



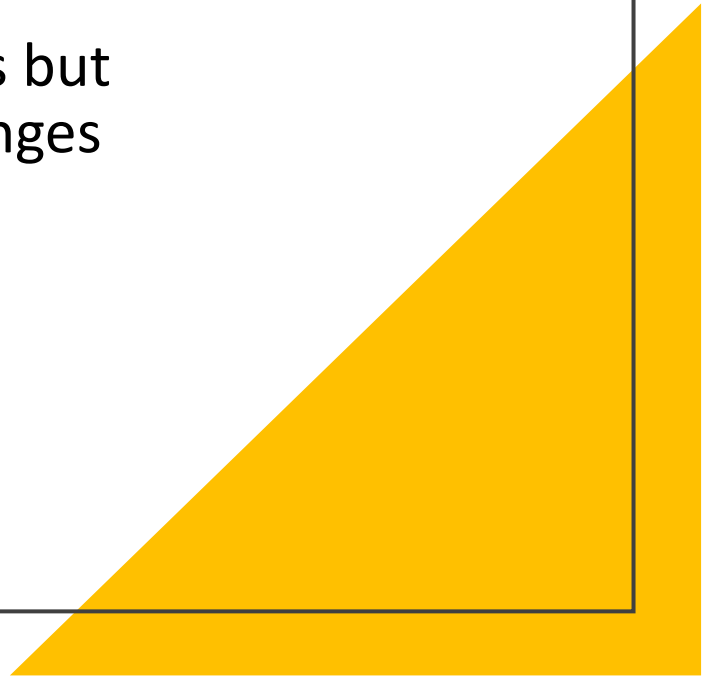
Gerrymandering

OLLI 2020

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Races without districts can't be gerrymandered

- Governors – everyone votes on the same candidates
- US Senate – Senators represent vastly different numbers but the Supreme Court has rejected Equal Protection challenges to the Senate



First – why do we redraw district lines?



Congressional House Redistricting

Congress limited the number of seats in the US House to 435 in 1929

Each seat must represent an approximately equal number of people, so number of Congressional seats must be rebalanced after every decennial census

Generally state legislatures draw congressional district lines

Since 1964, states must create districts with almost exactly the same number of people

Generally the state uses the total population but no federal law prohibits limiting this to eligible voters

The 1960's Warren Court changed everything

- Baker v. Carr (1962) – districts could be so unequal in population that it violates the Equal Protection Clause of the Constitution and courts must intervene. Baker involved state legislatures

Wesberry v. Sanders (1964)

Baker v. Carr applied to federal Congressional districts

Congressional districts must be mathematically equal unless necessary to achieve a legitimate state objective




One Person, One Vote

- Reynolds v. Sims (1964)
- ‘... legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests”

Reynolds v. Sim caused massive changes in the states

- Most states did not require equal population in either of the two houses of the legislature
- LA County with 6 million people had 1 representative in the California Senate; Alpine County with 400 people also had 1
- Many states did not redraw district lines for decades; Illinois did not redraw districts between 1910 and 1955
- With regular redistricting, gerrymandering became a much bigger concern
- Clearly, this caused a significant change of balance between rural and urban districts



Pre-1960 and Post-1960

Let's consider what this has meant for
democracy

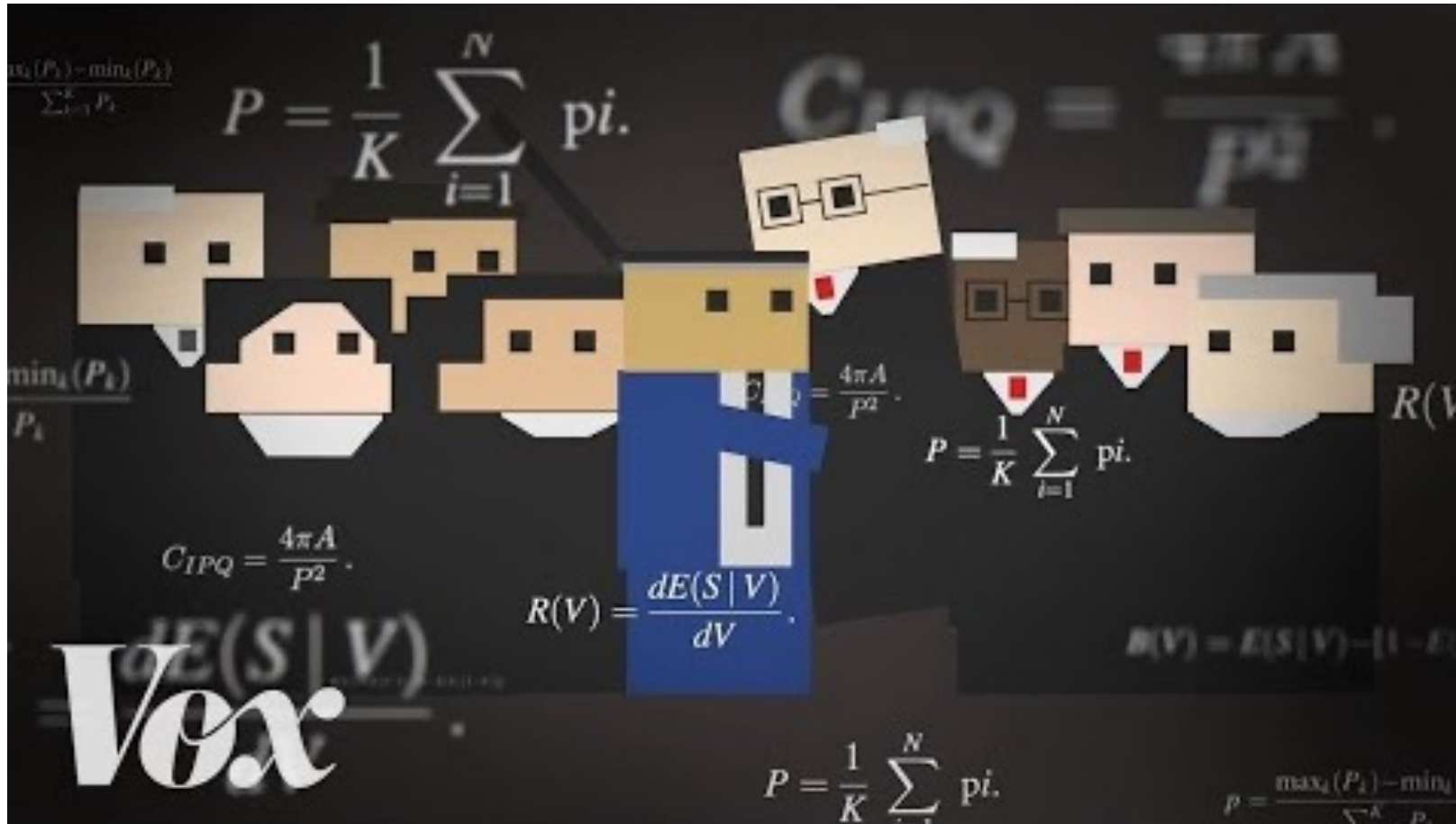
The 1965
Voting Rights
Act required
some states to
consider the
impacts of
redistricting on
racial minorities

- But then Shaw v. Reno (1993) held racial gerrymandering, for whatever reason, was suspect under a strict scrutiny standard

But this leaves a lot of room for shenanigans



Gerrymandering to maximize partisan advantage



But the Supreme Court doesn't (or doesn't want to) understand math

- Shaw v. Reno tells federal courts-hands off redistricting arguments based on partisan advantage.
- Racial gerrymandering can still be attacked, but partisan voting can substitute for racial criteria

State Courts have stepped
up

North
Carolina

Pennsylvania



But redistricting is
hard

<https://projects.fivethirtyeight.com/redistricting-maps/>

Redistricting Commissions

If you can't trust legislators to draw a map, who can
you trust

14 states have redistricting Commissions

- Alaska, Arizona, Arkansas, California, Colorado, Hawaii, Idaho, Michigan, Missouri, Montana, New Jersey, Ohio, Pennsylvania and Washington
- US Supreme Court has held independent redistricting commissions don't violate the US Constitution. (Arizona's Commission is upheld)-, 2015)

Redistricting Commissions are set up differently

- The Brennan Center for Justice has found these criteria lead to the best outcomes measured by satisfaction of citizens:
 - 1. Independent process for selection of commissioners
 - 2. Clear, prioritized criteria for mapdrawing
 - 3. Map approval rules that incentivize negotiation and compromise
 - 4. Strong transparency rules

Traditional Criteria

- Compactness
- Contiguity
- Preservation of political subdivision boundaries
- Preservation of communities of interest

Other criteria

- Partisan makeup of proposed district (or not)
- Competitiveness
- Proportionality (reflects partisan voting patterns in last 10 years)
- Avoid pairing incumbents

Discussion

- What criteria do you think is important?
- There are many programs available to draw lines

Redistricting in Illinois since 1970

- Illinois Constitution criteria: Compact , contiguous and substantially equal in population
- If the Legislature can't agree on a map by June 30 of each year ending in "1", a commission is formed with 4 members of each party (4 legislators and 4 non_ legislators picked by party leadership)
- Every redistricting since 1970 has ended up with a Commission
- If they can't agree (and they never have), the Ill. Supreme Court gives 2 names, 1 from each party, and the Secretary of State randomly draws 1
- Most maps have involved lawsuits in the Illinois Supreme Court, which has rejected some maps, in whole or part

This isn't the way it was supposed to be

- ConCon drafters thought this arrangement would force both parties to negotiate
- But the parties would rather risk everything on the chance of being able to have complete control

Citizen efforts to change the Illinois Constitution

- Several major efforts to put a Constitutional Amendment on the ballot have been made
- 2 efforts made it as far as filing enough signed petitions with the Illinois Board of Elections; 1 was tossed by a federal court, 1 by the Illinois Supreme Court
- The Illinois Constitution is very limited in what kinds of changes can be proposed by citizen petition
- The Legislature could put such an amendment on the ballot (when hell freezes over)

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Hopeful? Hopeless?

- Increased ability by ordinary citizens to draw maps has led to some pressures
- Transparency is critical