



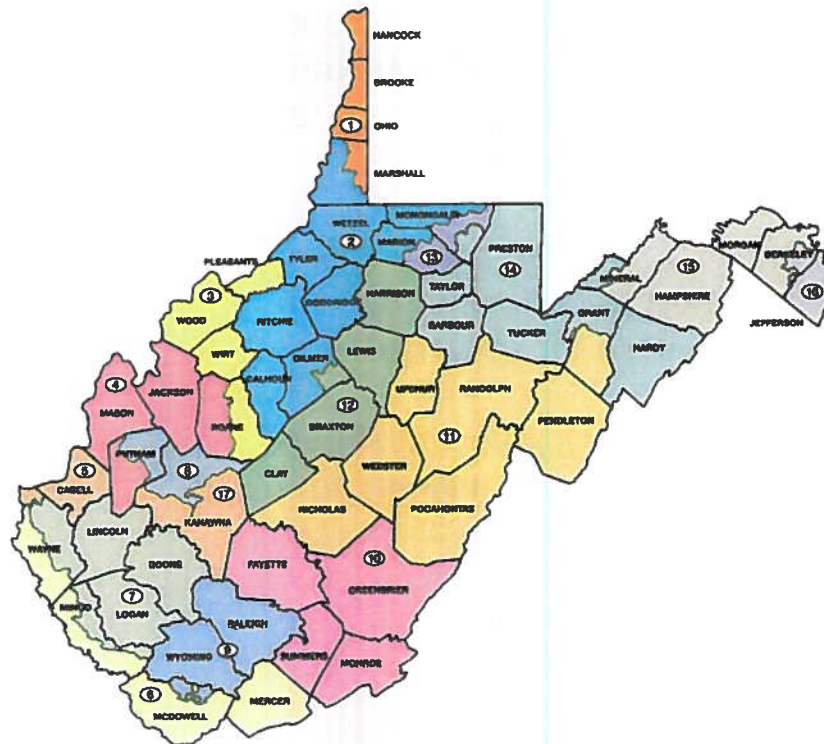
Guide to Redistricting

Information to Know for West Virginia's Redistricting Process

Current State Senate Map

- 17 Senatorial districts
- 34 Senators
- Senators hold staggering 4 year terms

In-depth maps for each district may be found on the Senate Redistricting page.



Process Introduction - West Virginia

- ▶ West Virginia redraws the State's Congressional and Legislative boundary lines after the U.S. census to accurately account for population changes every 10 years.
- ▶ The state legislature's Joint Committee serves both the Senate and House with redistricting efforts.
- ▶ Legislative leadership forms redistricting committees, who work with analysts to draw new boundaries for Congressional, State Senate and House of Delegates Districts.
- ▶ Upon the completion of the census and preparation of data, population counts are distributed to the Governor, legislative leaders, and state liaisons.
- ▶ After this process is completed, reports and maps are generated for the formation of the Redistricting Bill, which typically occurs during a special session following the Census year. All plans are subject to a gubernatorial veto, but that can be overridden with a simple majority vote in each chamber.

Source: <https://www.wvlegislature.gov/redistricting.cfm>

Terminology - Election Boundaries and Political Subdivisions

- ▶ Municipality
 - ▶ Town, city, etc.
- ▶ Magisterial District
 - ▶ Created by county, subject to redistricting after every decennial census.
- ▶ County
 - ▶ Created by WV Constitution, Legislature, and voted on by the residents.
- ▶ State Senate Districts
 - ▶ Redistricted every 10 years by the WV Legislature.
- ▶ State House of Delegates Districts
 - ▶ Redistricted every 10 years by the WV Legislature.
- ▶ Congressional Districts
 - ▶ Redistricted every 10 years by the WV Legislature.
- ▶ Census Block
 - ▶ Smallest unit of population created by US Census; used to create municipal populations.
- ▶ Precinct
 - ▶ Created by county commissions.
- ▶ Municipal Precinct
 - ▶ Municipal boundaries are created by municipal charters.
 - ▶ Precincts coincide with county precincts within the municipal boundaries.

Census Timeline and Deadlines

▶ Anticipated Timeline

- ▶ **Aug. 16, 2021:** Legacy format summary redistricting data file released (*Ohio v. Raimondo*, confirmed by James Whitehorn)
- ▶ **Aug. 21, 2021:** States will receive the data they need to begin redistricting
- ▶ **Sep. 30, 2021:** Redistricting data summary files and data toolkit released

▶ Original Plan

- ▶ **January:** President transmits data to Congress, which then transmits to Governors
- ▶ **Feb. 18, 2021 - Mar. 31, 2021:** Start to deliver data in state groupings
- ▶ **Apr. 1, 2021:** Commerce Dept. must provide each state with P.L. data (P.L. 94-171)
- ▶ **Apr. 30, 2021:** Extended deadline due to COVID

Sources: <https://www.census.gov/newsroom/blogs/random-samplings/2021/02/timeline-redistricting-data.html>;
<https://www.census.gov/newsroom/press-releases/2021/2020-census-apportionment-results.html>;
<https://www.jonesday.com/en/insights/2021/05/redistricting-waiting-to-hurry-up-national-law-journal>;
<https://www.census.gov/programs-surveys/decennial-census/decade/2020/2020-census-main.html>

Statutory Federal and State Redistricting Deadlines:

- ▶ Responsibility of the State Legislature to create boundaries based on population.
 - ▶ Federal Congressional Districts - absorb District 2
 - ▶ WV State Senate Districts
 - ▶ WV State House of Delegates Districts - now single member districts
- ▶ NO direct deadlines for completion, the process simply begins after every census.
 - ▶ Redistricting, Generally
 - ▶ Arrangement of State Legislative Districts (WVC Article 6-10)
 - ▶ House of Delegates Apportionment (WVC Article 6-7)
 - ▶ Division into Senatorial Districts (WVC Article 6-4)

Source: <https://www.ncsl.org/research/redistricting/state-redistricting-deadlines637224581.aspx>

Election Deadlines

- ▶ **Congressional, State, and County Candidate Residency**
 - ▶ **Nov. 8, 2021:** Must live in new district one year before the general election (WVC Article 6-12)
- ▶ **All Political Party Declarations**
 - ▶ **Nov. 11, 2021 (first possible date):** Must be 60 days prior to the filing period of the 2022 certificates of candidacies in new districts (W. Va. Code § 3-5-7)
- ▶ **Congressional, State, and County Candidate Filing**
 - ▶ **Jan. 29, 2022**

Practical Redistricting Deadlines and Timeline:

▶ State:

- ▶ Ideally, completed by no later than **Oct. or Nov.** after receiving Census data

▶ County: Magisterial District and Precinct lines will affect candidates for Board of Education, Executive Committee, and County Commission

- ▶ Prepare for potential large-scale changes in the Census and state maps
- ▶ Wait on a) Census data and b) completed state maps
- ▶ Complete county maps between **Nov. - Jan., but the sooner the better**
 - ▶ If precinct lines need altered, emergency provisions under § 3-1-7 will likely be brought in and the deadline for precinct maps will be in **November**
 - ▶ Residency Filing Date (To ideally avoid court challenges and adverse decisions)
 - ▶ Candidacy Filing Date (Higher risk of court challenges if candidates are districted out)
 - ▶ *Martin v. Jones*, 186 W. Va. 684 (1992).

Source: <https://gerrymander.Princeton.edu/reforms/WV>

Federal Statutory Law - U.S. Code and Constitution

- ▶ States must comply with federal requirements, particularly those related to population and anti-discrimination
- ▶ **Constitution**
 - ▶ Article 1, Section 2 (House of Representative Apportionment)
 - ▶ Article 1, Section 4 (Giving States Authority)
 - ▶ Equal Protection Clause - Districts must be substantially equal
 - ▶ 10% deviation norm is safe and often used by the courts
- ▶ **Public Law 94-171. Redistricting Data.**
- ▶ **United States Code**
 - ▶ 13 U.S.C.S. 141. Population and other census information.

State Statutory Law - W. Va. Code and Constitution

▶ W. Va. Constitution

- ▶ Article 1, Section 4
- ▶ Article 2, Section 4
- ▶ Article 6, Sections 2-4, 6-7, 10, 12

▶ W. Va. State Code

- ▶ § 1-2-1. Senatorial districts.
- ▶ § 1-2-2. Apportionment of membership of House of Delegates.
- ▶ § 1-2-2c. Redistricting.
- ▶ § 1-2-3. Congressional districts.

Magisterial Districts (Minor Civil Divisions/County Subdivisions)

- ▶ Will affect Board of Education and County Commission elections, Executive Committee District lines
- ▶ Responsibility of the County Commission
- ▶ **W. Va. Code**
 - ▶ § 7-2-2. Magisterial districts; boundary lines.
 - ▶ § 7-2-7. Establishment of tax district boundary lines.
 - ▶ § 11-3-1a. Magisterial districts as tax districts; legislative findings; terms defined.
- ▶ **Deadlines**
 - ▶ Before any districts are changed, the commission shall place notice of its intention to do so on the front door of the county courthouse, and at some public place in each district affected, for at least 30 days prior to the term of court at which such action is proposed to be taken (W. Va. Code § 7-2-2).

Source:

<https://westvirginia.hometownlocator.com/counties/subdivisions/index,cfips,007,c,braxton.cfm>

Precincts

▶ W. Va. Code

- ▶ § 1-2-2b. Precinct boundary changes.
- ▶ § 3-1-5. Voting precincts and places established; number of voters in precincts; precinct map; municipal map.
- ▶ § 3-1-7. Precinct changes; procedure; precinct record.
 - ▶ Note - Emergency provisions potentially brought in

▶ Deadlines

- ▶ Dependent on what precinct lines need to be altered and therefore, whether emergency provisions in § 3-1-7 are utilized - if they need redrawn, maps will need to be completed by November

Executive Committee Districts

- ▶ **W. Va. Code**
 - ▶ § 3-1-9. Political party committees; how composed; organization.
- ▶ **Deadlines**
 - ▶ Changes must be made to the territorial boundaries of the districts as required by the population changes within two years following the census (W. Va. Code § 3-1-9 (e)).
 - ▶ Practically, these changes will need completed sooner and align with Magisterial District Lines

Municipalities

- ▶ **W. Va. Code**
 - ▶ § 3-1-6. Municipal voting precincts.

Clerk Responsibilities and Action Items

- ▶ **W. V. Constitution**
 - ▶ Article 9, Sections 9, 10, 11, 12, 13
- ▶ Communicate with the County Commission re:
 - ▶ Census data projected release dates
 - ▶ Deadlines that must be met once data is gathered and state maps are released
- ▶ Pay attention to Census release and access dates through the end of **Sep.**
 - ▶ Unsure if data will be delivered or simply become available to the public and counties
- ▶ Prepare for the release of the state maps in the coming months, ideally by the end of **Oct.**
 - ▶ To be determined if a special session will be held to approve the maps
- ▶ Ensure county-level maps are drawn on time, ideally to avoid challenges in court - **the sooner the better**
 - ▶ Utilize both Census data and state maps to reference and incorporate by **Nov. - Jan.** based on residency and candidacy deadlines
 - ▶ May need to abide by the emergency provisions in W. Va. Code for Precinct lines and push the completion deadline to **Nov.**

Redistricting Case Law

- ▶ ***Reynolds v. Sims*, 377 U.S. 533 (1964).**
 - ▶ Substantial equality of population among the various districts
- ▶ ***Mahan v. Howell*, 410 U.S. 315 (1973).**
 - ▶ Some deviations are permissible when based on rational state policies, which must not be arbitrary or discriminatory
- ▶ ***Gaffney v. Cummings*, 412 U.S. 735 (1973).**
 - ▶ State legislative apportionment may be given more flexibility in what is constitutionally permissible
 - ▶ Substantial equality of population is required among districts so that votes of citizens are equal to one another
- ▶ ***White v. Weiser*, 412 U.S. 783 (1973).**
 - ▶ Congressional district population variances are not justified simply because they result from a state's attempt to avoid breaking up political subdivisions by drawing lines along existing subdivisions
- ▶ ***Miller v. Johnson*, 515 U.S. 900 (1995). HN 10.**
 - ▶ States may recognize communities with a particular racial makeup, so long as that action is directed toward some common thread of relevant interest - when based on race, states are at odds with EPC mandates

W. Va. Case Law

- ▶ ***Deem v. Manchin*, 188 F. Supp. 2d 651 (2002).**
 - ▶ Honest and good faith effort
 - ▶ Nearly of equal population as is practicable
 - ▶ Slight deviations aligning with identified, constitutional goals may be found to be constitutional
- ▶ ***Holloway v. Hechler*, 817 F. Supp. 617 (1992).**
 - ▶ Cannot be less opportunity of excluded groups to participate in political process and elect desirable candidates
 - ▶ Cannot be intentional discrimination or effect on a group, otherwise unconstitutional

W. Va. Decision: *State ex rel. Cooper v. Tennant*, 229 W. Va. 585 (2012).

- ▶ A county in its entirety did not have to be attached to another county to form a district (counties could be divided)
 - ▶ Here, county lines were only crossed as needed to ensure districts formed of contiguous territory or to address population inequalities
- ▶ Gerrymandering, in and of itself, is not impermissible
- ▶ Recognized permissible factors
 - ▶ Compactness, community interest, partisan advantage, etc.
- ▶ Substantial population equality is required, but some flexibility must be granted to states
 - ▶ 10% deviation (max) to be considered a minor deviation
 - ▶ [W. Va. Code § 1-2-1](#) did not violate equal representation requirements because its stated policy interests showed required balancing

Legal Tests

▶ ***Karcher v. Daggett*, 462 U.S. 725 (1983).**

- ▶ Could population differences have been reduced or eliminated by a good-faith effort?
- ▶ Legitimate exceptions are nondiscriminatory and justify minor deviations, but must be shown with specificity that an objective requires the deviations

▶ ***Thornburg v. Gingles*, 478 U.S. 30 (1986).**

- ▶ Must demonstrate unequal access to the electoral process under totality of circumstances
- ▶ Violation is not simply based on the conjunction of an allegedly dilutive electoral mechanism and the lack of proportional representation

▶ ***Cooper v. Harris*, 137 S. Ct. 1455 (2017).**

- ▶ Three threshold conditions to establish potential to elect a representative of the minority group's own choice, but that racially polarized voting prevents it from doing so in the district as actually drawn
- ▶ Must prove that race was the predominant factor for motivating the placement of a significant number of voters within or without a certain district
 - ▶ Demonstrate that the legislature subordinated other factors (compactness, respect for political subdivisions, partisan advantage, etc.) to racial considerations

SCOTUS Decision: *Tennant v. Jefferson County Comm'n*, 567 U.S. 758 (2012).

- ▶ **HN 2** - Determining whether a state's congressional redistricting plan meets the one-man, one-vote standard
 - ▶ Challengers must prove the existence of population differences that could practicably be avoided
 - ▶ Burden would then shift to the state to show with some specificity that population differences were necessary to achieve some legitimate state objective
- ▶ Vote dilution caused by relatively minor population disparities were acceptable as necessary to achieve clearly valid and neutral, legitimate state objectives

