



NYSAC
— NEW YORK STATE —
ASSOCIATION OF COUNTIES



County Redistricting and Weighted Voting Systems



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New York State based, NTS Data Services works in close partnership with 51 counties and over 70 school districts across the Empire State to develop and apply election technology applications. These applications include, voter database solutions and cyber security expertise to aide our counties and school districts in securing their critical data from adversarial entities.



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Decennial County Legislature Redistricting in NYS

NYSAC Fall Conference

September 13, 2021

Gerald Benjamin

The Benjamin Center - SUNY New Paltz



United States Constitution: One Person, One Vote

- ▶ In decisions made in 1962 (*Baker v. Carr*) and 1964 (*Wesberry v. Sanders*, *Reynolds v. Sims*) the United States Supreme Court made clear that the equal protection clause of the U.S. Constitution requires legislative districts to be “substantially equal in population.” (XIV Amendment)
- ▶ In 1968 this principle was extended by the Court to apply to local governments (*Avery v. Midland County*)



Historically, Most NY Counties Were Governed by Boards of Supervisors

- ▶ The Boards were comprised of the supervisors of each of the towns in the county, augmented by additional supervisors elected from wards within each city (if any) in the county

Towns within counties were, of course, not equal in population

- ▶ Thus in 1968 counties with boards of supervisors found their governance structure immediately in violation of the U.S. constitution.

Two Major Alternative Approaches to Complying with One-Person-One Vote

Counties give up towns as the basis of their governance structure.

- ▶ Replace Boards with legislatures.
 1. Create single member districts that were “substantially equal in population.”
 2. Combine towns and use single and multimember districts to assure that citizens were equally represented.
 3. Periodically alter the size of the legislative body

Counties retain the board, maintaining towns as integral to county govt.

- ▶ Create a weighted voting system that equally represented citizens by giving supervisors different voting strength within the board, based upon their town’s size relative to that of other towns in the county.

Currently there are 57 Counties Outside NYC

- ▶ 16 governed by Boards of Supervisors
 - ▶ Weighted voting required
- ▶ 41 have county legislatures
 - ▶ All must consider if redistricting is needed, and redistrict if necessary

For example: The Columbia County Board has 23 members, with a total of 3365 votes

- ▶ 18 Town Supervisors
- ▶ 5 Supervisors elected from the City of Hudson
- ▶ Total members - 23
- ▶ Total votes - 3535 Total pop. 58,813
- ▶ Most leg. Votes - Kinderhook - 442 (12.5%)
- ▶ Kinderhook Population - 8049 (13.7%)
- ▶ Least leg. votes - Hudson wards - 74 each (2.1%)
- ▶ Hudson wards' population - $5964/4 = 1491$ (2.5% county)
- ▶ Taghkanic - 75 votes (2.1%)
- ▶ Population 1231 (2.3%)

Why “Power Equalizing” is Needed

- ▶ In some circumstances, allocating weights to representatives entirely in proportion to population excludes some of them from effective participation in governance -
 - ▶ e.g. If one of Columbia’s towns had more than half the county’s people, it alone could run the county.

Proportionality in Weighted Voting

Iannucci v. Bd. Of Supervisors of Washington Cty. 20 NY 2d 244 (1967)

It is not sufficient to weigh:

- ▶ Relative to % of population represented
- ▶ e.g. Former Nassau County Board of Supervisors

Weighed in accord with:

- ▶ Voting power - % of time representative may comprise a **part of a potential winning coalition**
- ▶ Banzhaf Index
- ▶ <https://www.youtube.com/watch?v=sdWgGzetdWI>

The Banzhaf Index - One Way to determine relative power in a voting System

1. With consideration of the weight allocated each legislator (say based initially on population), determine how many votes are needed to pass a measure (the Quota)
2. Determine the total number of winning coalitions that may occur under these conditions
3. Determine how essential each legislator, with his or her weighed vote, is to the winning coalition.
4. If one or more legislators under the original allocation of weights will not be a winning coalition in his or her district's proportion of the county population, adjust the weights to assure that he or she may be on the winning side that proportion of the time.

New County Redistricting Law, Recent Litigation, & Communities Of Interest

Jeffrey M. Wice

New York Law School

County Redistricting in New York

- Equal Population
- Voting Rights Act
- NY Municipal Home Rule Law
- County Charters
- Chapter 516- New Criteria

Recent Voting Rights Litigation

- Rockland County- *Clerveaux v. East Ramapo Central School District*
- Suffolk County- *Flores v. Town of Islip*

MHRL
Criteria-
MHRL Sec.
10(1)(a)(13)

- Population equality
- No towns except those comprising 110% of a district population can be divided
- Provide fair and effective representation for the people of the local government as organized in political parties
- Districts shall be of convenient and contiguous territory in as compact form as practicable

A. 229C
(Paulin)/S.5160B
(Skoufis)

- In 1991, Westchester LWV challenged the county's legislative redistricting because it didn't follow state guidelines. The the Appellate Division held that the county "operates under a charter form of government and its reapportionment plans are adopted pursuant to its charter, not Municipal Home Rule Law Sec 10(1) (a) (13)(a)."
- Charter counties were not required to follow the State MHRL redistricting standards.
- Chapter 516 extends the MHRL guidelines to cover charter counties so that statutory provisions for electoral procedures would be uniformly applied in New York State.

Chapter 516- New Ranked Criteria (avoids trade- offs)

- (single member) Population equality as near as practicable within 5%
- (multi-member) Population equality with substantially equal weight
- Cannot intend to or result in denying or abridging minority voting rights
- Districts must be contiguous
- Districts must be compact
- Cannot favor/disfavor incumbents, particular candidates, or parties
- Consider existing district cores, political subdivisions & *communities of interest*
- No villages, cities or towns except those having 40% of a full ratio of a district can be divided
- Districts must be formed so as to promote orderly and efficient elections

Balancing Conflicts- Communities Of Interest

- When balancing other traditional criteria, COI usually ranks below population equality and minority voting rights and above all the others
- Can Communities of Interest camouflage partisan gerrymandering?
- Are Communities of Interest too subjective?
- Could use of Communities of Interest lead to strangely shaped districts?
- When should Communities of Interest be more important than established “actual” communities (towns, villages, etc.)?

Communities Of Interest & Race

- Be mindful of the 14th Amendment Equal Protection Clause- avoid “packing” that leads to racial gerrymandering
- Will COIs lead to using race as a predominant factor?
- Make sure that race is one of several factors being used
- Expert “racial bloc voting analyses” inform of federal Voting Rights Act situations- do these before enacting a plan (where necessary)

Stay In Touch

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County Level Redistricting in NYS

What Does the Process Look Like?

Joshua Simons

The Benjamin Center At SUNY New Paltz

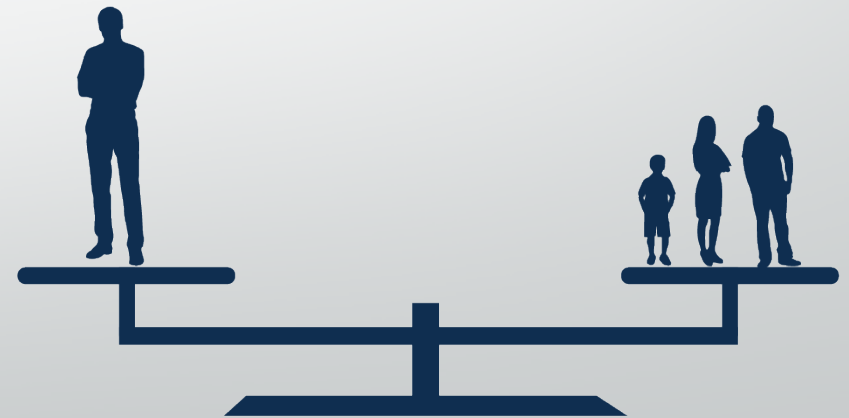


What is Redistricting, and Why Does it Matter?

Redistricting is redrawing legislative district boundaries so that they all have roughly the same population. (+/- 5% deviation typically)

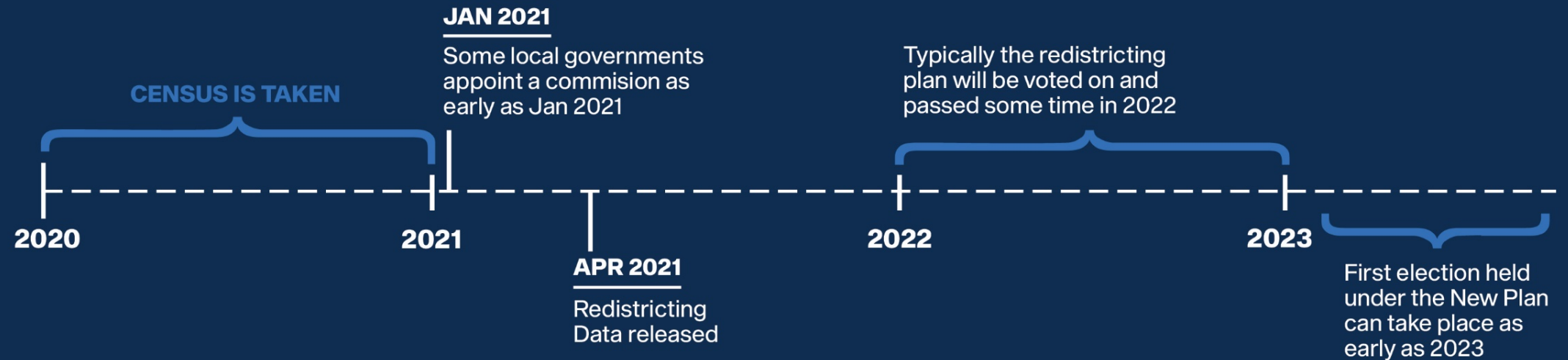
Redistricting ensures that everyone's vote counts the same, a concept called "one person, one vote".

In overpopulated districts each person's vote counts less than it should. In underpopulated districts, each person's vote counts more than it should.



Typical Timeline

Redistricting Timeline



This is Not a Typical Cycle

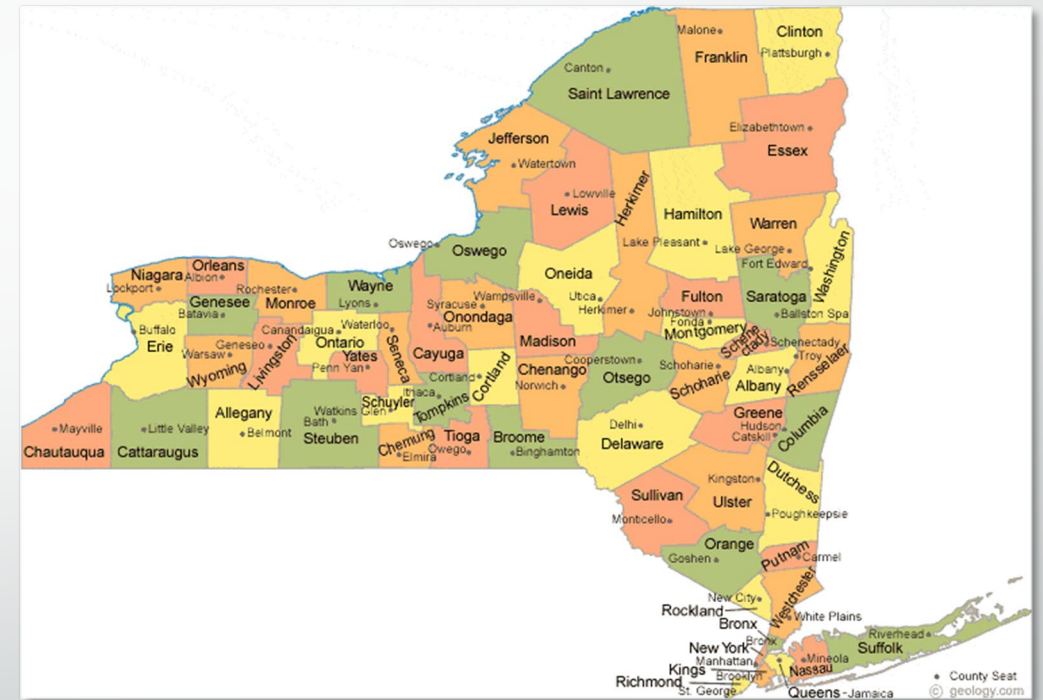
- PL 94-171 data was not released until August 12th, 2021
- Some counties have statutory deadlines. Most do not.
- The best time to start thinking about redistricting was 3 months ago.
- The second best time to start thinking about redistricting is now.



All Redistricting is Local

While much focus is often paid to the redistricting of Congressional Districts, most of the redistricting that gets done is to local governments.

In New York State, there are 40 Counties, 16 Towns, 4 Villages, 47 Cities, and at least one School District (Buffalo Public Schools) that utilize district plans, and will have to evaluate population changes.



Process

Process Drives Outcome:

- Process could be defined in local laws or county charter
 - Independent Commission, Committee, Task-Force, etc.
 - Statutory timelines may exist
 - Appointments and Forming of Redistricting Group Comes First

Hire a Consultant?:

Pros:

- Technical skills (GIS) may not exist in house, or using an executive department (e.g. Planning) may be seen as partisan or political
- Expertise in the legal requirements to avoid legal trouble, and assistance should legal issues arise
- Experience, expertise, and familiarity with the data, the technologies, and the process

Cons:

- \$
- RFP and selection can be time consuming

Requirements

Federal:

- Substantially equal population
- Compliance with the Voting Rights Act

State: (MHRL Section 10.13.c)

- “substantially equal weight for the population”
- “substantially fair and effective representation for the people of the local government as organized in political parties”
- districts of “convenient and contiguous territory”
- New Redistricting Law

Local:

- County charters may have additional requirements for redistricting, or enumerate priorities

Priorities

Possible Additional Priorities:

- Political boundaries (keep municipalities whole)
- Geographic boundaries (rivers, streams, lakes, mountains, etc. as natural dividers)
- Communities of Interest
- Nesting (School Districts, State Assembly, State Senate Districts, etc.)
- Competition / Partisanship
- Start fresh or keep cores of current districts in tact
- Incumbent protection

Note: Order of priorities matters. Higher priority decisions constrain the ability to satisfy lower priorities

District Deviation and Demographic Statistics

First:

- PL 94-171 Census Data for Redistricting is Released
- 2020 Census Blocks are Different than 2010 Blocks
- LATFOR Prisoner Adjusted Population Data Released
- Districts are Rebuilt Using 2020 Blocks
- Population, Population Deviation, and Voting Age Population (VAP) Demographic Statistics are Calculated.

This Tells You:

- Which Districts are Out of Compliance
- How Much have the Population Numbers Changed
- How Much have the VAP Demographics of the Districts Changed

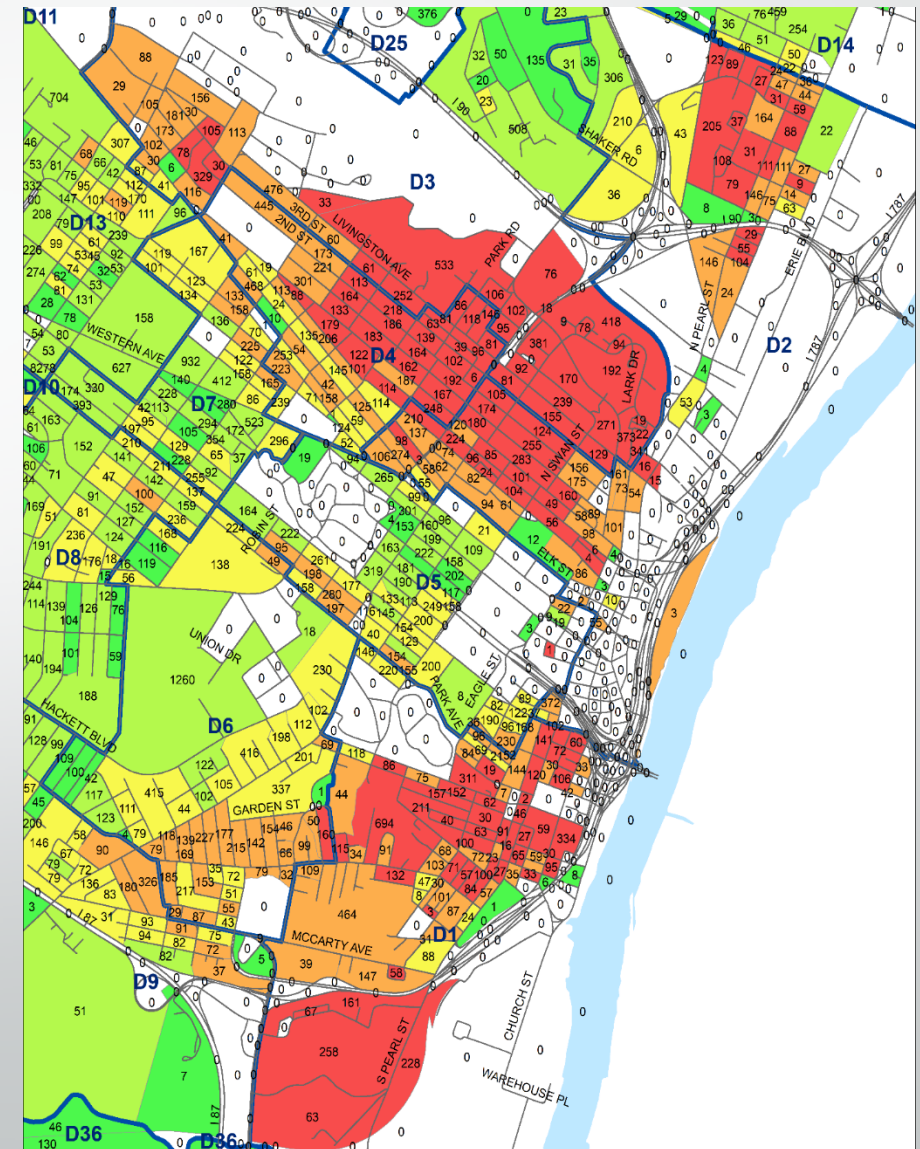
Voting Rights Act Tests

Plans can not diminish a protected minority's opportunity to elect a candidate of their choosing.

- In many places this issue has been well litigated.
- In others, not at all.

Generally a good first step is to take your current district map, and see if the boundaries divide a concentrated minority population into multiple district. That is a red flag.

Another good test is to take a blank map, and see how many minority-majority districts can be made. If that number is greater than those that already exist, more analysis and decisions are warranted.



Drawing Redistricting Plans

- This is an iterative process.
- Multiple plans can be worked on simultaneously
- Ideally each successive decision drives the process towards a consensus
- Hard decisions will have to be made. Everyone will not be able to get everything they want



Process Overview: Start to Finish

- Redistricting Body Formed
- Census Data Released
- District Deviation and Demographics Report
- Voting Rights Act Tests
- Initial Plans Drawn, Discussed and Debated, Decisions are Made
- Next set of Plans Drawn Based on Decisions Above
- Iterations of Last Two Steps Until:
- Final Plan Arrived At
- Public Hearing(s)*
- Plan Adoption
- Board of Elections Draws New Election Districts Based on the Plan

* Public participation can, and should occur throughout this process. Transparency of process leads to fewer issues with public support later on. Some places go so far as to have sessions where the public can draw their own plans, or direct the drawing of example plans. Public participation can take many forms, including social media, web sites, constituent meetings of individual legislators, public hearings, public working sessions, etc.



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