

I. Redistricting in Mississippi

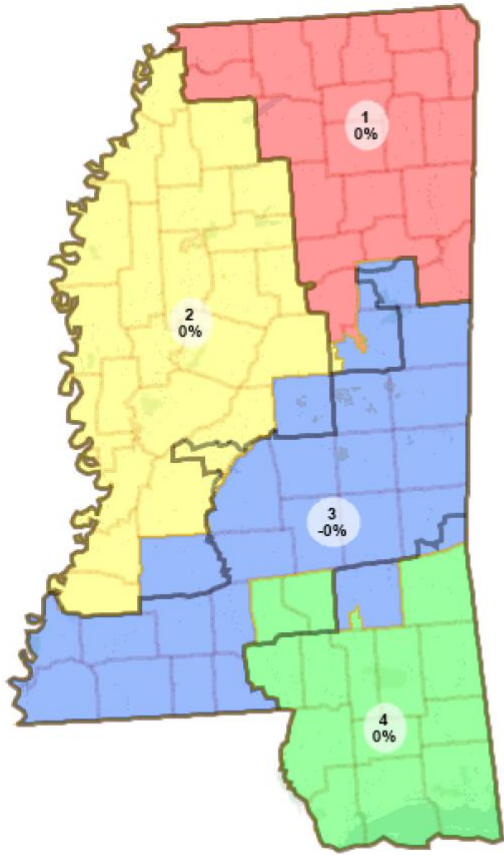
The paper is the third in a three-paper series and concerns the state of Mississippi (for a broader overview of the project, *see* Paper 1). Mississippi has a population of approximately three million people and is entitled to four House members after the 2020 census (unchanged from the 2010 census).¹ Unlike the previous states, I do not present a “least change” map for Mississippi. Instead, I consider whether the VRA requires a Mississippi map with two majority-minority districts. The second plan discussed in this section draws two such districts; much of that subsection considers whether Section 2 of the VRA mandates that plan or a similar one.

A. Good Government Plan for Mississippi

1. Maps

This section provides maps of both individual congressional districts and the state as a whole. In the first image, the solid black lines represent the old district lines, while the filled areas depict the new districts.

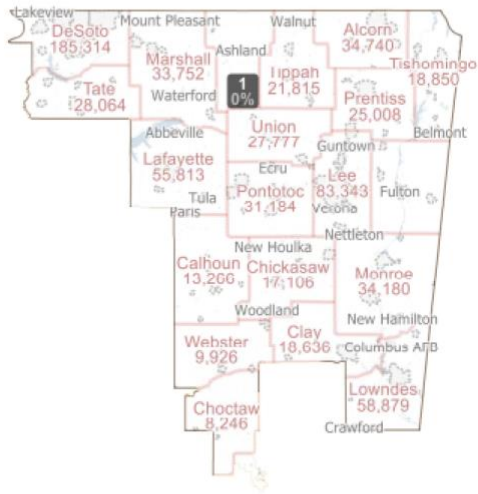
¹ *See* U.S. CENSUS BUREAU, QUICKFACTS MISSISSIPPI (last visited Nov. 23, 2021), <https://www.census.gov/quickfacts/MS>.



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District: 2

District: 1

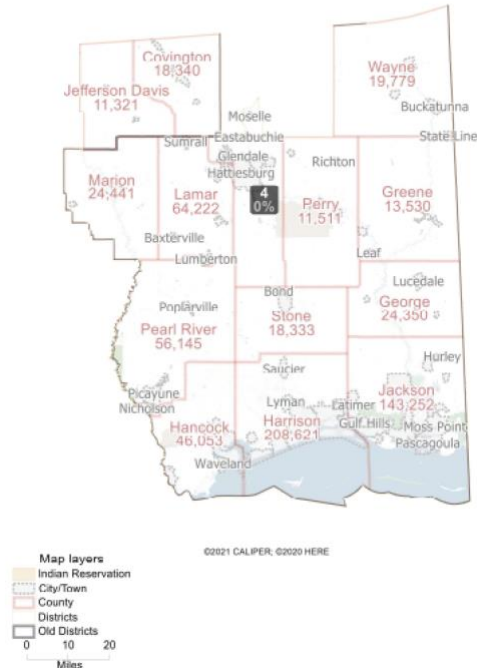
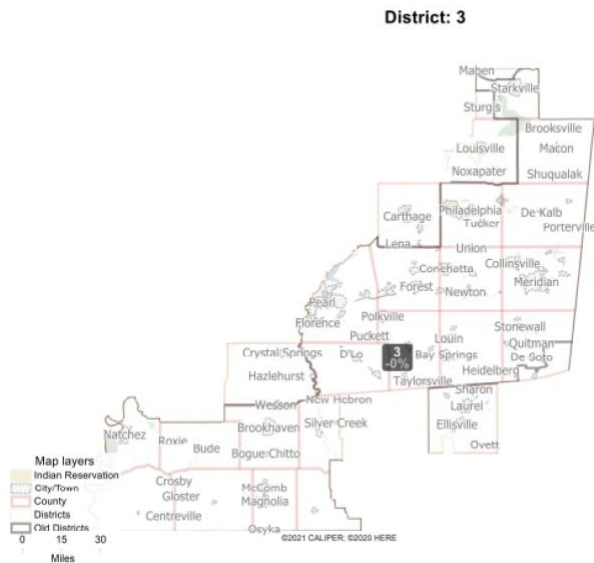


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District: 4



2. Principles Prioritized

This map prioritizes traditional good government principles, including limiting subdivision splits, maintaining contiguous districts, and maximizing compactness. I have discussed the virtues of good government maps above and will not repeat myself here.

3. Demographic Considerations

Mississippi is majority white, but also has one of the largest Black populations by percentage of any state in the country.² This substantial number of Black residents virtually ensures that Mississippi needs at least one Section 2 VRA district. The second Mississippi plan that I consider intentionally draws two VRA districts—this plan focuses on good government

² See *id.*

principles, and only seeks to avoid clear violations of the VRA. Accordingly, CD2 contains a highly compact Black majority (about 58.9 percent of the VAP) while each of the other districts has a Black minority of between 23 percent and 35 percent of the VAP. No other minority group makes up as much as 5 percent of the VAP in any district.

4. Geographic Considerations and Compactness

This map performs extremely well in terms of compactness. Each district has a Reock score of between 0.30 and 0.54 (the mean is 0.42). The maximum Schwartzberg score is 2.09, the minimum is 1.48, and the mean is 1.81. It is no surprise that these districts perform well on these metrics—visually speaking, each looks quite reasonable. CD1 and CD4 have some small fingers drawn in to equalize population, but they are ultimately minor deviations from relatively smooth boundaries.

5. Political Subdivisions

In addition to prioritizing compactness and contiguity, this good government map aims to limit political subdivision splits. Accordingly, it is no surprise that this map keeps the vast majority of Mississippi counties and voting districts intact. It splits only two of 82 Mississippi counties; it is unclear that any sane plan could split fewer. Likewise, it only divides 0.3 percent of voting districts, five out of 1,834. Importantly, the plan eliminates the ugly bisection of Hines County. The old districts sever the top half of Hines from the bottom half, while placing the middle segment in the culturally distinct CD3. This map reunites Hines. Meanwhile, Wintson—the county sacrificed to limit splits in others—remains mostly intact, as more than 85 percent of the county sits in CD3. In short, this map represents a substantial improvement on the existing lines when it comes to preserving subdivisions.

6. Communities of Interest

This plan manages to keep most towns in the same congressional district. It only divides four of the states 427 towns/cities, which improves on the eight that the existing lines split. It also places the entire populated area of the Cochtaw reservation in CD3, which eliminates the previous multi-district split.

7. Partisan Considerations

This good government map preserves the political status quo. The GOP has an effective lock on CD1, CD3, and CD4—meanwhile, the Democrats are nearly certain to control CD2. Given that the Republicans generally prevail in statewide and presidential elections in Mississippi,³ this three-one split is not particularly surprising. To be sure, one could pack enough Democrats into two districts to give the state an evenly split congressional delegation (as my second Mississippi map demonstrates). However, doing so would require giving short shrift to political subdivision lines and sacrificing a degree of compactness.

As it happens, the redistricting process in Mississippi is controlled by the state legislature and the governor, both of which are held by Republicans.⁴ Section 2 of the VRA effectively requires the state to draw one majority Black (and thus likely Democratic) congressional district, but it is unlikely that the political branches of the Mississippi government would willingly grant Democrats control of a second congressional district. In light of this reality, this good government map almost certainly represents the only politically tenable distribution of congressional seats (though a reasonable argument could be made that the VRA demands two majority-Black districts—I consider this possibility when discussing the next map).

³ N.Y. TIMES, MISSISSIPPI ELECTION RESULTS (Nov. 3, 2020), <https://www.nytimes.com/interactive/2020/11/03/us/elections/results-mississippi.html>.

⁴ See PRINCETON GERRYMANDERING PROJECT, MISSISSIPPI (last visited Nov. 23, 2021), <https://gerrymander.princeton.edu/reforms/MS>.

District Map



District Data

District	Candidate Scenario	Pop. 2020	Hispanic CVAP 2019	Non-Hisp. Black CVAP 2019	Non-Hisp. Asian CVAP 2019	Non-Hisp. Native CVAP 2019	Chance of 1+ Flips [†]	Chance of Democratic Win	Predicted Vote Shares	Biden (D) 2020	Trump (R) 2020
1	Open Seat	740,321	1.8%	27.3%	0.6%	0.4%	No	2%	36% D / 64% R	112,255	216,498
2	Open Seat	740,320	1.2%	60.8%	0.6%	0.3%	No	92%	58% D / 42% R	204,535	128,717
3	Open Seat	740,318	1.0%	36.0%	0.6%	1.2%	No	4%	39% D / 61% R	127,786	205,994
4	Open Seat	740,320	2.8%	23.2%	1.4%	0.7%	No	1%	34% D / 66% R	94,823	205,553

8. Legal Compliance

i. The U.S. Constitution

Unlike the next plan considered, this good government map raises no significant constitutional concerns. CD3 is underpopulated by two residents, but for the reasons discussed in Paper 2,⁵ it is unlikely that this small a deviation from one person, one vote would inspire a successful lawsuit. In addition, in none of the districts do racial considerations predominate over

⁵ See *supra* Section I.B.8.i. in Paper 2.

traditional good government criteria. Accordingly, nothing in this map would seem to violate *Shaw*.

ii. The VRA

This map may violate Section 2 of the VRA if the state is required to draw two majority-Black districts. Only CD2 is majority-Black in this plan. Since I consider at length how the VRA applies to Mississippi in the next section of this report, I will defer that discussion for the moment. It is worth noting, however, that CD2 is clearly a VRA district according to this map. It has a significant and compact Black majority, and Mississippi has overwhelmingly racially polarized voting.⁶ Accordingly, if Section 2 does not require two Black-majority districts, it would almost certainly mandate a district similar to CD2 under *Thornburg v. Gingles*.⁷

iii. State Law

It is unclear whether any state law constrains congressional redistricting in Mississippi. The state constitutional requirements only apply to state legislative districts.⁸ One state statute requires that districts be contiguous, minimize political subdivision splits, and follow county lines and voting districts to the greatest extent possible.⁹ It is unclear whether the state statute applies to congressional districts, as it has only been discussed in the context of state legislative districts.¹⁰ However, the statute references to “the apportionment” singular,¹¹ which appears to refer to the state’s constitutional provision—this reading would seem to make the law inapplicable to congressional redistricting.

⁶ See, e.g., Jamelle Bouie, *The Mississippi Special Election Is a Glimpse Into America’s Polarized Future*, SLATE (Nov. 27, 2018).

⁷ 478 U.S. 30 (1986).

⁸ See PRINCETON GERRYMANDERING PROJECT, MISSISSIPPI (last visited Nov. 23, 2021), <https://gerrymander.princeton.edu/reforms/MS>.

⁹ Miss. Code Ann. § 5–3–101(a)-(b).

¹⁰ See *Mississippi State Conference of the NAACP v. Barbour*, No. 3:11cv159–TSL–EGJ–LG–MTP, 2011 WL 1870222, at *3 (S.D. Miss. May 16, 2011).

¹¹ Miss. Code Ann. § 5–3–101(a)

Even if we assume that this law governs congressional districts, though, this map would almost certainly comply. It provides compact, contiguous districts and splits only two counties and five voting districts. Relatively few maps could do a better job of complying with the state criteria (if they indeed apply).

9. The Proposed Plan vs. The Existing Plan

This good government plan does not significantly differ from the existing district lines. The most significant changes I made were meant to equalize the population. CD2 was underpopulated by approximately 66,000 residents, while CD4 was overpopulated by approximately 37,000 residents. To restore balance, I shifted most of Jones County out of CD4 and into CD3; I then moved the less populated Jefferson Davis and Covington Counties into CD4. I also moved most of Winston County and all of Oktibbeha County out of CD1 and into CD3. These moves substantially overpopulated CD3. I then moved this surplus population into the previously underpopulated CD2. The plan uses the previously undivided Winston County to equalize populations across CD1, CD2, and CD3. Doing so allowed me to reunify Clarke, Hinds, Madison, and Oktibbeha Counties.

From a partisan perspective, the redrawn districts change nothing. CD1, CD3, and CD4 remain solidly Republican, while CD2 is overwhelmingly Democratic. Put otherwise, this map essentially preserves the status quo in the state while improving on previous subdivision splits. For this reason, it is the most plausible plan offered in this report.

10. The Proposed Plan v. The Adopted Plan

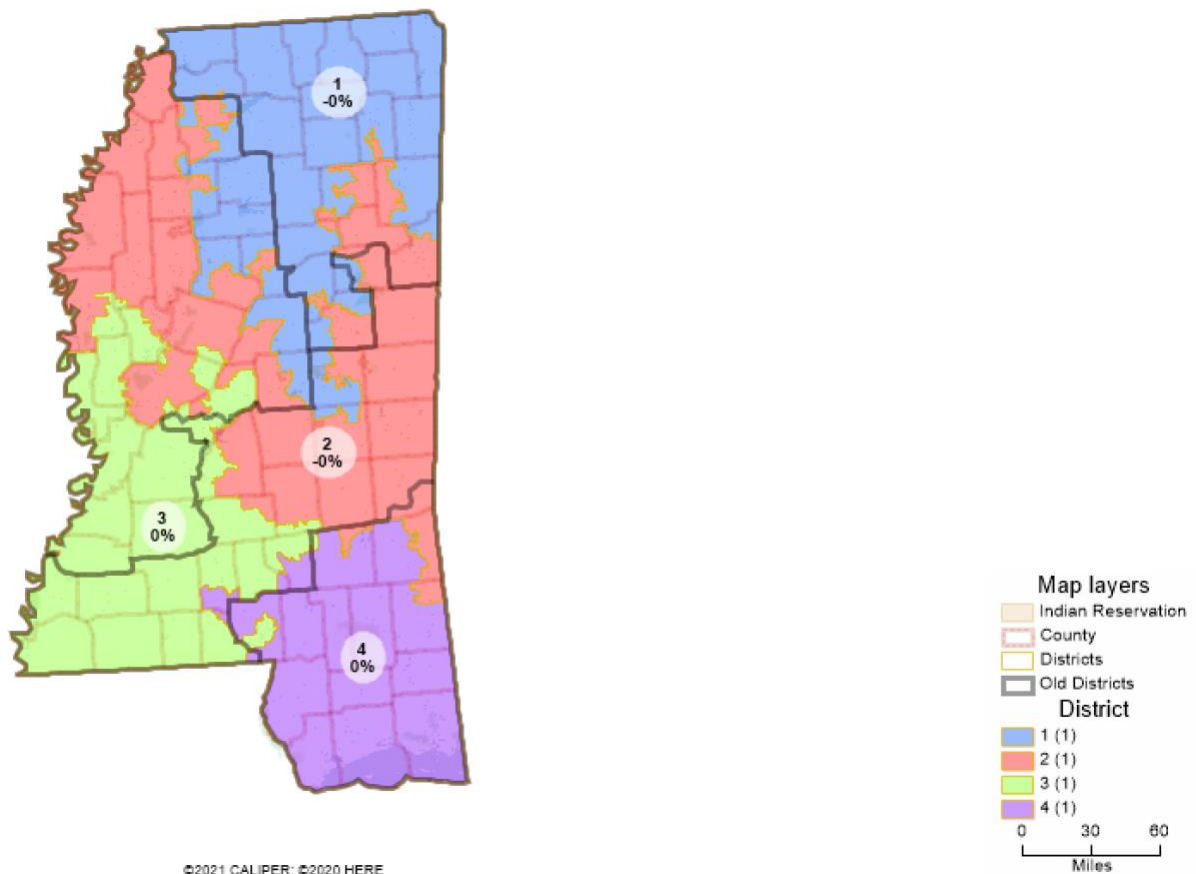
Mississippi has neither adopted nor proposed a redistricting plan at this point in the calendar. It is a safe bet, however, that the initially adopted plan will closely resemble this good government map. Republicans control the state legislature, and almost certainly will not

willingly adopt the two majority-minority districts plan I propose below. There is an outside chance that litigation may eventually force them to adopt such a map, but the preferred legislative map will likely look similar to this plan.

B. Two Majority-Minority Districts for Mississippi

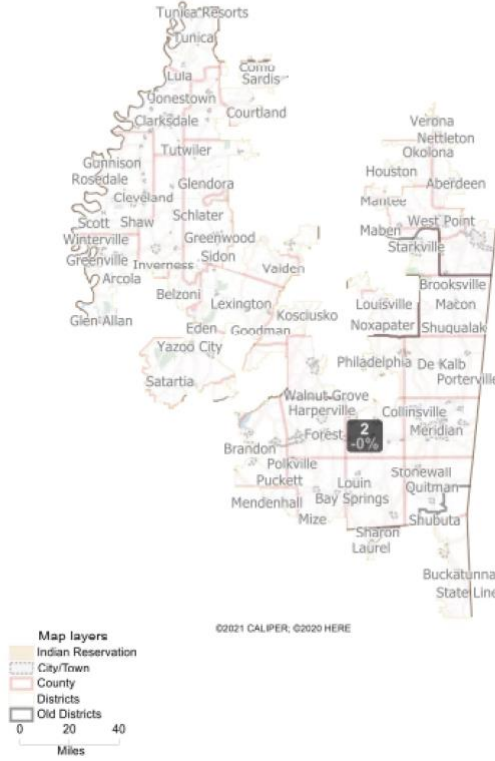
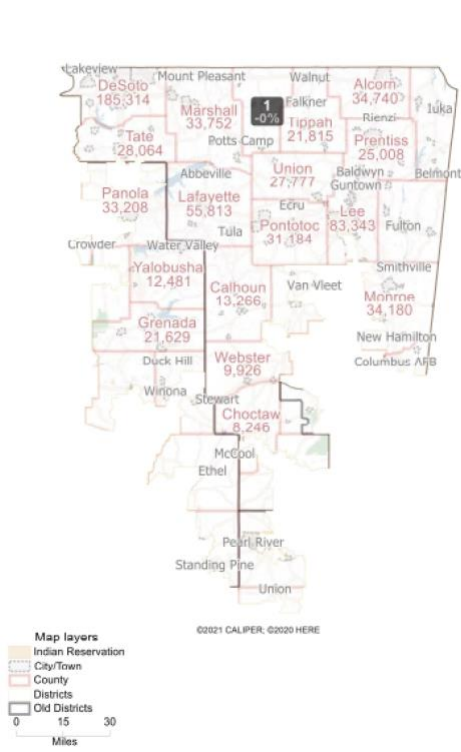
1. Maps

This section provides maps of both individual congressional districts and the state as a whole. In the first image, the solid black lines represent the old district lines, while the filled areas depict the new districts.

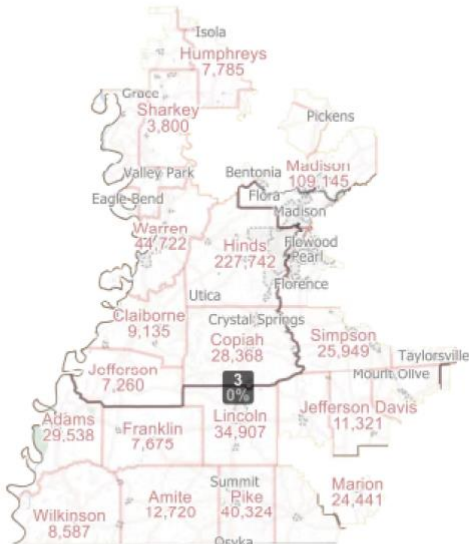


District: 2

District: 1



District: 3



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District: 4



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2. Principles Prioritized

Up to this point, my maps have prioritized good government principles and fidelity to preexisting district lines. This map takes a different tack. It seeks to draw a Mississippi map with two districts featuring compact Black majorities. Put otherwise, it tests whether Black voters might claim a second VRA district on top of the first they are effectively guaranteed. This map succeeds in producing bare Black VAP majorities in two districts; however, it remains open to debate whether Section 2 requires these districts be drawn. Later in this section, I consider the legal case for and against these districts. Ultimately, I conclude that the VRA does not mandate these districts, and that the Fourteenth Amendment would thus likely prohibit them.

3. Demographic Considerations

As mentioned above, this map attempts to draw two Black majority districts, and so goes out of its way to consolidate both Black voters into CD2 and CD3. As a result, CD2 and CD3 have extremely small Black majorities: 50.24 percent of the VAP and 50.04 percent of the VAP, respectively. Meanwhile, CD1 and CD4 have overwhelming white VAP majorities of 70.5 percent and 69.9 percent. Both of these districts still have Black VAPs of over twenty percent, but these individuals are far more dispersed than those in CD2 and CD3. As was the case with the good government plan, no district has a substantial number of Hispanic, Asian American, or Native American voters.

4. Geographic Considerations and Compactness

This plan explicitly sacrifices compactness for the purpose of drawing two Black majority districts. Unsurprisingly, then, the statistical measures of compactness do not favor this map. CD2 has a Schwartzberg score of 4.90, by far the highest of any district considered in this report. Its Reock score is slightly better (0.28), but still not particularly high. CD1 and CD3 also score poorly on Schwartzberg (3.33 and 3.02), but do somewhat better on Reock (0.41 and 0.44). The only district with impressive scores is CD4, which has a Reock of 0.52 and a Schwartzberg of 1.89.

These weak statistical evaluations reinforce what a purely visual inspection suggests: these districts are ugly. CD2 winds from the northwest corner of the state to the southeastern border, grabbing Black populations as it goes. Meanwhile, CD1 snakes unevenly into the south, capturing only majority-white districts. CD3 does a somewhat better job of maintaining sanity, but still has a number of strange appendages. In short, this map does fairly poorly when it comes to adhering to the traditional compactness principle.

5. Political Subdivisions

One of the costs of prioritizing majority-minority districts is extreme division of counties. This map splits more than 40 percent of Mississippi's 82 counties—34 counties contain two or more districts, while Jones county encompasses parts of CD2, CD3, and CD4. Interestingly, though, I only split 14 of 1,834 voting districts, less than one percent of the total and only nine more than the “good government” map discussed above. As such, while the counties themselves might have cause to complain, this map would not unduly hinder election administration. In nearly every precinct, all those going to the polls will vote in the same congressional race.

6. Communities of Interest

In addition to dividing nearly half the state's counties, adopting this plan would divide a significant number of Mississippi towns. The preexisting map splits only eight municipalities; this plan divides 37 of the states 427 towns/cities. If the VRA requires this map (or a similar one) Mississippi would likely have to tolerate this level of division. By contrast, Mississippi would be unlikely to adopt a map that splits this many municipalities if it were permitted to do otherwise.

7. Partisan Considerations

Since this map creates two majority Black districts in a solidly-Republican, four district state, common sense suggests that the plan will favor the Democratic Party. Indeed, Mississippi currently has three Republicans and one Democrat in its congressional delegation,¹² and this plan would give Democrats an advantage in two districts. However, that advantage would be relatively small. PlanScore.org gives the Democrats a 59 percent chance of winning CD2 and a 63 percent chance of winning CD3—neither could be classified as a “safe” Democratic seat.

¹² See N.Y. TIMES, *supra* note 3.

Meanwhile, packing the vast majority of the state’s Black voters into two districts produces overwhelming GOP advantages in the remaining districts. In light of these factors, PlanScore.org actually rates this plan as favoring Republicans in terms of the efficiency gap.

Indeed, it is not clear that the Democratic Party in Mississippi would prefer this map to the good government plan discussed above. While this map would certainly give Democrats the opportunity to win two seats, they could easily end up with zero. The good government map would ensure that Democrats remained represented in Mississippi’s congressional delegation and would give Black voters a much wider margin to work with in electing a candidate of their choice. With these considerations in mind, this map may not qualify as a partisan gerrymander.

District Map



District Data

District	Candidate Scenario	Pop. 2020	Hispanic CVAP 2019	Non-Hisp. Black CVAP 2019	Non-Hisp. Asian CVAP 2019	Non-Hisp. Native CVAP 2019	Chance of 1+ Flips [†]	Chance of Democratic Win	Predicted Vote Shares	Biden (D) 2020	Trump (R) 2020
1	Open Seat	740,319	1.7%	23.7%	0.6%	0.9%	No	<1%	32% D / 68% R	98,504	233,209
2	Open Seat	740,299	1.2%	50.7%	0.5%	0.7%	Yes	59%	51% D / 49% R	171,349	153,410
3	Open Seat	740,322	1.0%	51.8%	0.6%	0.2%	Yes	63%	52% D / 48% R	183,200	157,222
4	Open Seat	740,320	2.8%	20.8%	1.4%	0.8%	No	1%	32% D / 68% R	86,334	212,919

8. Legal Compliance

i. The U.S. Constitution

This map raises the most serious constitutional issue of any discussed so far. Though it complies with one person, one vote by equalizing the number of residents in each district, it may violate *Shaw v. Reno* as an impermissible racial gerrymander. While a reasonable case could be made that the VRA requires this effort to create two majority-minority districts, a reviewing court would most likely find that CD2 does not meet the criteria laid out in *Thornburg v. Gingles* and is accordingly not required under Section 2 of the VRA.¹³ Since the VRA does not demand CD2, using race as a predominate consideration cannot be justified by a compelling state interest and thus violates *Shaw*.¹⁴

As discussed in subpart II.A.8.i of Paper 1, *Shaw* generally prohibits the use of race as the predominant factor in drawing district lines. Anyone who scrutinizes CD2 cannot escape the conclusion that it prioritizes race above all else. The district has more than a dozen narrow fingers that grab majority-Black voting districts while running roughshod over county lines. It forms a somewhat bizarre U-shape through the middle of the state in order to connect large Black populations in the northwest and east. Moreover, it spans the width and quite nearly the length of the state with some areas connected by only narrow strips of land. While it is certainly no worse than Illinois's infamous "earmuff" district, visual inspection confirms that district sacrifices compactness and subdivision preservation at the altar of majority-minority jurisdictions. Setting aside the aesthetics of the district, the name of this plan, "Two Majority-Minority Districts for Mississippi," would probably prove a threshold *Shaw* claim on its own.

¹³ 478 U.S. 30, 47–51 (1986).

¹⁴ *Bush v. Vera*, 517 U.S. 952, 977 (1996).

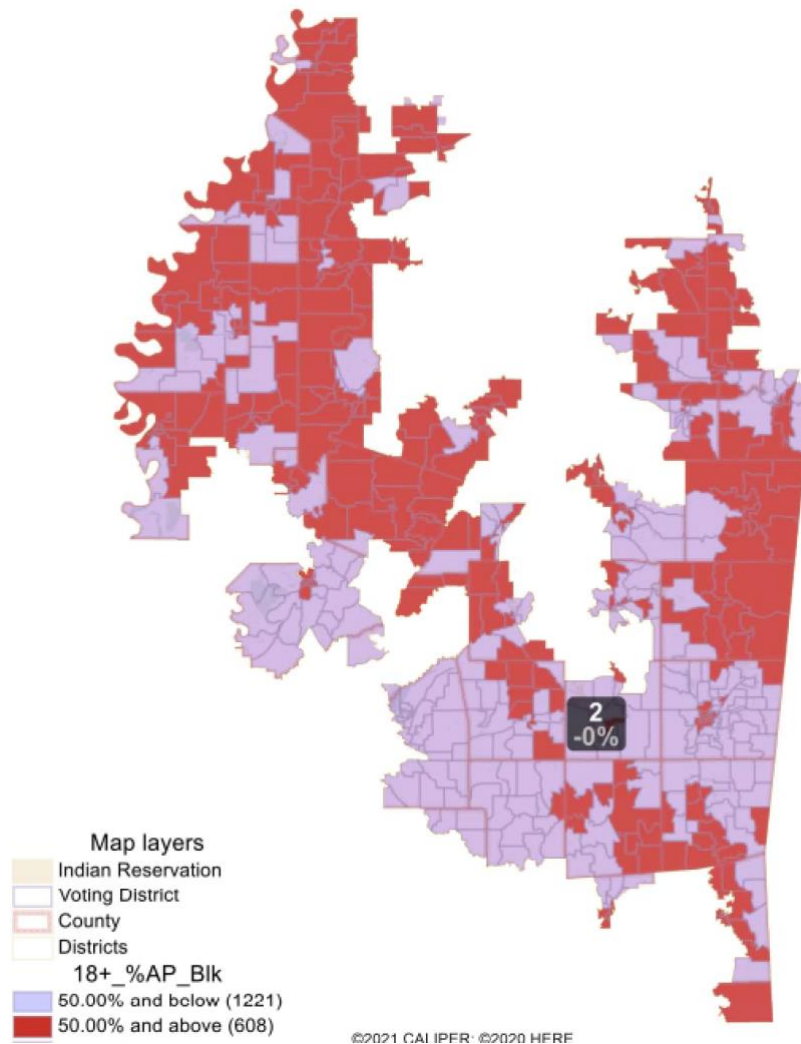
Given that a CD2 plaintiff could almost certainly make out a prima facie *Shaw* case, the burden would shift to the state to prove that it *had* to draw CD2 in order to comply with the VRA.¹⁵ Accordingly, I must directly address the question of whether the VRA demands two majority-Black districts in Mississippi. *Gingles* provides the general rules for evaluating a Section 2 claim. As discussed in II.A.8.ii of Paper 1, the case requires that (1) the minority who benefits from the district must be sufficiently large and compact to constitute a majority; (2) the minority must be politically cohesive; and (3) the white majority must vote as a bloc to prevent the minority from electing its candidate of choice.¹⁶ With regard to CD2, the most tenuous aspect of a Section 2 claim would likely be the compactness requirement.¹⁷

The map below illustrates the distribution of Black voters in CD2. The red areas depict voting districts where at least 50 percent of the VAP is Black; all other districts appear in light purple. As this map makes clear, the district goes out of its way to unify two disparate Black populations, one in the northwestern part of the state and the other on its eastern border. In order to connect these two areas, it cuts straight across county lines. Moreover, the district goes out of its way to grab just enough Black voters in the southern part of the state to compose a voting-age majority.

¹⁵ *See id.*

¹⁶ Christopher S. Elmendorf et al., *Racially Polarized Voting*, 83 U. CHI. L. REV. 587, 597–598 (2016).

¹⁷ Of course, if the state were defending this map in court, they would also need to demonstrate requirements (2) and (3), which are sometimes referred to collectively as “racially polarized voting.” The Supreme Court has never definitively established the standards for providing racially polarized voting—some think that a simply bivariate regression is sufficient, while others would require more sophisticated analysis. *See, e.g.*, *Luna v. County of Kern*, 291 F. Supp. 3d 1088, 1118 (E.D. Cal. 2018); Samuel Issacharoff, *Ballot Bedlam*, 64 DUKE L.J. 1363, 1395 (2015). Methodologically speaking, conducting either form of analysis is not conceptually challenging. However, doing so requires either precinct or exit poll data, and would take up substantial space in this report. Moreover, it would add little of substantive interest, since few would dispute that Mississippi has some of the most racially polarized voting in the United States. Accordingly, I simply note that the state could probably meet requirements (2) and (3)—instead, I focus on prong (1).



Does CD2’s odd shape and unification of geographically distant populations make it insufficiently culturally compact? Answering that question requires considering the Supreme Court’s holding in *LULAC v. Perry*.¹⁸ Justice Kennedy’s opinion in that case declares that “there is no basis to believe a district that combines two farflung segments of a racial group with disparate interests provides the opportunity that § 2 requires or that the first *Gingles* condition contemplates.”¹⁹ Put otherwise, he suggests that we should not *assume* that minority voters in a non-geographically compact district are culturally compact simply because they have the same

¹⁸ 548 U.S. 399 (2006).

¹⁹ *Id.* at 433.

racial background.²⁰ He further quotes with approval language from *Bush v. Vera* which asserts that a district that “reaches out to grab small and apparently isolated minority communities” is not reasonably compact.²¹ Examining CD2, there is little doubt that the district sacrifices compactness and subdivision preservation when it uses narrow tentacles to rope in geographically isolated communities of Black voters. While one could certainly make a nonfrivolous attempt to distinguish CD2 from the district the Court rejected in *LULAC*—and indeed, Section 2 plaintiffs here would want to make every effort to show that Black voters in the district, despite their geographic difference, vote cohesively and have similar political goals—an unbiased assessment of CD2 would likely conclude it is not geographically compact.

Proportionality also weighs against requiring a second VRA district in Mississippi. While proportionality is not a safe harbor for VRA compliance, it is probative of a lack of a Section 2 violation.²² Approximately 38 percent of the Mississippi population is Black,²³ which means that drawing two VRA districts would give Black voters a majority in a disproportionate share of congressional contests. While not determinative, this fact reinforces the conclusion that CD2 is not required by the VRA. Consequently, CD2 is probably a *Shaw* violation.

This congressional map also contains a de minimis violation of the one person, one vote principle. CD3 contains two more people than perfect population equality requires, while CD2 has two less than the principle would demand. It seems unlikely that litigants would spend the time and money to challenge this map, particularly given the uncertainty built into the data in this round of redistricting. Nevertheless, it would probably make sense to fix this minor discrepancy before adopting this map in order to avoid any *Karcher* problems.

²⁰ *Id.* at 433–34.

²¹ *Id.* at 402 (quoting *Bush v. Vera*, 517 U.S. 952, 979 (1996)).

²² *Johnson v. De Grandy*, 512 U.S. 997, 1000 (1994).

²³ *See* U.S. Census Bureau, *supra* note 1.

ii. The VRA

As the above discussion makes clear, this plan would certainly be permissible under the VRA. It draws every majority-minority district to which Black voters would be entitled, and potentially one to which they are not entitled. However, the preceding section also demonstrates that the VRA probably does not *require* this map or a similar one. The Black population in Mississippi, while large, is simply not compact enough to support two majority-minority districts.

iii. State Law

As previously mentioned, it is not clear whether Section 5-3-101 of the Mississippi Code applies to congressional districts.²⁴ However, even if it did, it would not prevent the adoption of this map. The preceding discussion makes clear that if this map is legal under federal law, it is also *required* by federal law. Conflict preemption would thus require that the map be drawn notwithstanding any clash with state law. Of course, if the map is not required by federal law, then it would also be *illegal* under the Constitution, meaning that analysis of state law would be superfluous.

9. The Proposed Plan vs. The Existing Plan

Unsurprisingly, this map deviates substantially from the existing Mississippi districts. The previous map does a reasonably well when it comes to preserving political subdivisions and drawing compact districts. By contrast, this map largely ignores subdivision lines and creates a strangely shaped CD2. Of course, the most significant change is political. The map intentionally groups the majority of Black voters into two districts. Both districts would lean Democratic but would be highly competitive. Indeed, in most elections the Democratic Party would end up with

²⁴ See *supra* Section I.A.8.iii.

either two districts or zero districts. Given that the current plan provides a stable 3-1 Republican to Democrat split, this map obviously represents a significant change from the status quo. Given my already extended discussion of this plan, I will not belabor the point. It suffices to say that adopting this map would reshape Mississippi congressional politics.

10. The Proposed Plan v. The Adopted Plan

As mentioned above, the Mississippi legislature has neither proposed nor adopted a new plan for the state's congressional districts. However, given the state's Republican lean, it is a sure bet that the legislature would never willingly adopt a plan like this one. If anything like this plan is to be imposed, it would have to come at the direction of a court.

II. Paper Series Conclusion

This three-paper series has exhaustively considered six congressional maps across three different states. Few, if any, of these maps would have a significant chance of being adopted were they to be considered by the state's redistricting authorities. Mississippi would never willingly enact a map with two Black-majority districts, and Oklahoma was committed to contorting its map to eliminate any risk that the state's CD5 would fall into Democratic hands. Instead, these maps show what is possible from a redistricting perspective. For example, in Mississippi, it is feasible to draw two somewhat compact Black-majority districts. With this information, activists in the state could file a non-frivolous Section 2 lawsuit demanding that such districts be drawn. Likewise, my Mississippi and Oklahoma "good government" plans demonstrates that mapmakers could equalize population while only splitting two counties.

By far the most plausible of these plans is the Mississippi "good government" map. State authorities are no doubt aware that the VRA will require them to draw at least one Black-majority district in the western half of the state. My good government map accomplishes that

goal while minimizing the number of county, voting district, and municipality splits. The core of the previous districts would remain intact, and each of the incumbent members of Congress could easily retain their existing seats. While Mississippi will almost certainly not adopt my map, it seems likely that the plan it eventually settles on will closely resemble my own.