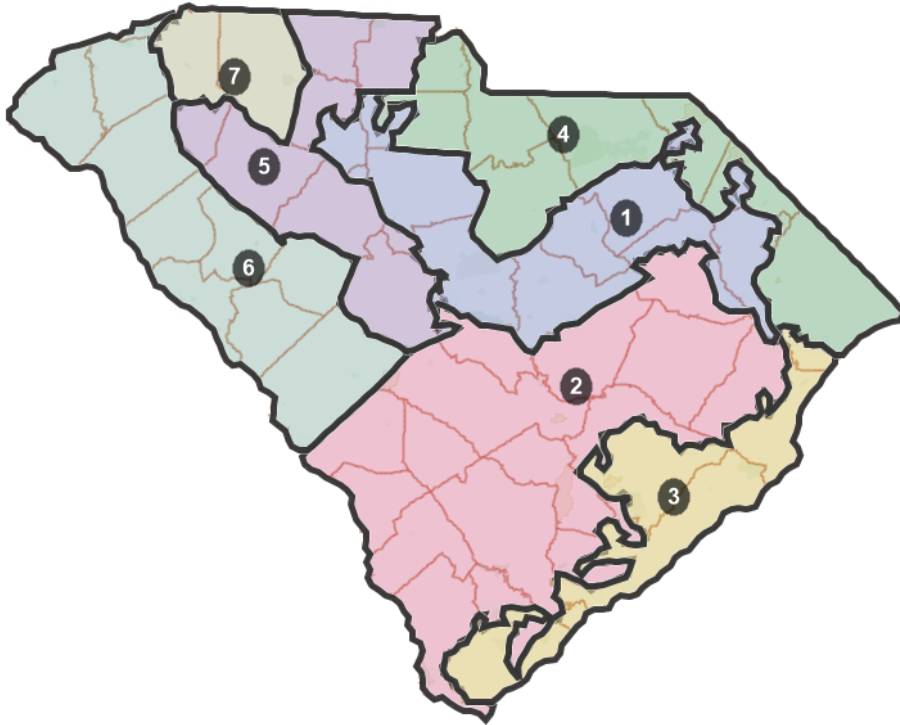# SOUTH CAROLINA: MINORITY MAXIMIZING REDISTRICTING MAP 2020

*Sherwin Lai**

INTRODUCTION

This proposed plan for South Carolina's Congressional districts based on 2020 Census data seeks to maximize the Black voting age population's opportunity to elect candidates of their choice. Following the 2020 Census, South Carolina continues to be entitled to seven Congressional districts.[1] Since it is mathematically impossible to draw two majority Black

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[1] *Apportionment Population and Number of Representatives by State: 2020 Census*, UNITED STATES CENSUS BUREAU (Apr. 26, 2021), https://www2.census.gov/programs-surveys/decennial/2020/data/apportionment/apportionment-2020-table01.pdf.

districts, this plan consists of one majority Black district (50.53% BVAP) and one plurality Black district (45% BVAP) that includes White Democrats who cross over to support the plurality's preferred candidate. One significant tradeoff of the plan is that its districts are not compact; the Black majority and opportunity districts branch out to pick up the Black population and carve out the White population. This report also discusses potential legal challenges and defenses under the U.S. Constitution and Voting Rights Act—particularly the vulnerabilities the map has under *Shaw v. Reno*-type race-based gerrymandering claims.

I. PLAN OVERVIEW

This plan seeks to maximize the Black population's opportunity to influence Congressional House elections in South Carolina. Even though African Americans comprise 26.8% of the state's population,[2] both the Congressional redistricting plans adopted after the 2010 and 2020 censuses consisted of *only one* out of seven districts (14.3%) that was majority Black,[3] which Rep. Jim Clyburn has represented since the 1990s.[4] In a state that exhibits highly racially polarized voting, that has political consequences, for Rep. Clyburn's district consistently has been the only district that elects a Democrat.[5]

That district has presumably been drawn to comply with Section 2 of the Voting Rights Act, which prohibits the "denial or abridgement of the right of any citizen of the United States to vote on account of race or color."[6] And § 2 is violated when "it is shown that the political processes

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[2] Based on 2020 Census Data, Race by Ethnicity, Percent Black or African American Alone or in Combination. *SOUTH CAROLINA: 2020 Census*, UNITED STATES CENSUS BUREAU (Aug. 25, 2021), https://www.census.gov/library/stories/state-by-state/south-carolina-population-change-between-census-decade.html.

[3] *South Carolina Passed Congressional Plan S.865*, PLANSCORE (Feb. 1, 2022), https://planscore.campaignlegal.org/plan.html?20220201T202359.130549862Z (showing that the enacted 2020 SC Congressional plan only includes one majority Black district at 50.2% non-Hispanic Black CVAP); *2012-2020 Redistricting Plan*, PLANSCORE, https://planscore.campaignlegal.org/south_carolina/#!2020-plan-ushouse-eg (similar for 2010 SC Congressional plan).

[4] *What Redistricting Looks Like In Every State: South Carolina*, FIVETHIRTYEIGHT, https://projects.fivethirtyeight.com/redistricting-2022-maps/south-carolina.

[5] *Id.*

[6] 52 U.S.C. § 10301(a).

leading to nomination or election in the State or political subdivision are not equally open to participation by members of a [protected] class of citizens . . . in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice."[7] The Supreme Court has established that to demand that a majority-minority district be drawn under § 2, a plaintiff must first establish the following conditions: (1) that "the minority group . . . is sufficiently large and geographically compact to constitute a majority in a single-member district," (2) that it "is politically cohesive," and (3) that "the white majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate."[8] After these requirements are satisfied, "a court [then] proceed[s] to analyze whether a violation has occurred based on the *totality of the circumstances*."[9]

But while "[p]utting more minority voters into a district gives those voters more political power," "a map that groups too many minority voters into a few districts *limits* their electoral power by confining it to a small number of districts."[10] Even so, it is difficult to allege that the concentration of Black voters into a single majority-Black district in South Carolina directly constitutes racial packing, for the Black population is much less compact than in a state like Alabama. After all, it is impossible to draw two majority Black districts.

Nonetheless, it is still a worthy exercise to examine how a plan can be drawn to accommodate a Black opportunity district in addition to a Black majority district. That district will contain a plurality Black population and enough White liberals who cross over to vote with the Black population. The plan presented here represents an instance of that exercise.
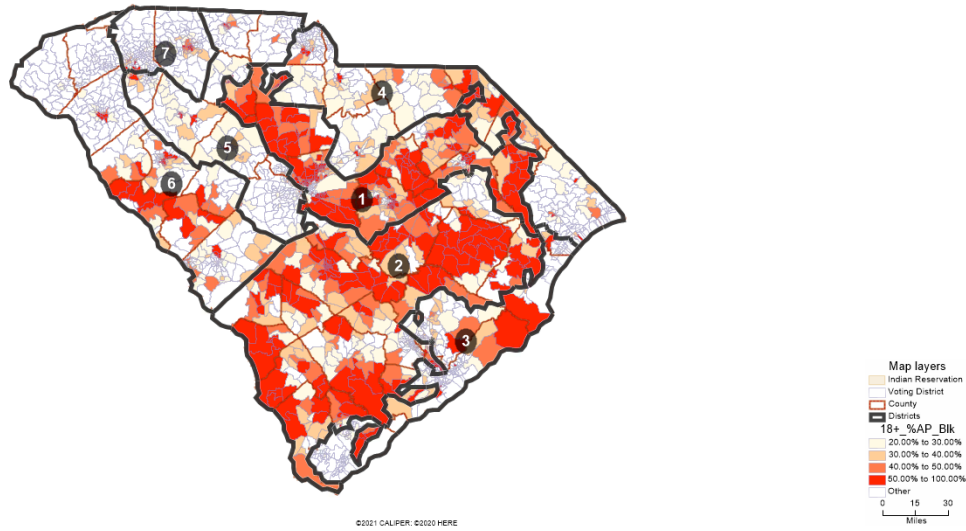
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[7] 52 U.S.C. § 10301(b).

[8] Thornburg v. Gingles, 478 U.S. 30, 50–51 (1986).

[9] Bartlett v. Strickland, 556 U.S. 1, 12 (2009) (emphasis added).

[10] Harry Enten, *It's Much Harder To Protect Southern Black Voters' Influence Than It Was 10 Years Ago*, FIVETHIRTYEIGHT (Dec. 5, 2016, 2:56 PM), https://fivethirtyeight.com/features/its-much-harder-to-protect-southern-black-voters-influence-than-it-was-10-years-ago.

A. District 1—The Majority Black District

District 1 of the plan is the majority Black district (50.15% BVAP, 50.53% Black CVAP). It principally includes Fairfield, Richland, Sumter, Lee, Darlington, and Marion counties as a starting point. But to bolster the Black population and ensure its majority-minority status, the Whiter portions of Fairfield County were excluded, and the district branches out in the north to scoop up Black population in Union and Chester counties and in the east in Marlboro and Dillon counties. Because this district sought to include just enough Black population to constitute a majority while leaving enough remaining Black population for another oppor-tunity district, compactness had to be heavily deprioritized.
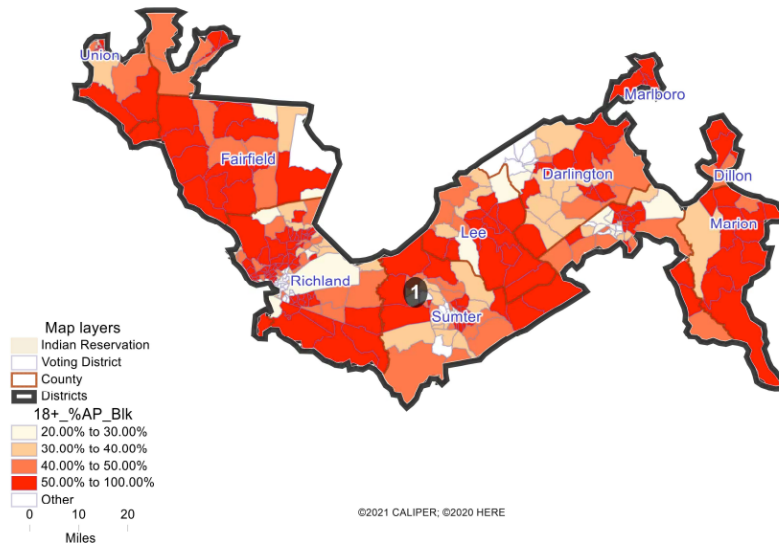
B. District 2—The Black Opportunity (Plurality) District

To further maximize the electoral voice of South Carolina's Black voting-age population, the plan includes a crossover district—one in which "minority voters make up less than a majority of the voting-age population [but] is large enough to elect the candidate of its choice with help from voters who are members of the majority and who cross over to support the minority's preferred candidate."[11] District 2 of the plan has a 42.05% BVAP and 45.00% Black CVAP. So while the Black population does not constitute a majority, nor does the voting-age non-Hispanic White population, at 48.86%. Here, partisan data is especially relevant, as it is expected that White liberal voters will cross over to vote with Black voters to elect the candidate of their choice. That indeed is the case here: based on 2020 Presidential Election results, the district has a partisan balance of 56.65% Democrat (Biden) to 43.35% Republican (Trump).

As with District 1, District 2 is not an illustration of compactness; it is drawn precisely to include the Black population below District 1 and in the southern areas of the state. The jagged southern boundary of the district, where the water is, brings in chunks of Beaufort and Charleston counties with greater Black population and leaves much of the White population for the district below. The district covers all of Jasper County all the way to the southernmost portion of the state; however, everything east of that does not touch the southernmost to preserve contiguity for the district underneath—that is why the district does not pick up the Black population in the eastern part of Charleston even though it would have increased the BVAP. But for a tiny inlet, the district excludes most of Berkeley County for similar reasons.

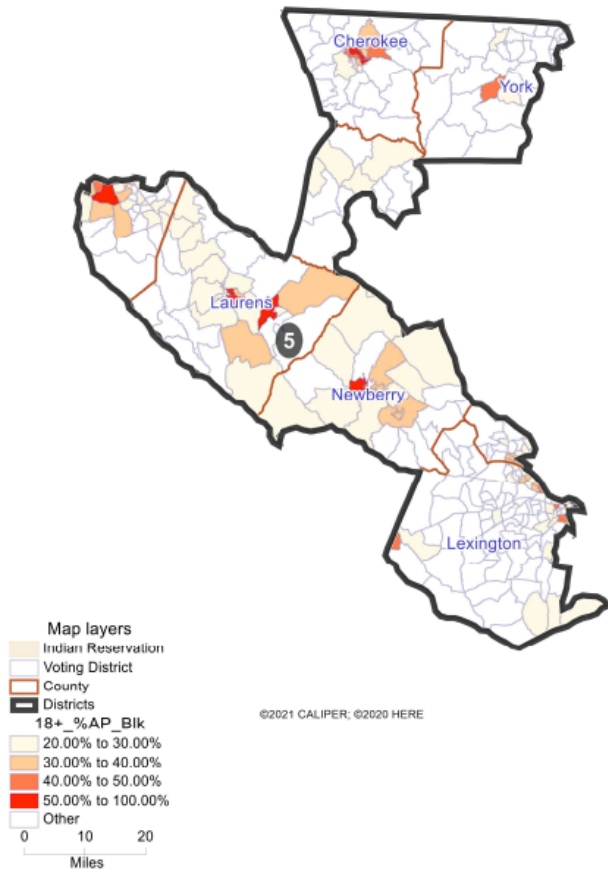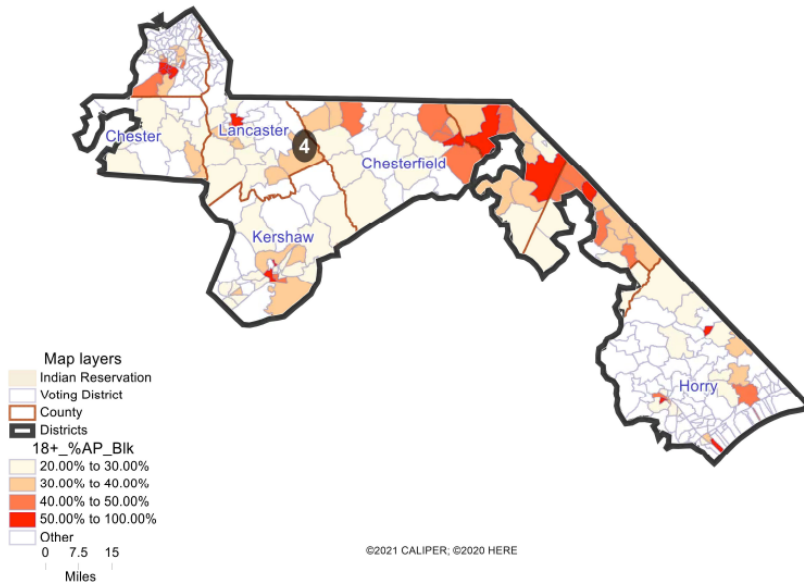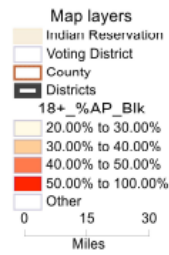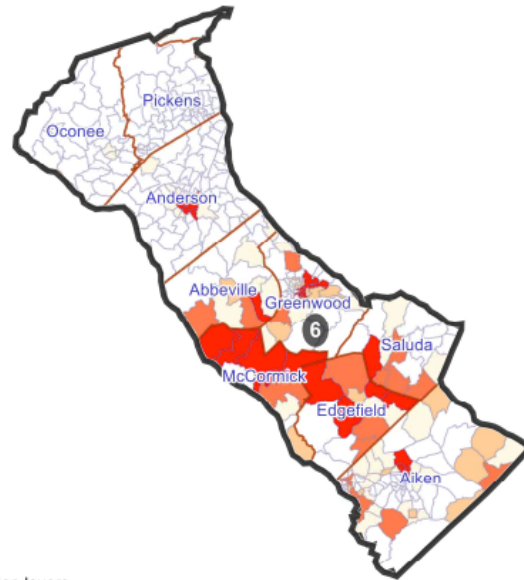---
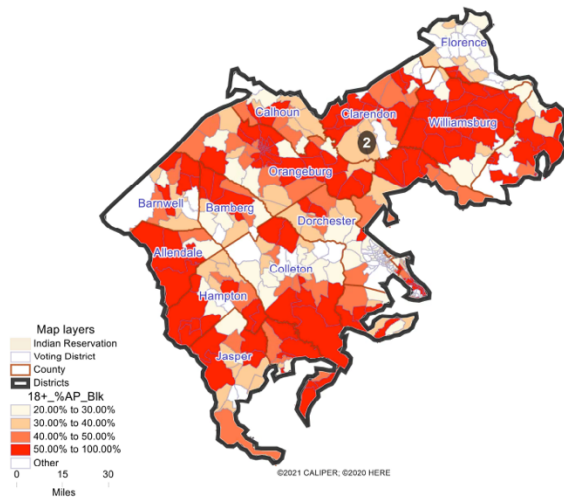
[11] *Bartlett*, 556 U.S. at 13.

C. District 3

District 3 resides on the southernmost part of South Carolina, stretching from Beaufort to Charleston to Berkeley to Georgetown counties and including part of Horry County. It essentially sweeps up the remaining (largely White) population excluded from District 2's design. The main potential issue for this district is that it is contiguous over water. But South Carolina law does not proscribe such a configuration; in fact, contiguity over water is inevitable in any districting plan given that many of these localities are "islands" off the state's southern shore.
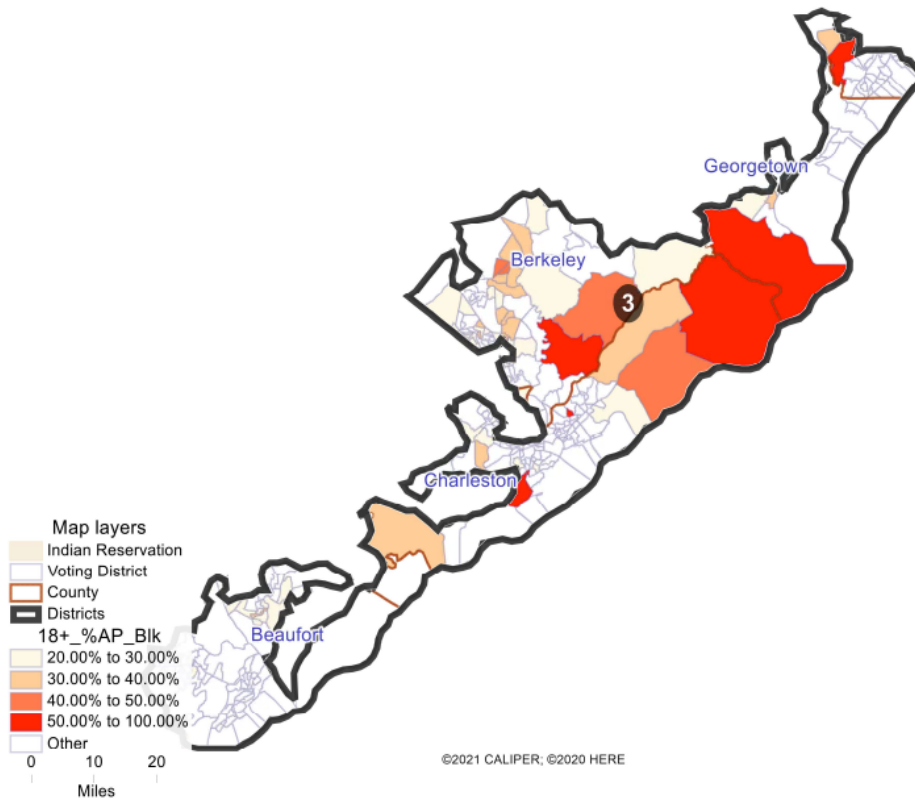
D. Districts 4, 5, 6, and 7

The remaining districts wrap around the state in counterclockwise fashion. The primary objective in drawing those districts was to minimize county splits to the extent possible, except when necessary to abide by perfect population equality and to accommodate the peculiar nooks and crannies of District 1, the majority Black district.

Map layers
Indian Reservation
Voting District
County
Districts
18+_%AP_Blk
20.00% to 30.00%
30.00% to 40.00%
40.00% to 50.00%
50.00% to 100.00%
Other
0   15   30
Miles

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Map layers
Indian Reservation
Voting District
County
Districts
18+_%AP_Blk
20.00% to 30.00%
30.00% to 40.00%
40.00% to 50.00%
50.00% to 100.00%
Other
0   4   8
Miles
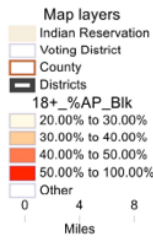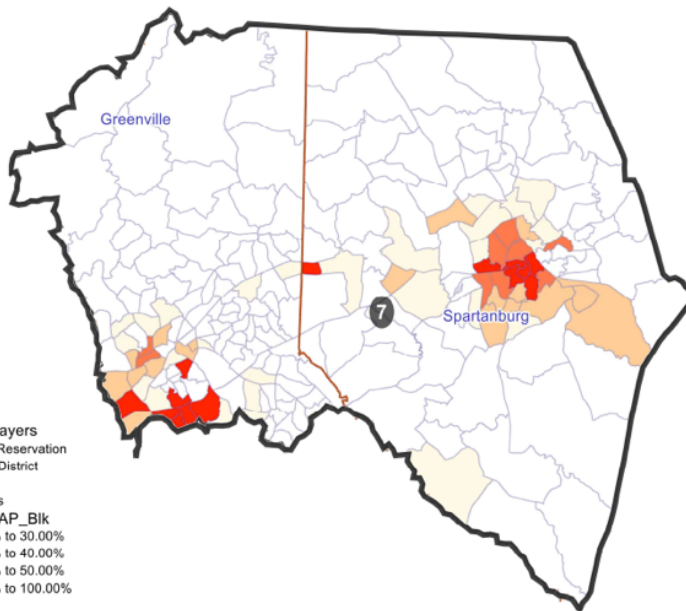
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II. REDISTRICTING PRINCIPLES, METRICS, AND TRADEOFFS
A. Demographic and Political Considerations

As previously explained, the redistricting plan is drawn to maximize the influence of Black voters in South Carolina. The racial demographic breakdown is as follows:

District	% 18+ NH Wht[12]	18+ % AP Blk[13]	% NH Blk CVAP[14]
1	42.50%	50.15%	50.53%
2	48.86%	42.05%	45.00%
3	77.25%	12.21%	13.70%
4	70.21%	19.81%	21.13%
5	72.28%	17.50%	18.32%
6	73.78%	17.77%	18.98%
7	68.74%	17.83%	18.91%

Because the plan includes a crossover district, the partisan breakdown of the districts is relevant to ensure that White liberals cross over to support the Black plurality's candidate of choice. The metrics presented by the table below are based on the 2020 Presidential Election. The plan produces 2 reliable Democratic seats (the Black majority and plurality districts) and 5 Republican seats—one more Democratic seat than the existing and adopted maps, which have a 6-1 R-D split.[15] Notably, none of the seven seats are competitive, but that is the nature of and necessary tradeoff for a minority-maximizing map for a state with a sizeable but non-compact minority.

District	2020 Presidential Election % Democrat (Biden)	2020 Presidential Election % Republican (Trump)
1	64.23%	35.57%
2	56.65%	43.35%
3	43.48%	56.52%
4	38.74%	61.26%
5	35.71%	64.29%
6	31.79%	68.21%
7	38.61%	61.39%

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[12] Non-Hispanic White voting-age population.

[13] Any part Black voting-age population.

[14] Non-Hispanic Black citizen voting-age population.

[15] *What Redistricting Looks Like In Every State: South Carolina, supra* note 4.
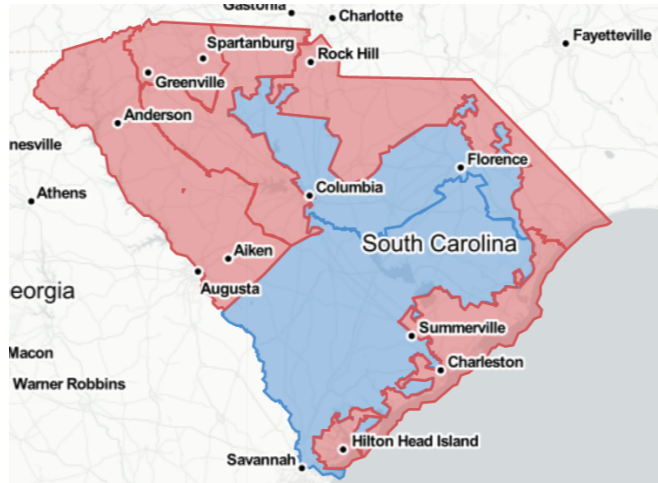
B. Geographic Considerations and Political Subdivisions

It is palpable by cursory visual inspection that the plan is not drawn with compactness as a priority. After all, the plan is specifically drawn to include one majority Black district that is just barely over 50% to leave enough remaining Black population to constitute a second opportunity district. And because the Black population is relatively geographically dispersed throughout the state, it was necessary to draw districts that were strange in shape. It is no surprise, then, that the plan's districts score relatively poorly on compactness measures:

District	Reock[16]	Schwartzberg[17]	Alternate Schwartzberg[18]	Polsby-Popper[19]
Mean	**0.32**	**2.53**	**2.95**	**0.15**
Std Dev	**0.15**	**0.76**	**0.83**	**0.11**
1	0.22	3.16	3.67	0.07
2	0.44	2.55	3.10	0.10
3	0.16	3.57	4.03	0.06
4	0.19	2.87	3.20	0.10
5	0.34	2.45	2.82	0.13
6	0.32	1.71	2.13	0.22
7	0.57	1.42	1.67	0.36

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[16] The measure is always between 0 and 1, with 1 being the most compact.

[17] The measure is usually greater than or equal to 1, with 1 being the most compact.

[18] The measure is usually greater than or equal to 1, with 1 being the most compact.

[19] The measure is always between 0 and 1, with 1 being the most compact.

District	Area/Convex Hull[20]	Ehrenburg[21]	Perimeter[22]	Length-Width[23]
Sum	—	—	**4,876.38**	—
Mean	**0.63**	**0.26**	—	**25.03**
Std Dev	**0.13**	**0.14**	—	**26.94**
1	0.49	0.15	864.83	64.55
2	0.72	0.41	1,072.90	3.69
3	0.55	0.15	764.69	7.44
4	0.55	0.21	777.85	63.29
5	0.57	0.16	595.10	17.39
6	0.70	0.23	556.17	12.36
7	0.85	0.49	214.84	6.46

Turning to political subdivisions, to be sure, the plan splits more counties than necessary to comply with one person, one vote. But not without good reason: many of the splits are necessary to accommodate the placement of Black population into the majority and plurality Black districts. For instance, District 1 stretches into small areas of Union, Chester, and Newberry counties on its northern end, reaches into Lexington County to grab a mere 5,000 people, and picks up a small number of voting districts in Marlboro and Dillon counties. While it is possible to draw a majority-minority district with fewer county splits, these splits were necessary to bring the district to just barely over majority Black, so that the southern-more Black population could be used to create a second plurality Black district. The same logic is behind the county splits between Districts 2 and 3 (*e.g.*, the voting districts in Beaufort with at least 40% Black population are taken into District 2; the rest belong to District 3 to compose the southern border of the state). County splits are not as numerous for the remaining districts; counties generally remain intact unless (a) they border with Districts 1 and 2 or (b) needed to comply with one person, one vote. Greenville is split three ways because it was decided preferable to split one county multiple ways than to split multiple counties one way each.

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[20] The measure is always between 0 and 1, with 1 being the most compact.

[21] The measure is always between 0 and 1, with 1 being the most compact.

[22] The Perimeter test computes one number for the whole plan, with a smaller total perimeter being more compact.

[23] A lower number indicates better length-width compactness.

| County Splits	
County	**Districts**
Beaufort	2, 3
Berkeley	2, 3
Charleston	2, 3
Chester	1, 4
Colleton	2, 3
Dillon	1, 4
Florence	1, 2
Georgetown	2, 3
Greenville	5, 6, 7
Horry	3, 4
Lexington	1, 5
Marion	1, 4
Marlboro	1, 4
Newberry	1, 5
Richland	1, 5
Union	1, 5
York	4, 5

III. LEGAL COMPLIANCE
A. State Law

South Carolina does not have state legal requirements for Congressional Districts that go beyond what federal law requires.[24] The only issue that may arise is contiguity over water. District 3 of the plan, which covers the southern coast of the state, relies on water to remain contiguous. While there is no explicit state law prohibition of contiguity over water, it is an issue to be aware of. But this issue should not be unique to this plan, as contiguity over water is inevitable in any districting plan given that many of these localities are "islands" off the state's southern shore. The image below shows the water areas in blue:

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[24] Justin Levitt, *South Carolina*, ALL ABOUT REDISTRICTING (Feb. 10, 2022), https://redistricting.lls.edu/state/south-carolina/.
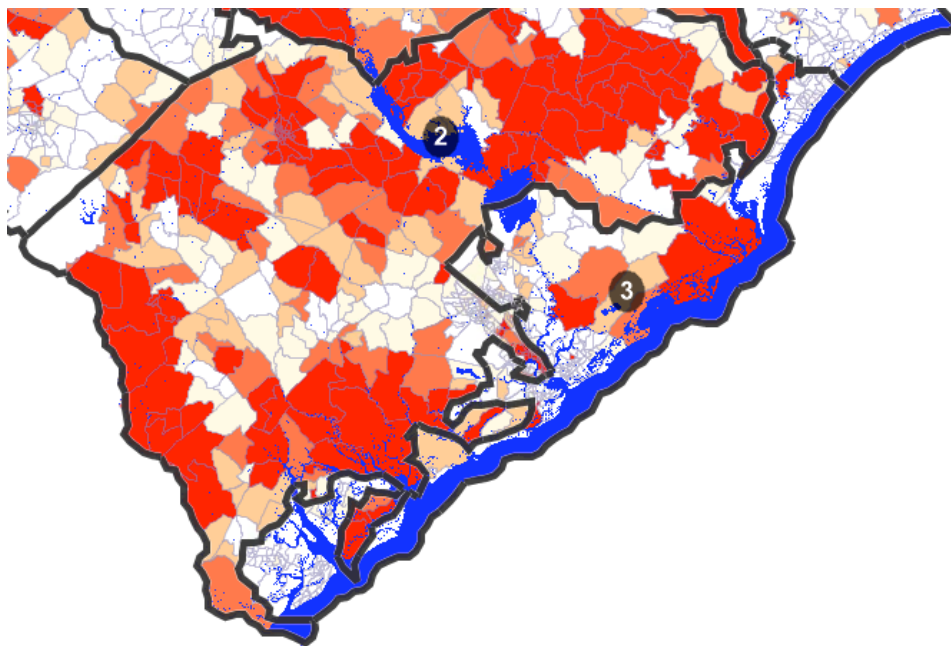
B. U.S. Constitution and Voting Rights Act

1. One Person, One Vote

"Legislators represent people, not trees or acres."[25] Under the Equal Protection Clause, each district must contain the same number of people so that one's vote is not "unconstitutionally impaired when its weight is in a substantial fashion diluted when compared with votes of citizens living on other parts of the State."[26] With respect to Congressional districts, no "*de minimis* level of population differences [is] acceptable," and the Supreme Court has "required that *absolute* population equality be the paramount objective of apportionment . . . in the case of congressional districts."[27]

The plan presented here comports with that requirement; it achieves perfect population equality amongst its districts according to 2020 Census data ± one person:

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[25] Reynolds v. Sims, 377 U.S. 533, 562 (1964).

[26] *Id.* at 568.

[27] Karcher v. Daggett, 462 U.S. 725, 731–33 (1983). *But see* Tennant v. Jefferson Cty. Comm'n, 567 U.S. 758, 763 (2012) (per curiam) (allowing population deviations if "necessary to achieve some legitimate state objective" (quoting *Karcher*, 462 U.S. at 470)).

District	Population (2020 Census)
1	731,204
2	731,204
3	731,203
4	731,203
5	731,204
6	731,204
7	731,203

2. Racial Gerrymandering and the Voting Rights Act as a Defense

"[A] plaintiff challenging a reapportionment [scheme] under the Equal Protection Clause may state a claim by alleging that [it] rationally cannot be understood as anything other than an effort to separate voters into different districts on the basis of race, and that the separation lacks sufficient justification."[28] If, "either through circumstantial evidence of a district's shape and demographics or more direct evidence going to legislative purpose," a plaintiff demonstrates "that race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district,"[29] the burden shifts to the state to satisfy strict scrutiny—that "its race-based sorting of voters serves a compelling interest and is narrowly tailored to that end."[30] The "subordinat[ion]" of "traditional race-neutral districting principles, including but not limited to compactness, contiguity, and respect for political subdivisions or communities defined by actual shared interests, to racial considerations" triggers strict scrutiny liability.[31] But "a State can satisfy strict scrutiny if it proves that its race-based sorting of voters is narrowly tailored to comply with the" Voting Rights Act.[32]

The particularly non-compact nature of the districts of this plan, especially with respect to the majority and plurality Black districts, can give rise to the inference that race was the predominant factor in constructing the plan and thus trigger strict scrutiny. A plaintiff seeking to bring an Equal Protection challenge this plan could point to, for example, where District 1 stretches out to scoop in voting districts with surgical

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[28] Shaw v. Reno, 509 U.S. 630, 649 (1993).

[29] Miller v. Johnson, 515 U.S. 900, 916 (1995).

[30] Cooper v. Harris, 137 S. Ct. 1455, 1464 (2017) (internal quotation marks omitted).

[31] *Miller*, 515 U.S. at 916.

[32] Wisconsin Legislature v. Wisconsin Elections Comm'n, No. 21A471, 2022 WL 851720, at *2 (U.S. Mar. 23, 2022) (citing *Cooper*, 137 S. Ct. at 1463-64).

precision to capture Black voters, creating numerous county splits in the process:
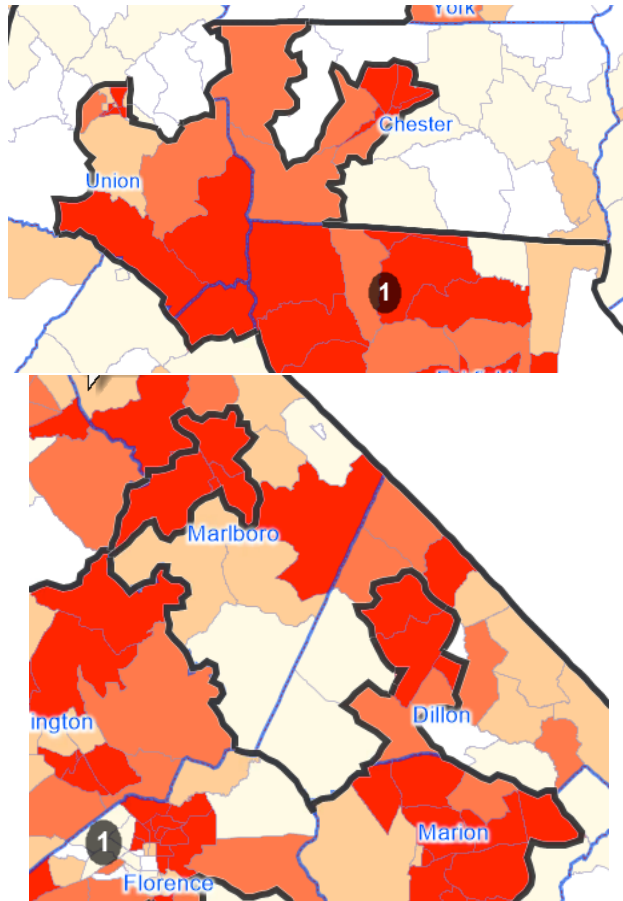
One can also scrutinize the boundary between Richland and Lexington counties—rather than cleanly track the county line, the boundary between Districts 1 and 5 loops in to exclude White voters from Richland County and loops out to include Black voters from Lexington County:
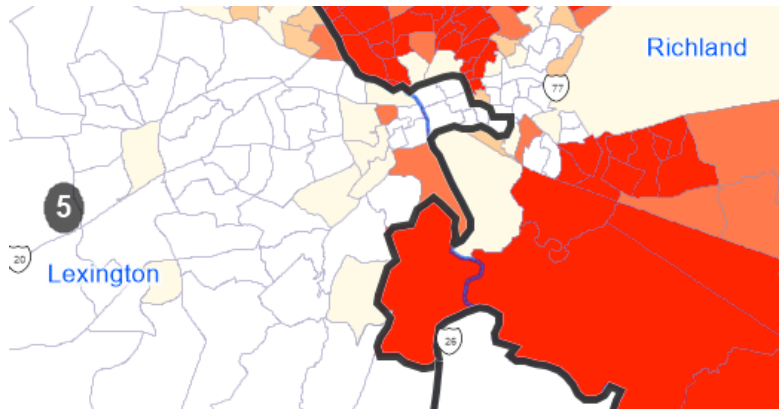
One could also point to the boundary between Districts 2 and 3, which weaves in and out across county lines to place particular voting districts with more Black voters into District 2 to maximize its plurality Black population:
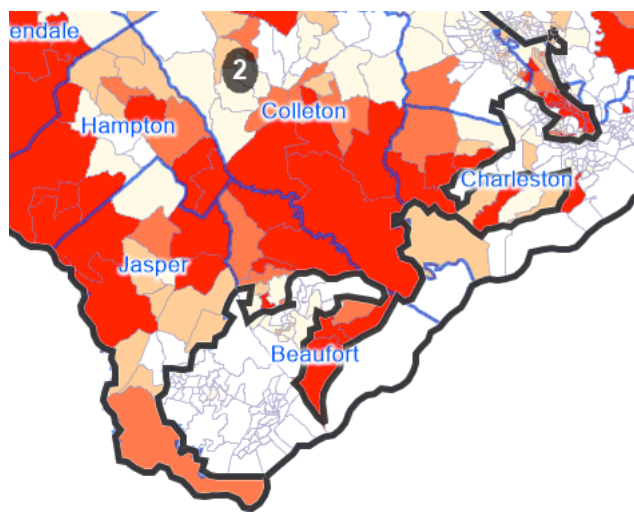
This "circumstantial evidence of a district's shape and demographics" does not end the analysis, however.[33] The redistricting plan can still be upheld on the grounds that it is narrowly tailored to comply with the Voting Rights Act. To "invoke[] § 2 [of the Voting Rights Act] to justify race-based districting, '[the state] must show (to meet the "narrow tailoring" requirement) that it had "a strong basis in evidence" for concluding that the statute required its action.' "[34]

District 1 is a majority-minority district with 50.15% BVAP. It is fairly clear that the Black population is entitled to a majority-minority district as it satisfies the *Gingles* criteria: (1) it is sufficiently large and compact, (2) it is politically cohesive, and (3) the White majority votes as a bloc to defeat the Black minority's preferred candidate.[35] District 1, then, can be said to be drawn to comply with the Voting Rights Act, a compelling interest to justify the use of race.

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[33] *Cooper*, 137 S. Ct. at 1464.

[34] *Wisconsin Legislature*, 2022 WL 851720, at *2 (citing *Cooper*, 137 S. Ct. at 1464).

[35] There may still be the question of whether the use of race was *narrowly tailored* enough to create a § 2 district, though. Were it not for the need to "save" more of the Black population for a crossover district (District 2), a majority-minority district could have been arguably drawn in a more compact manner than that of the current configuration of District 1.

It may prove more difficult to say the same for District 2, however, which has a 42.05% BVAP and 45.00% Black CVAP—short of an outright majority by either metric. It is reasonable to advance the theory that opportunity districts should be drawn when possible to prevent members of a sizeable minority from having "less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice."[36] Even if they themselves do not constitute a majority of a district, their voice should not be rendered meaningless, and placing them with White voters who cross over to vote with them would reward the mitigation of racially polarized voting. But the Supreme Court has held that "Section 2 does not impose on those who draw election districts a duty to give minority voters the most potential, or the best potential, to elect a candidate by attracting crossover voters."[37] This limitation on Section 2's reach, at least under current law, will likely pose the largest obstacle in enacting a plan such as this one and is why it merely serves as a proof of concept rather than an operational scheme for implementation.[38]

IV. COMPARATIVE ANALYSIS:
PROPOSED VS. EXISTING AND ADOPTED PLANS

There are a few points of comparison to be made between this plan and the existing (2012) and adopted (2022) plans.

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[36] 52 U.S.C. § 10301(b).

[37] *Bartlett*, 556 U.S. at 15.

[38] Another possible way to justify the plan is to characterize it as political, rather than racial, gerrymandering. Unlike racial gerrymandering, partisan gerrymandering is nonjusticiable. Rucho v. Common Cause, 139 S. Ct. 2484 (2019). And when "the State has articulated a legitimate political explanation for its districting decision, and the voting population is one in which race and political affiliation are highly correlated," the politics-not-race rationale may serve a viable defense against a *Shaw* claim. Easley v. Cromartie, 532 U.S. 234, 242 (2001). In this case, one could justify District 2 as an effort to create a second safe Democratic district rather than an attempt to draw a Black plurality district. *But see Cooper*, 137 S. Ct. at 1473 (centering the inquiry around whether "legislators have 'place[d] a significant number of voters within or without' a district predominantly because of their race, regardless of their ultimate objective in taking that step." "[I]f legislators use race as their predominant districting criterion with the end goal of advancing their partisan interests—perhaps thinking that a proposed district is more 'sellable' as a race-based VRA compliance measure than as a political gerrymander and will accomplish much the same thing—their action still triggers strict scrutiny.").

Adopted 2022 South Carolina Congressional Map
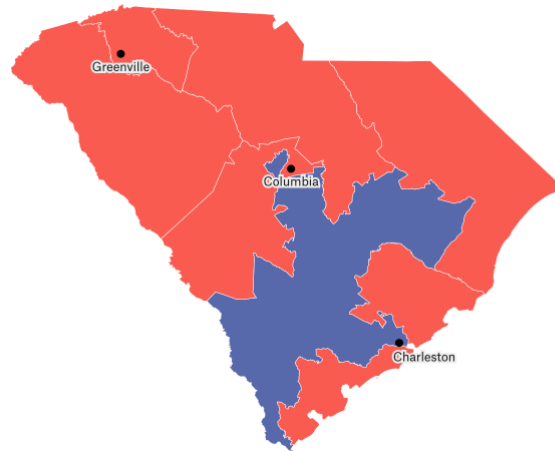
Existing 2012 South Carolina Congressional Map
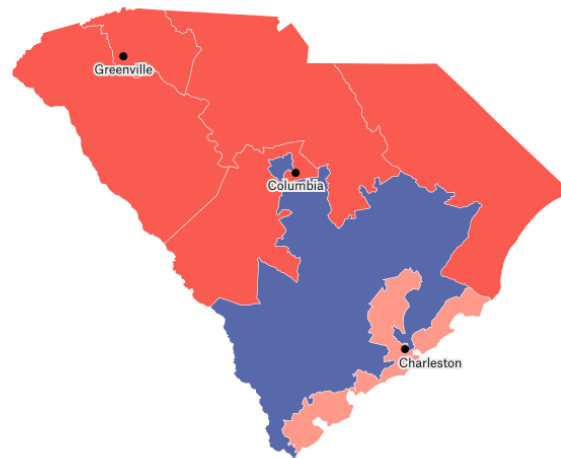
- Like this plan, neither of the adopted or existing plans have any competitive seats. The partisan balance, however, differs. This plan has 2 safe Democratic seats—the Black majority district (64.23% Biden) and the crossover district (56.65% Biden)—with the remaining 5 being safe Republican districts (at least 56% Trump 2020). The enacted plan, by contrast, has only one safe Democratic seat (66.29% Biden) (Rep. Clyburn's seat).
    - o Important caveat: District 1 of the existing plan elected a Democrat in 2018, Rep. Joe Cunningham, making the state's House delegation 5-2 R-D. Republican Rep. Nancy Mace defeated that Democratic incumbent in 2020, however, restoring South Carolina's House delegation to 6-1 R-

D.[39]

- The adopted plan includes a single Black majority district (50.2% Black CVAP)—and this is also true of the existing plan.
    - The district with the next highest Black population, District 7, contains merely 27.2% Black CVAP. Compare that with this plan's creation of a plurality Black district at 45.00% Black CVAP.
    - This plan's majority-minority district is located northernmore than that of the adopted and existing plans. Much of the population in the adopted and existing plans' majority-minority district are placed into the crossover district instead in this plan.
    - While the adopted plan's lack of crossover district is understandable given that the Black population in South Carolina is not particularly compact, there are serious questions as to whether other objectives were accomplished in tradeoff. For one, if a crossover district is not to be drawn, one would expect that the Black population in the majority-minority district be higher. But that does not seem to be the case; the Black CVAP is barely a majority at 50.2%. And not to mention, the majority-minority district in the existing and adopted plans is not particularly compact either (though there are fewer political subdivision splits than this plan).

CONCLUSION

This map aims to be an exercise to answer the question: Is there any way to maximize South Carolina's Black population's electoral influence beyond the one majority-minority Congressional district it has? While it is not possible to draw one more majority-minority district, the answer is yes—an additional Black plurality district can be drawn. And the Black voting population in that district can elect the candidate of their choice with the help of White liberal voters who cross over to support that candidate. Two major tradeoffs with this approach, though: *First*, it is only possible to draw a second crossover district at the cost of compactness, especially because the Black population in South Carolina is not particular compact. *Second*, such a plan is particularly vulnerable to *Shaw v. Reno*-type Equal Protection challenges, given that the conscious use of

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[39] *South Carolina's 1st Congressional District*, BALLOTPEDIA, https://ballotpedia.org/South_Carolina%27s_1st_Congressional_District.

race is necessary to produce the plurality Black district. Limited recognition of crossover districts under current Supreme Court jurisprudence poses a challenge to justifying the plan as narrowly tailored to comply with the Voting Rights Act.