

ACLU

Mississippi

REDISTRICTING:

The Fight for Fair Maps in Mississippi

2021


Introduction

For 8 years, Robert Clark sat alone as the only Black legislator in Mississippi's capitol. While other Mississippi lawmakers had at least one, if not multiple, desk mates, Clark labored from a small workstation, literally isolated from his colleagues, and struggling to even be recognized to speak during debate on the House floor.

The 1965 Voting Rights Act (VRA) removed many of the Jim Crow barriers that prevented Black Mississippians from registering to vote and accessing the polls. As Black voter registration accelerated, there was a hope that more Black Mississippians would be elected in the several Mississippi counties with majority Black populations.

When Clark was elected to the Mississippi House of Representatives in 1968, he became the first African-American seated in the state's legislature since the end of reconstruction.

Even with this newfound access to the ballot, Mississippi's legislative apportionment scheme severely limited Black voting strength. In 1967, still in the glow of the VRA, 28% of Mississippi's registered voters were Black. But not until 1976 would another African-American join Clark at the Capitol. That year, Doug Anderson, Fred Banks, and Horace Buckley were all elected out of Jackson.

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- 1965: Voting Rights Act (VRA) passed
 - 1965: Connor v Johnson filed
 - 1967: 28% of Mississippi's registered voters are Black
 - 1968: Robert Clark elected as first Black Mississippi legislator since reconstruction
 - 1976: Only four of 174 Mississippi legislators are Black
 - 1979: Connor v Johnson finally settled, nineteen Black Mississippians elected to the legislature
 - Today: Mississippi Black voters are underrepresented in the legislature

That made four. A full decade after the VRA, only 4 of the 174 Mississippi legislators were Black. At the time, Mississippi used multiple member districts and gerrymandering to cancel out the strength of Black voters. The practice of Black vote dilution, unfortunately, is not a thing of the past.

Asserting their rights under the VRA, civil rights attorneys and Black leaders challenged Mississippi's racially discriminatory legislative apportionment scheme. It would take the conclusion of a 14-year legal struggle and the enactment of court-ordered redistricting plans before Mississippi's Black population would begin to have a voice in the makeup of the state legislature.

Frank Parker, representing the Black plaintiffs, argued correctly that more African-Americans in the Mississippi legislature would result in "more progressive legislation and will serve as a deterrent to reactionary kinds of legislation particularly in the area of public education and county government reforms." As Parker predicted, during this period lawmakers worked together to make historic investments in education and infrastructure.

In 1979, there were 19 Black Mississippi Senators and State Representatives elected to serve the state. Clark now chaired the House Education Committee

and would team with Black and white lawmakers to reform Mississippi's education system.

Rightfully so, Mississippi's legislature began to look more like Mississippi's population. Undoubtedly, a great number of Black Mississippians have held elected office since passage of the VRA, with nearly 50 black legislators currently serving in the state capitol.

But, if recent redistricting trends continue, Mississippi's legislature will be less and less representative of the state. During the last redistricting cycle, lawmakers seized on Mississippi's extreme racially polarized voting—the tendency of voters of different races to vote in opposite directions—to diminish the ability of Black voters to pick their preferred candidates through the use of gerrymandering, packing, and splitting.

White Mississippians vote overwhelmingly for Republican candidates, and Black Mississippians vote overwhelmingly for Democratic candidates. As a result, Republicans control only 3 of the 64 state legislative districts that are less than 55% white, while they control 108 of the 110 state legislative districts that are 55% or more white.

As the majority party in control of redistricting, it is therefore in the partisan interest of Republicans to minimize Black

A strong majority of Mississippi voters want:

- An early voting period
- Expanded health insurance access through Medicaid
- A medical marijuana program
- Greater investments in roads and bridges

voting power by maximizing the number of districts that are 55% or more white. This is exactly what occurred as a result of the 2010 redistricting cycle. The vast majority of Mississippi House and Senate districts are more than 55% white. In fact, the median House district is 65.3% white (9 points whiter than the state as a whole), and the median Senate district is 62.4% white (6 points whiter than the state as a whole).

Today, Mississippi voters give the legislature low marks as a whole but also view the body as unresponsive to their needs.

A strong majority of Mississippi voters want an early voting period, expanded health insurance access through Medicaid, a medical marijuana program, and greater investments in roads and bridges. However, legislators have largely ignored these issues because they believe their district lines insulated them from any electoral repercussions. Instead of Mississippi voters choosing their legislators, State Senators and Representatives are using redistricting to choose their own voters.

Marginalization of Black Voter Strength

In Mississippi, the racial demographics of a district strongly predict who will be elected to represent the district. The district lines that are currently in effect exploit Mississippi’s racially polarized voting to diminish Black voting strength.

Mississippi’s racially polarized voting is apparent in the current composition of the legislature. The following tables show Republicans only control 3 out of the 19 Senate districts that are less than 55% White, and they control none of the 45 House districts that are less than 55% White [1].

SENATE

Winning Candidate

% White	Black Democrat	White Democrat	White Republican	Total
Under 35	12	1	0	13
35-49.9	2	0	0	2
55-54.9	0	1	3	4
55 or more	0	0	33	33
Total	14	2	36	52

Under 50	14	1	0	15
Over 50	0	1	36	37
Total	14	2	36	52

HOUSE

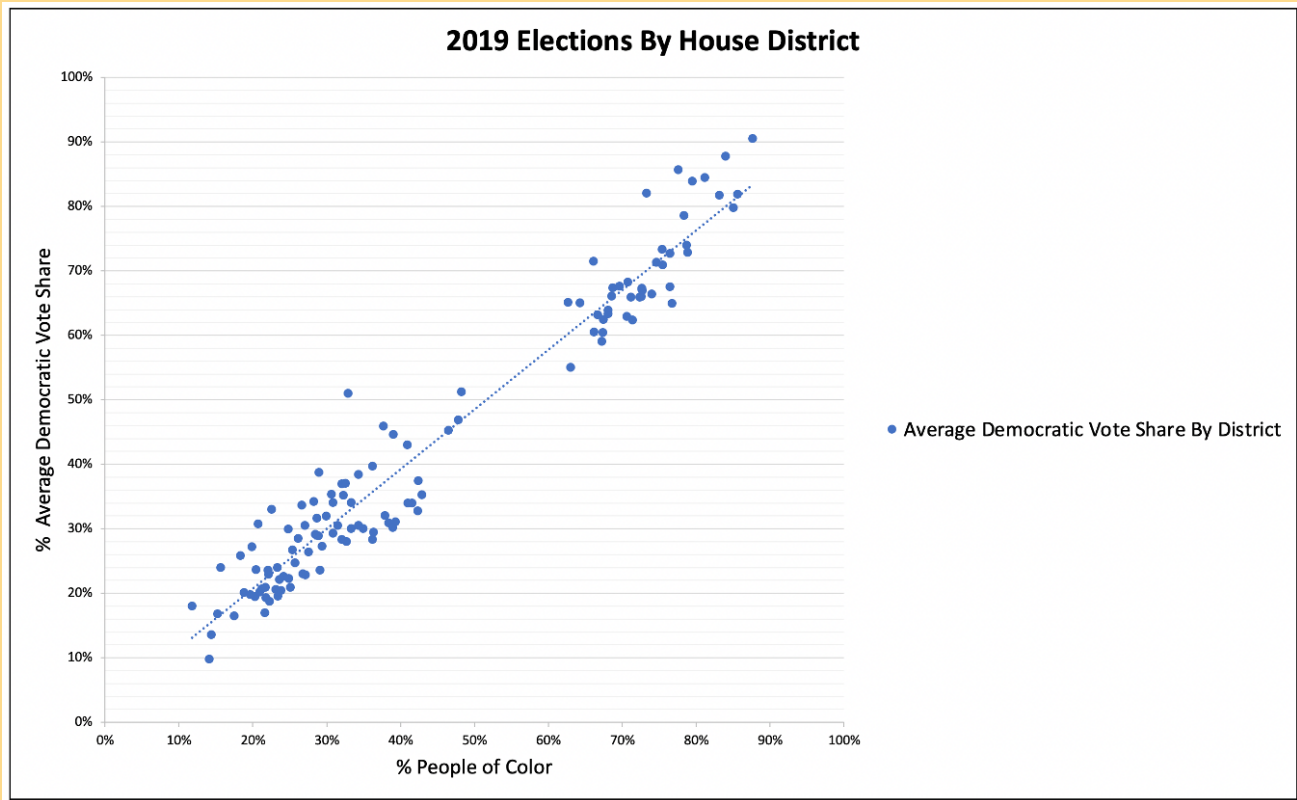
Winning Candidate

% White	Black Democrat	White Democrat	Black Independent	White Independent	Latinx Republican	White Republican	Total
Under 30	28	0	0	0	0	0	28
30-34.9	8	0	1	2	0	0	11
35-49.9	2	1	0	0	0	0	3
50-54.9	1	2	0	0	0	0	3
55-59.9	0	1	0	0	0	5	6
60 or more	0	1	0	0	1	69	71
Total	39	5	1	2	1	74	122

Under 50	38	1	1	2	0	0	42
Over 50	1	4	0	0	1	74	80
Total	39	5	1	2	1	74	122

[1] While we do not have official numbers on the ethnicity of registered voters in the state, using modeled data from L2, we can get a fairly accurate picture of the demographics of these voters. Statewide, 56.3% of registered voters in Mississippi are modeled as White, 36.0% as Black, 3.1% as some other ethnicity, and 4.6% unknown.

As the tables show, the more white a district, the less likely a Democrat is to win the district. In fact, statistical analysis shows that there is a strong correlation between the share of non-White voters in a district and the Democratic vote share. The trendline in the following chart suggests for every 1% less White a district gets, Democrats add 0.93% to their average vote share.



The district lines currently in effect in Mississippi skew much more in favor of the Republicans than expected based on the demographic patterns. The percentage of registered voters who are white statewide is 56.3%, but 33 of 52 Senate districts have more than 56.3% White registered voters, and 77 of 122 House districts have more than 56.3% White registered voters. Notably, the median Senate district in Mississippi has a

voting-age population that is 62.4% White, and the median House district has a voting-age population that is 65.3% White (6 and 9 points higher than the proportion of the state's White registered voters, respectively).

In addition to maximizing the number of districts with White populations sufficient to elect Republicans, the current lines heavily concentrate Black voters into

certain districts, effectively bleeding surrounding districts of Black voters. Meanwhile, the remaining Black voting-age population (BVAP) split into numerous White-majority districts so that Black voting strength outside of majority-minority districts is so heavily dispersed that it is rendered essentially ineffective.

Section 2 of the VRA requires that in areas with racially polarized voting, where the minority community is sufficiently compact and where current and historical factors indicate discrimination against minorities, the district must be drawn so that the minority community constitutes a majority in the district such that it can elect candidates of its choice. These districts, referred to as “majority-minority” districts because the minority community represents the majority of the district, have been essential in the effort to protect the voting power of minority communities around the country, including in Mississippi.

But crafting majority-minority districts is often a balancing act. The VRA tasks map drawers with the responsibility of drawing districts with a sufficiently large minority community to allow minority voters to elect candidates they prefer. However, map drawers must also avoid packing more minority members into a district than

is necessary because doing so will diminish minority voting strength.

Legislators across the country have used compliance with the VRA as an excuse to gerrymander on the basis of race by creating severely packed majority-minority districts, thereby diluting the voting strength of minority communities around the state [2].

This is due at least in part to the fact that Black voters are heavily concentrated in a small number of districts. Of its 52 State Senate districts, Mississippi currently has 15 majority-minority districts. Of those 15 districts, 12 have a BVAP above 60% [3]. In many cases, these super-majorities have BVAPs that are significantly higher than what may be required to elect candidates that Black voters prefer [4].

This means that surrounding districts have fewer Black voters, and the Black voters in those districts have less influence as a result. Majority-minority Senate districts include approximately 53.2% of the total BVAP across the state. The remaining Black voters are dispersed throughout 37 White-majority districts, 33 of which have a larger percentage of White voting-age citizens than the state’s percentage of White registered voters.

[2] See, e.g., *Cooper v. Harris*, 137 S. Ct. 1455, 197 L. Ed. 2d 837 (2017).

[3] https://www.maris.state.ms.us/MAPS/Redistricting/MS2010SenateDist/JR202_2019-LongReport.pdf

[4] It is important to note that in many parts of the state, and around the country, there is a need for significant majorities in majority-minority districts in order for minority communities to elect their preferred candidates current and historical factors that have made it more difficult for minority communities to vote create. For example, in 2019, courts held that the Mississippi legislature violated Section 2 of the VRA in drawing Senate District 22, even though the district had a majority BVAP, because the majority was too narrow to allow Black voters to elect candidates of their choice. *Thomas v. Bryant*, No. 19-60133 (5th Cir. 2019).

Given the extent to which voting in Mississippi is racially polarized, Republicans control 36 of the 37 White-majority districts and all of the 33 districts that are whiter than the statewide population. No White-majority districts are represented by an African American, and only one is represented by a Democrat.

In effect, more than half of Mississippi's total BVAP is represented by less than one-third of the state's total Senate districts, while Black voters outside of majority-minority districts have been split among districts with large White majorities, undermining the power of their votes.

Out of a total of 122 House districts, there are 42 majority-minority districts. Of those, 37 districts have a BVAP over 60%, and ten of them have a BVAP over 70% [5]. While gerrymandering likely explains some of this concentration, some of it also likely has to do with the fact that Black voters generally live close to each other, so when drawing lines, it's inevitable that districts will include heavy concentrations of Black voters (and the same with white voters). This, of course, is in largely the legacy of segregation and other Jim Crow laws.

Almost 65% of Mississippi's total BVAP is represented by just over one-third of the total House districts.

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The remaining Black voting-age population is dispersed throughout 80 white-majority districts, 77 of which have a larger percentage of white voting-age citizens than the state's percentage of white registered voters. There are no House districts that are between 40% and 50% white; every district is either 50% or more white or less than 40% white.

In the vast majority of these districts, Black voters effectively have no ability to elect candidates of their choice. Republicans control all but two of these 77 districts. Of all White-majority districts, only one is represented by an African American, while only five are represented by a Democrat.

[5] https://www.maris.state.ms.us/MAPS/Redistricting/MS2010HouseDist/Concert1c_ver1.3.Longreport.pdf

The concentration of Black voters in a small number of districts and scattering of Black voters in the remaining districts diminishes Black voting power in the state as a whole. In particular, it eliminates opportunities to create additional Black-majority districts, and it weakens the influence that Black voters have in White-majority districts because they have insufficient numbers to form coalitions that might allow them to elect candidates of their choice.

Mississippi's district maps do not have to look the way they currently do. In fact, in 2011, the House proposed a map that included 44 majority-minority districts (as opposed to the 42 that ultimately passed), 8 of which had BVAPs between 50%-60% (as opposed to the 5 that ultimately passed) [6]. The legislature has the opportunity to pass maps in the current redistricting cycle that protect Black voting power and more fairly represent Mississippi's electorate. If it again passes maps that resemble the current ones, this would raise serious concerns of intentional effort to minimize Black voting power in order to maximize Republican control of the legislature.

[6] House Consensus Report.