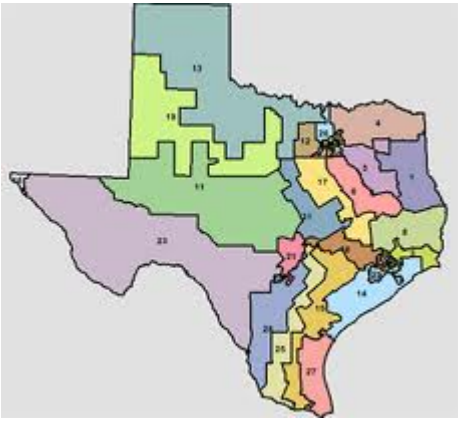

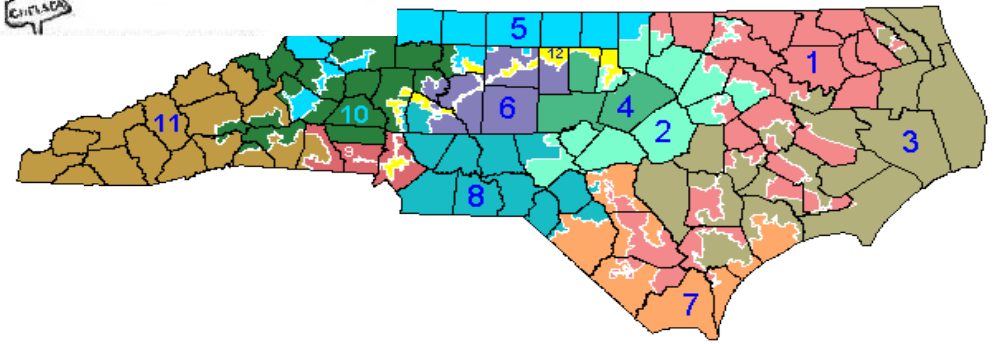

Racial Redistricting and Voting Rights

Dane County Redistricting Commission

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January 5, 2021

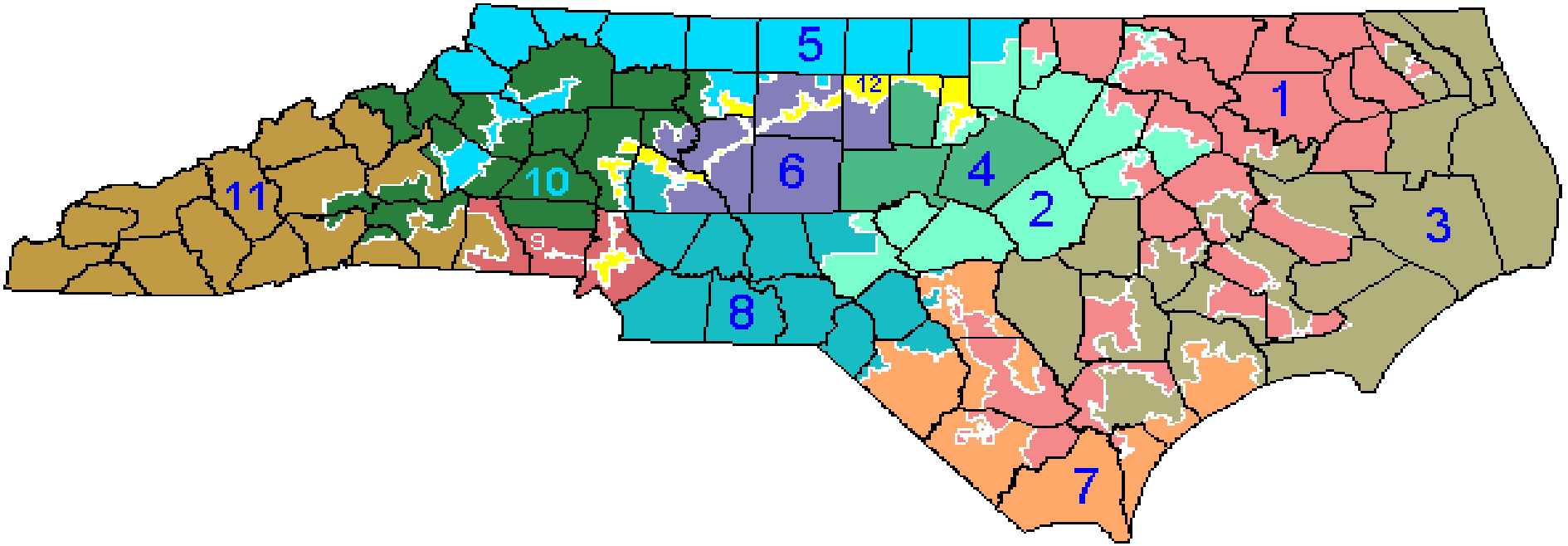
Components of the 1965 VRA

- Equal opportunity to vote: banned literacy tests and other restrictions on the right to vote, federal marshals to enforce the law.
- Section 2 – right to vote may not be denied on the basis of race; applies to entire country.
- Section 5 – pre-clearance, applied to covered jurisdictions (but the 2013 *Shelby* case).
- 1975 amendments – protection for language minorities. 5% or 10,000 citizens with limited English proficiency.

Intent vs. effects

- Then *Mobile v. Bolden* (1980) – plaintiffs in a voting rights case had to prove an intent to discriminate, not just an effect.
- The 1982 VRA Amendments reversed the *Mobile* decision. *Thornburg v. Gingles* (1986), three-prong test for vote dilution: compact population, minority vote is cohesive, majority bloc voting denies minority equal opportunity to elect candidates of choice.
- The 1992 redistricting process: maximize the number of minority-majority districts.

The 1992 North Carolina House Plan:



Courts: Protecting white voters

- *Shaw v. Reno* (1993) challenged the new black-majority districts. “Appearances matter” -- struck down these districts as a violation white plaintiffs’ protection of the “equal protection” of the law under the 14th Amendment.
- *Miller v. Johnson* (1995). Race cannot be the predominant factor in drawing district lines.
- Race and party intersection: *Easley v. Cromartie* (2001).

Racial redistricting, cont.

- 2002 and 2012 rounds of redistricting – tension between VRA and *Shaw/Miller*. Sued by minority plaintiff if you don't consider race enough and by white plaintiff is you consider race too much. Have to find the "sweet spot."
- *LULAC v. Perry* (2006), found that removing 100,000 Latino voters from District 23 constituted vote dilution under the VRA (example of "cracking"). District had to be redrawn to make a "performing district."

Recent cases: dilution through packing

- *Whitman v. Personhuballah* (2015) with Virginia's congressional districts, *Alabama Legislative Black Caucus v. Alabama* (2015) with state legislative districts, and *Cooper v. Harris* (2017) NC's congressional districts all concerned "packing" voters and race vs. party. The Court ruled that packing constituted vote dilution under Section 2 of the VRA and the 14th Amend. In the NC cases the court was unanimous on District 1 and Justices Thomas, Ginsburg, Breyer and Sotomayor joined Justice Kagan's majority opinion on the 12th district. Ruled that race could still predominate even if party played a role.

Remaining tensions

- Party gerrymandering as a “safe harbor” for racial gerrymandering? *Cooper v. Harris* seems to suggest “no,” but it is hard to know what Justice Thomas is up to. Supreme Court needs to sort this out, but now that they are out of the partisan redistricting business *(Rucho v. Common Cause*, 2019) it is not clear how this plays out.
- Tension between goals. Under conditions of residential segregation, compact districts often dilute minority voting power through packing.

Tensions between goals

- City lines often drawn intentionally to segregate, therefore respecting such lines often leads to packing.
- Sometimes minority community exists on city borders so respect for borders leads to cracking of communities of interest.
- The intentional creation of minority opportunity districts often leads to non-competitive minority districts and an increase in the number of non-competitive white districts. Therefore, maximizing the number of competitive districts often leads to less descriptive and/or substantive representation for minorities.