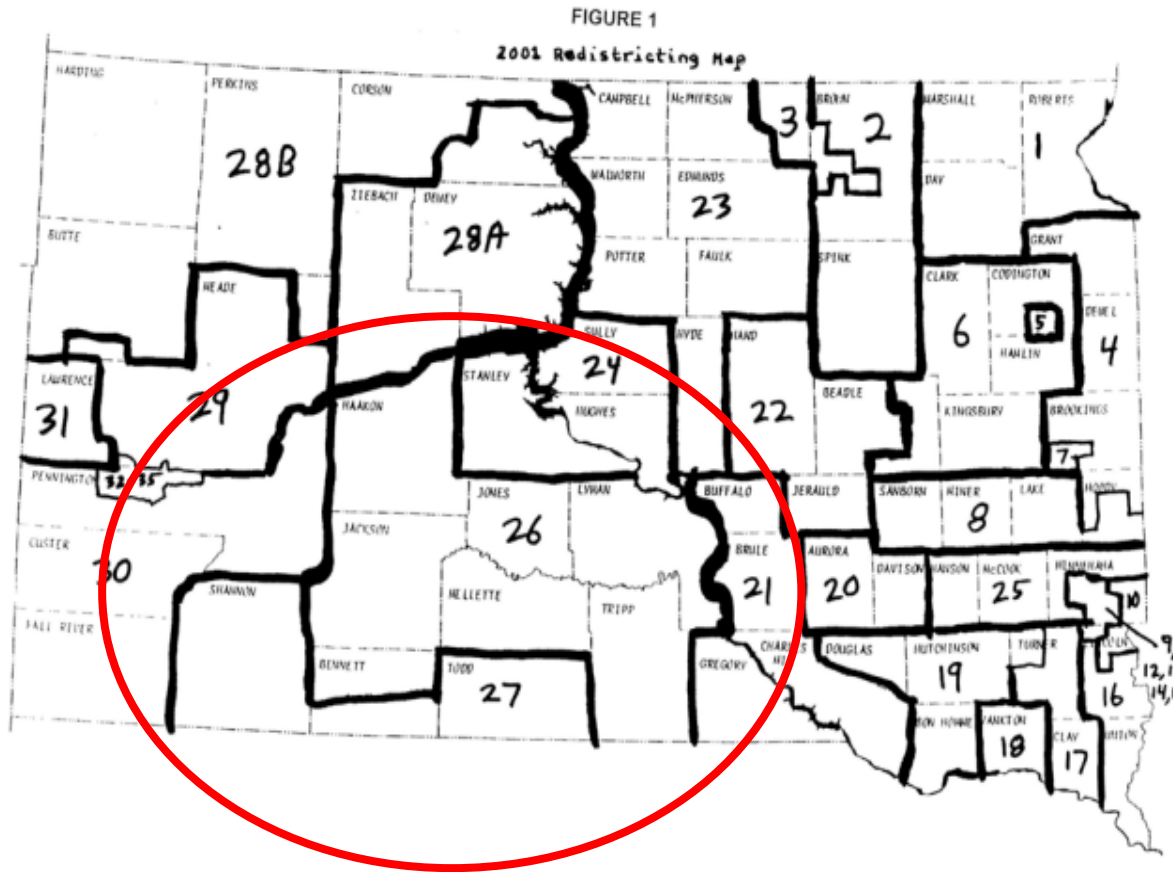
Vote dilution (VRA Section 2)

EXAMPLE – *Bone Shirt v. Hazeltine*, 336 F. Supp. 2d 976 (D.S.D. 2004)

- Successful challenge by Native Americans to South Dakota's 2001 legislative redistricting plan, alleging that the state had violated Section 2 by packing Native Americans into a 86% VAP supermajority district (LD26) and leaving a 23% Native American VAP minority in an adjacent district (LD27).
- The plaintiffs showed that Native Americans **could have formed a compact, cohesive majority in both LD26 and LD27.**
- The court agreed, holding that “[t]he current legislative Plan impermissibly dilutes the Indian vote and violates § 2 of the Voting Rights Act. Defendants must afford Indians in both Districts 26 and 27 a realistic and fair opportunity to elect their preferred candidates.” *Id.* at 1052.

Vote dilution (VRA Section 2)

EXAMPLE – *Bone Shirt v. Hazeltine*, 336 F. Supp. 2d 976 (D.S.D. 2004)



— Racial gerrymandering (14th Amendment)

- The 14th Amendment's Equal Protection Clause prohibits drawing district lines **predominantly on the basis of race** unless the state can show that the district plan is **narrowly tailored** to advance a **compelling interest**.
- A plaintiff must show that race “predominated” over other redistricting criteria.
- Complying with the VRA can be a “compelling interest” as long as the state can show a “strong basis in evidence” for its belief that the VRA required a particular district. *See Bethune-Hill v. Va. State Bd. of Elections*, 137 S. Ct. 788 (2017).

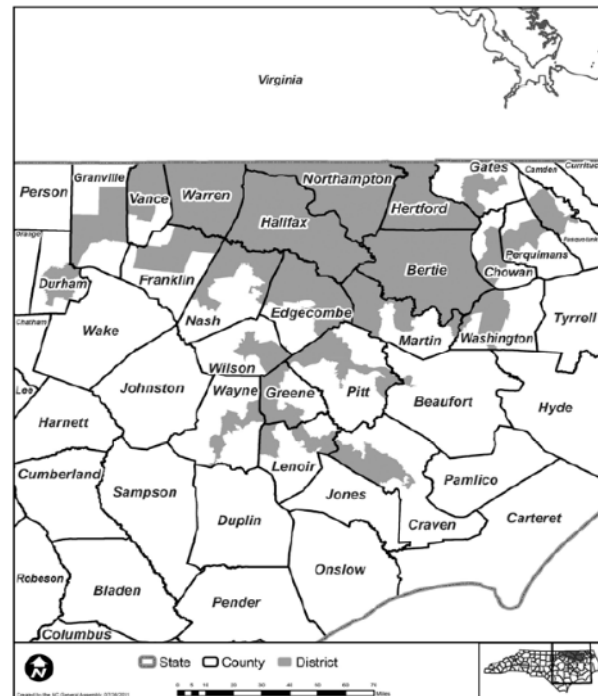
— Racial gerrymandering (14th Amendment)

- A district may be an impermissible racial gerrymander if:
 - it is **irregular, bizarrely-shaped, or otherwise inconsistent with traditional redistricting criteria**, and inexplicable on any basis other than race, *see, e.g., Cooper v. Harris*, 137 S. Ct. 1455 (2017); *Miller v. Johnson*, 515 U.S. 900 (1995); or
 - there is **overt evidence of racial motivation**, even if the district complies with traditional redistricting criteria, *see, e.g., Bethune-Hill v. Va. State Bd. of Elections*, 137 S. Ct. 788 (2017).

Racial gerrymandering (14th Amendment)

EXAMPLE—*Cooper v. Harris*, 137 S. Ct. 1455 (2017)

- Successful challenge to two majority-black North Carolina congressional districts, CD1 and CD12, with Court concluding that race was the predominant motive for the creation of both districts and could not be justified by reference to the VRA.



Congressional District 1 (Enacted 2011)



Congressional District 12 (Enacted 2011)

Factors to consider when analyzing compliance with federal law

- Citizen voting-age population of minority group in a given area.
- Polarization: do minority voters and white voters choose opposing candidates in elections?
 - This goes to the cohesiveness and white bloc voting elements of the *Gingles* test, and involves determining which candidates each group tends to prefer. Analyzed through ecological regression.
 - Performance thresholds: taking into account minority vote preferences, turnout, and crossover and coalition voting to determine what share of the population in a district a minority group must represent in order for it to be able to elect candidates of its choice.
- Racial predominance: is the district bizarrely shaped? Does it disregard traditional redistricting criteria (i.e., communities of interest)? Is there evidence in the record of explicit race-based goals?

— Conclusion