

**Snell & Wilmer**

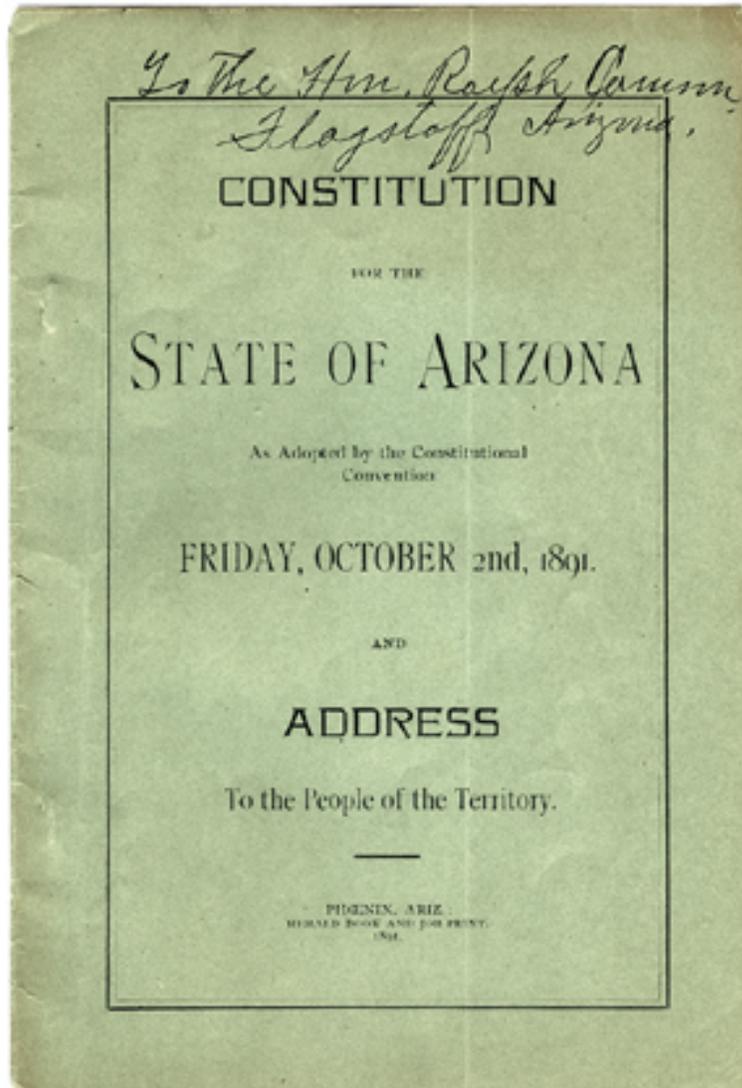
Committed to being your perfect fit.®

# Arizona Independent Redistricting Commission

Map Drawing Under the Arizona Constitution

June 29, 2021

# The Arizona Constitution



- Mapping Clauses
  - Ariz. Const. art. 4, pt. 2, § 1(14)-(17)
- Equal Privileges and Immunities Clause
  - Ariz. Const. art. 2, § 13

# History of the Mapping Clauses

- Arizona voters approved Proposition 106 in November 2000.
  - Amended the Arizona Constitution
  - Created the Independent Redistricting Commission
  - Transferred the power to redraw lines for legislative and congressional districts from the Legislature
  - Solidified the specific process and criteria to be used on redrawing district lines

## Titles

Article	Heading
Preamble	Preamble
1	STATE BOUNDARIES
2	DECLARATION OF RIGHTS
3	DISTRIBUTION OF POWERS
4	LEGISLATIVE DEPARTMENT
5	EXECUTIVE DEPARTMENT
6	JUDICIAL DEPARTMENT
6.1	COMMISSION ON JUDICIAL CONDUCT
7	SUFFRAGE AND ELECTIONS
8	REMOVAL FROM OFFICE
9	PUBLIC DEBT, REVENUE, AND TAXATION
10	STATE AND SCHOOL LANDS
11	EDUCATION
12	COUNTIES
13	MUNICIPAL CORPORATIONS
14	CORPORATIONS OTHER THAN MUNICIPAL
15	THE CORPORATION COMMISSION

## Article 4

Article	Heading
Part 1 - Section 1	Legislative authority; initiative and referendum
Part 1 - Section 2	Penalty for violation of initiative and referendum provisions
Part 2 - Section 1	Senate; house of representatives; members; special session upon petition of members; congressional and legislative boundaries; citizen commissions
Part 2 - Section 2	Qualifications of members of legislature
Part 2 - Section 3	Sessions of legislature; special sessions; limitation of subjects for consideration
Part 2 - Section 4	Disqualification for membership in Legislature
Part 2 - Section 5	Ineligibility of members of legislature to other public offices
Part 2 - Section 6	Privilege from arrest; civil process
Part 2 - Section 7	Freedom of debate
Part 2 - Section 8	Organization; officers; rules of procedure
Part 2 - Section 9	Quorum; compelling attendance; adjournment
Part 2 - Section 10	Journal of proceedings; roll call
Part 2 - Section 11	Disorderly behavior; expulsion of members
Part 2 - Section 12	Procedure on bills; approval or disapproval by governor
Part 2 - Section 13	Subject and title of bills

# Structure of Ariz. Const. art. 4, pt. 2, § 1

- 1) Senate and House composition
- 2) Senate and House authority to demand special session
- 3) **Establishment of IRC, composition of IRC, commissioner qualifications**
- 4) **Nomination authority by Commission on Appellate Court Appointments**
- 5) **Establishing pool of IRC commissioner candidates**
- 6) **Senate/House leadership appointments to IRC**
- 7) **Filling early IRC vacancy**
- 8) **Selection of IRC chairperson**
- 9) **Section of IRC vice-chairperson**
- 10) **Impeachment of IRC commissioner**
- 11) **Filling late IRC vacancy**

# Structure of Ariz. Const. art. 4, pt. 2, § 1

- 12) IRC quorum and voting; open meetings and notice
- 13) Commissioner ineligibility for public office or paid lobbyist
- 14) Process for drawing congressional and legislative maps
- 15) Exclusion of party registration and voting history; incumbent addresses
- 16) Advertising draft maps; public comment; legislature recommendations
- 17) Self-executing provisions; certification to Secretary of State
- 18) ADOA resources to IRC; appropriations
- 19) Procurement and contracting authority; staff and consultants
- 20) IRC standing in legal challenges
- 21) Commissioner reimbursement
- 22) ADOA non-interference with mapping decisions
- 23) Cessation of IRC duties

# Mapping Clauses

## 14) Process for drawing congressional and legislative maps

- The independent redistricting commission shall establish congressional and legislative districts.
- The commencement of the mapping process for both the congressional and legislative districts shall be the creation of districts of equal population in a grid-like pattern across the state.
- Adjustments to the grid shall then be made as necessary to accommodate the goals as set forth below:
  - A. Districts shall comply with the United States Constitution and the United States voting rights act;
  - B. Congressional districts shall have equal population to the extent practicable, and state legislative districts shall have equal population to the extent practicable;
  - C. Districts shall be geographically compact and contiguous to the extent practicable;
  - D. District boundaries shall respect communities of interest to the extent practicable;
  - E. To the extent practicable, district lines shall use visible geographic features, city, town and county boundaries, and undivided census tracts;
  - F. To the extent practicable, competitive districts should be favored where to do so would create no significant detriment to the other goals.

# Mapping Clauses

14) **Process for drawing congressional and legislative maps**

15) **Exclusion of party registration and voting history; incumbent addresses**

- Party registration and voting history data shall be excluded from the initial phase of the mapping process but may be used to test maps for compliance with the above goals.
- The places of residence of incumbents or candidates shall not be identified or considered.

16) **Advertising draft maps; public comment; legislature recommendations**

17) **Self-executing provisions; certification to Secretary of State**

# Mapping Clauses

14) *Process for drawing congressional and legislative maps*

15) *Exclusion of party registration and voting history; incumbent addresses*

16) *Advertising draft maps; public comment; legislature recommendations*

- The independent redistricting commission shall advertise a draft map of congressional districts and a draft map of legislative districts to the public for comment, which comment shall be taken for at least thirty days.
- Either or both bodies of the legislature may act within this period to make recommendations to the independent redistricting commission by memorial or by minority report, which recommendations shall be considered by the independent redistricting commission.
- The independent redistricting commission shall then establish final district boundaries.

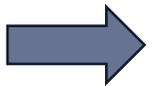
17) *Self-executing provisions; certification to Secretary of State*

# Mapping Clauses

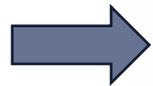
- 14) *Process for drawing congressional and legislative maps*
- 15) *Exclusion of party registration and voting history; incumbent addresses*
- 16) *Advertising draft maps; public comment; legislature recommendations*
- 17) *Self-executing provisions; certification to Secretary of State*
  - The provisions regarding this section are self-executing.
    - “‘Self-executing’ means that the legislature need not pass a statute enacting the redistricting plans.” *Ariz. Minority Coalition for Fair Redistricting v. AIRC*, 211 Ariz. 337, 351 (App. 2005) (“*Ariz. Minority Coalition I*”)
  - The independent redistricting commission shall certify to the secretary of state the establishment of congressional and legislative districts.

# Timeline/“Phases”

Legislature Recommendations



At Least  
30 Days

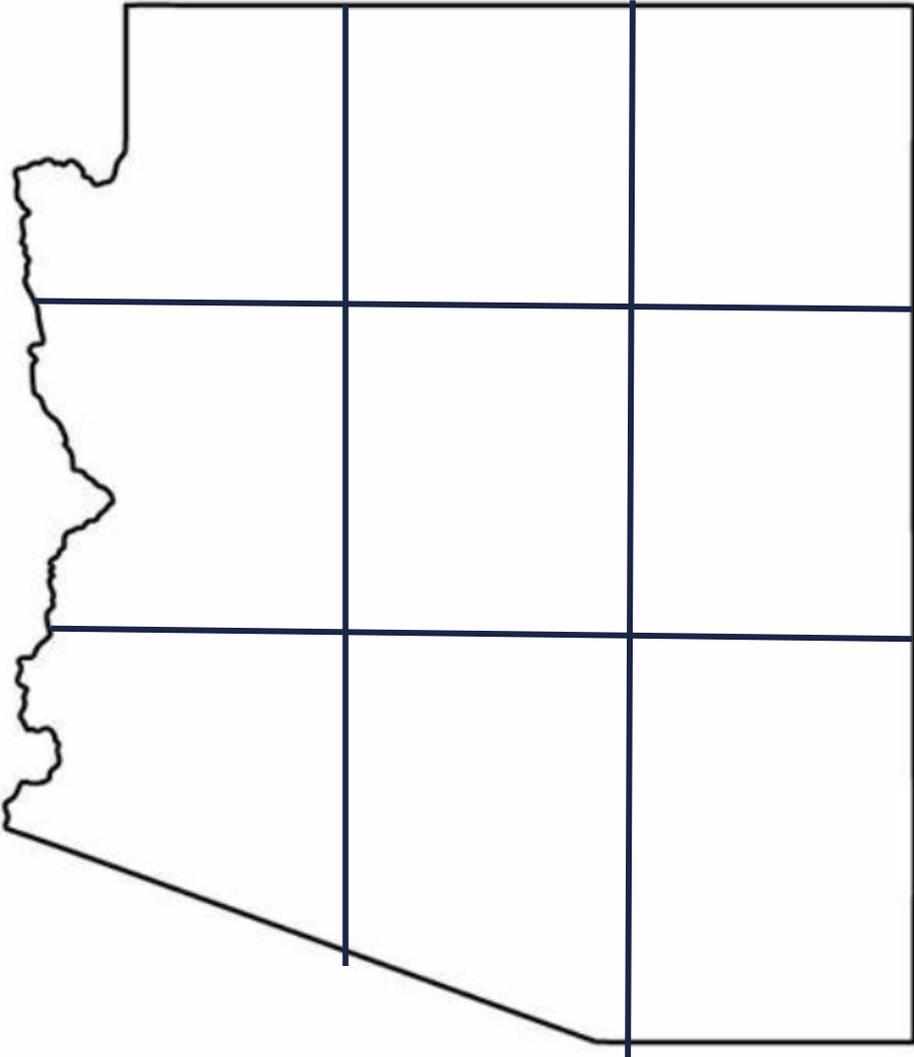


Public Comment

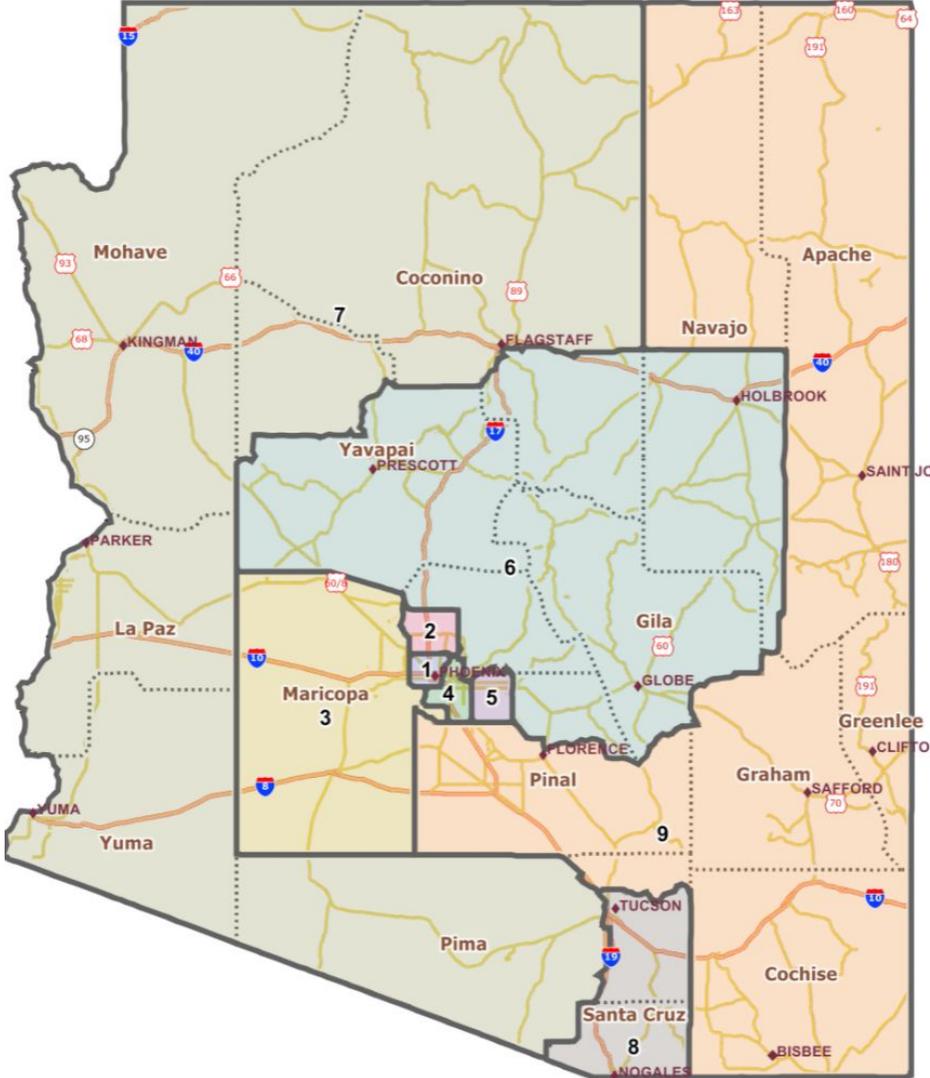
# Establishing the Grid Maps

## Overview

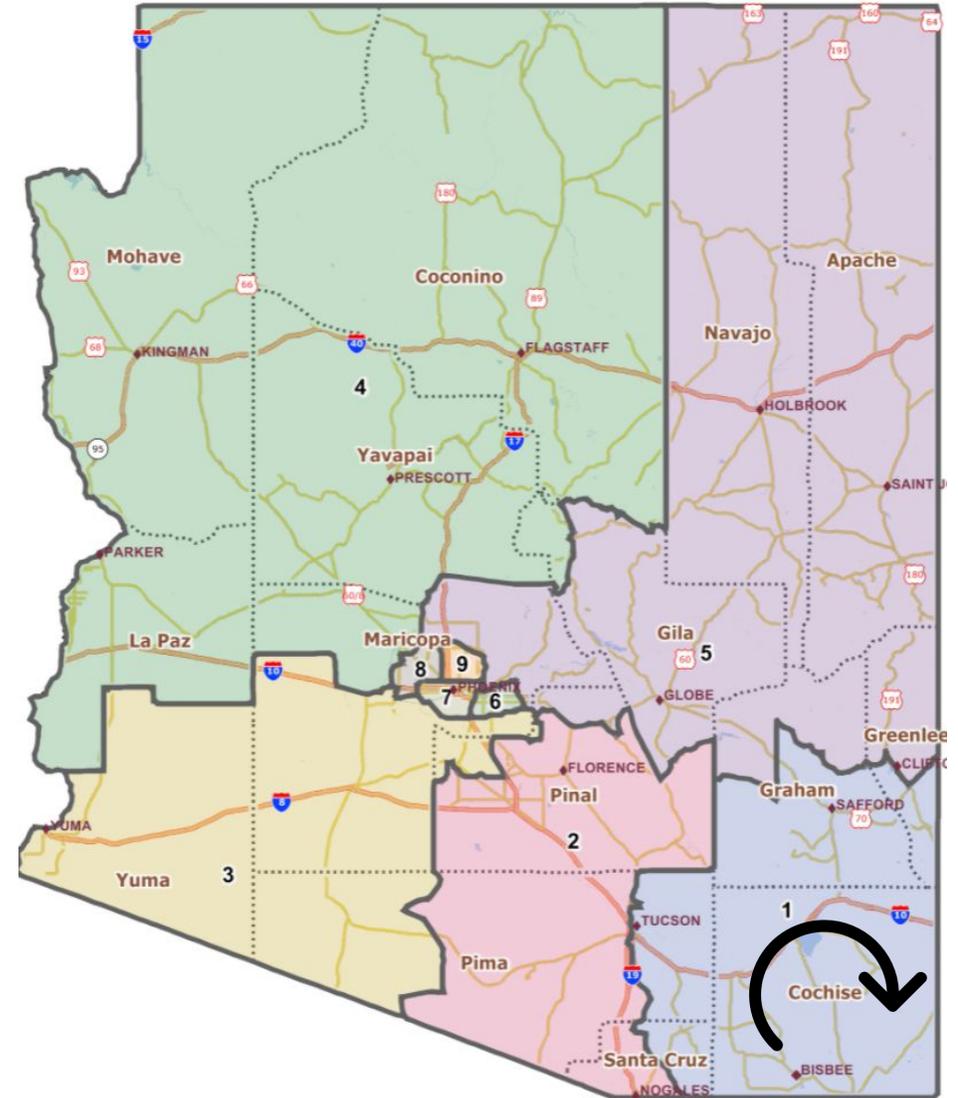
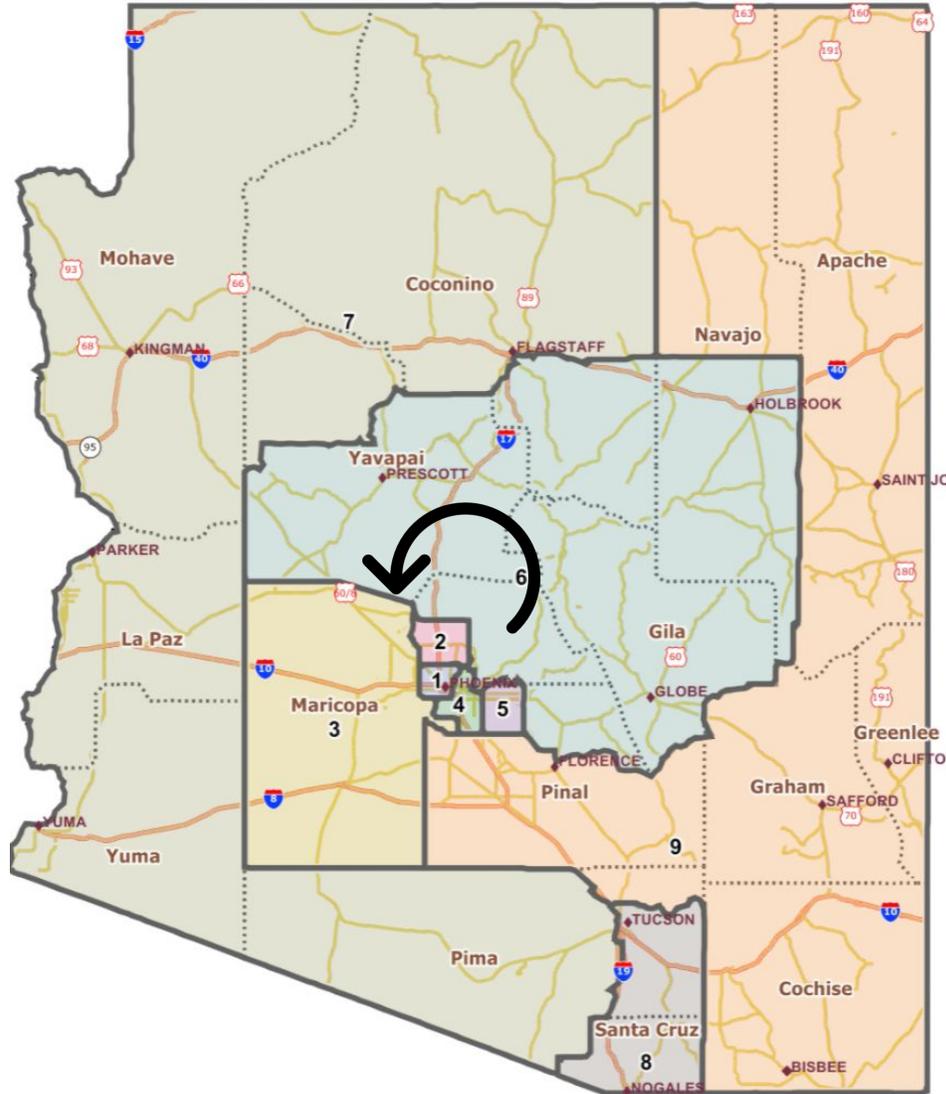
# Establishing the Grid Maps



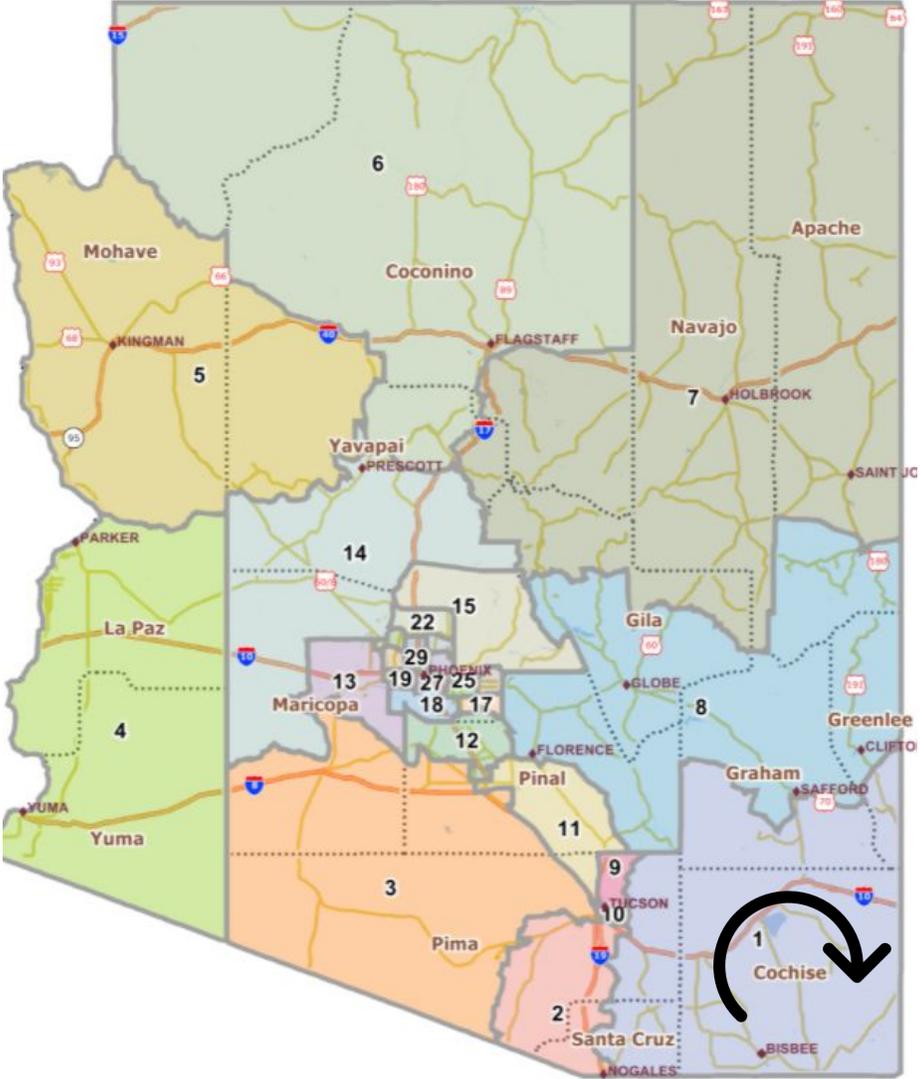
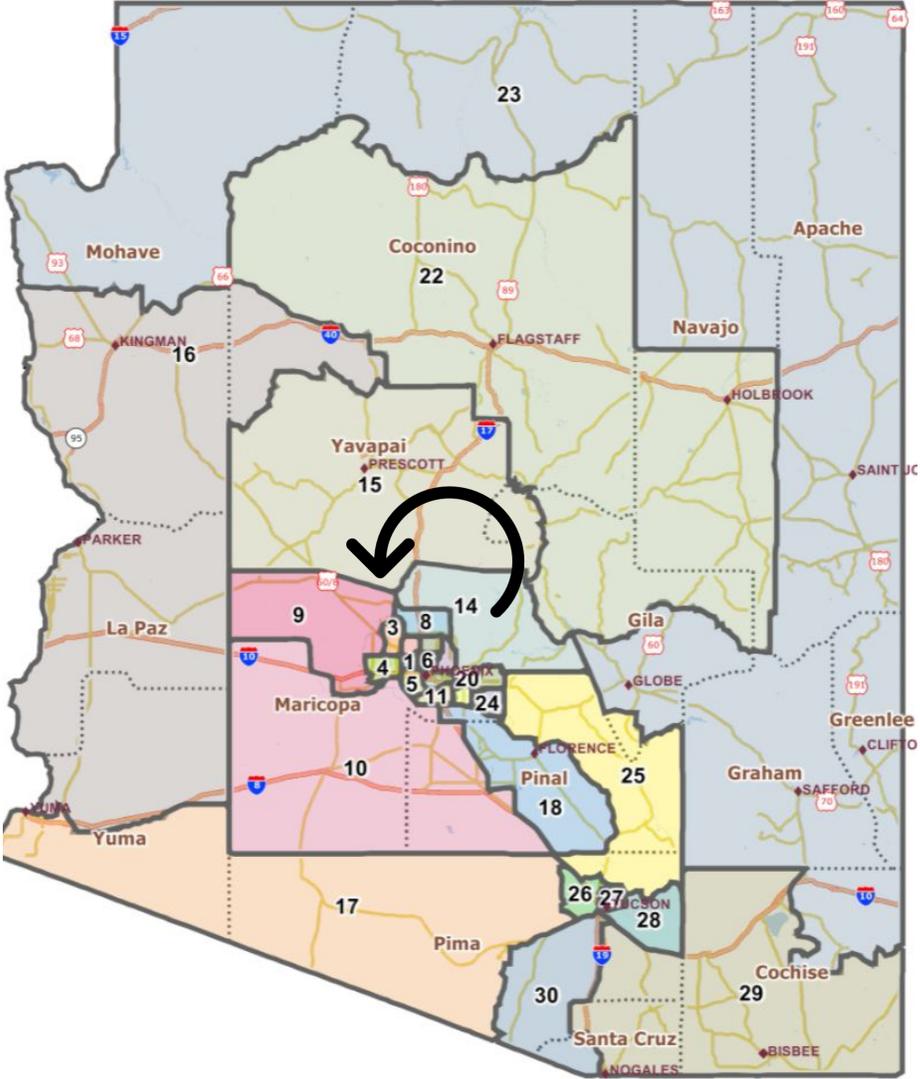
“The commencement of the mapping process for both the congressional and legislative districts shall be the creation of districts of equal population in a grid-like pattern across the state.” Ariz. Const. art. 4, pt. 2, § 1.



# 2011 Congressional Grid Maps



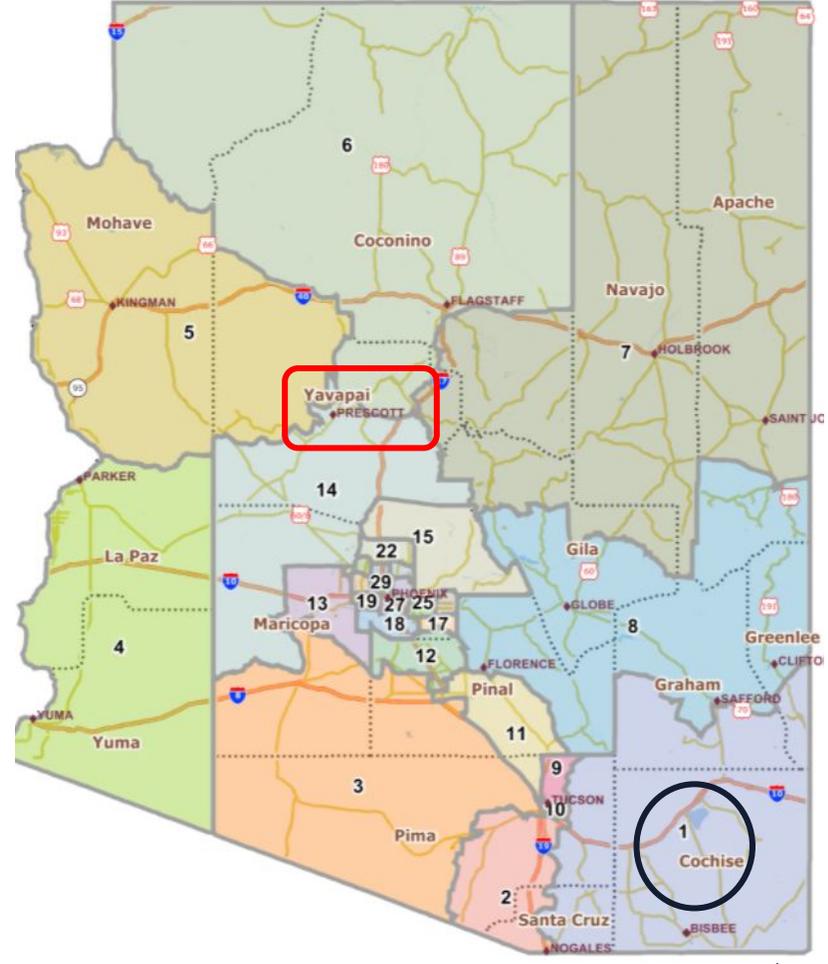
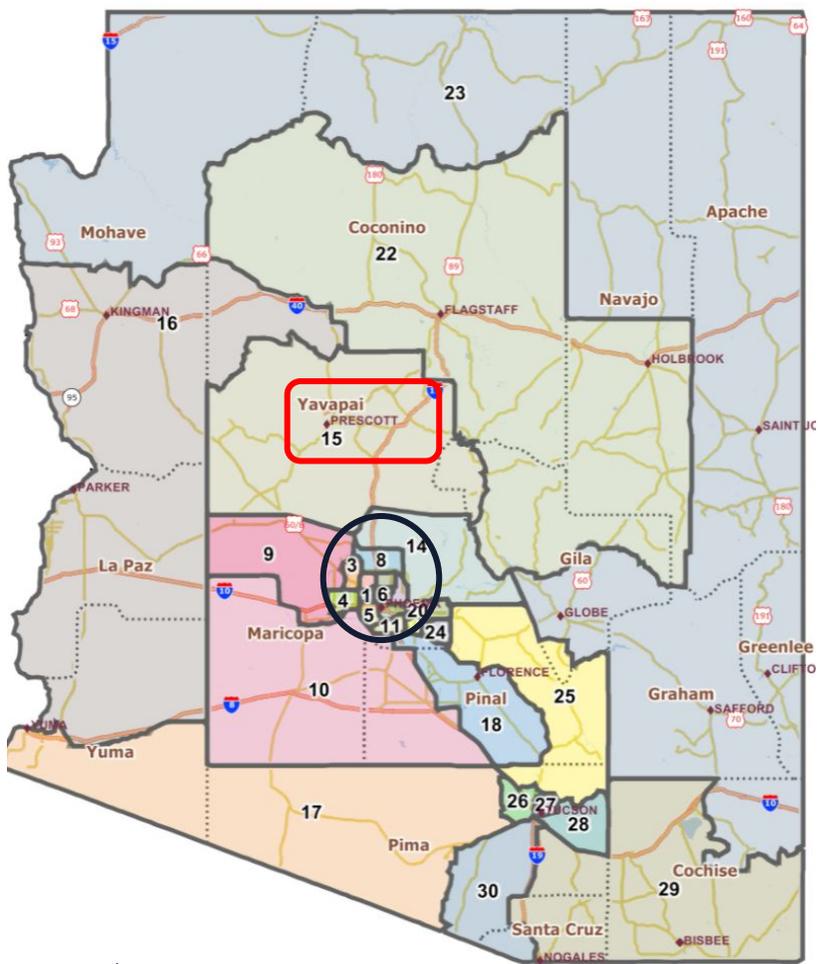
# 2011 Legislative Grid Maps



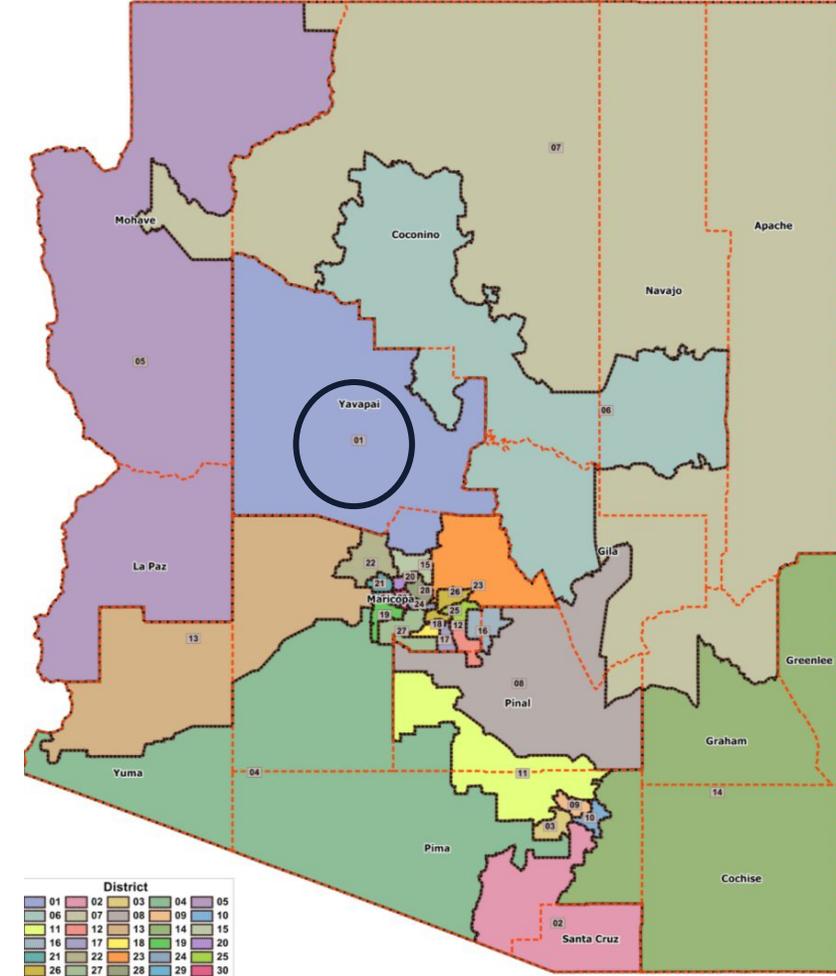
# District Numbering

- No requirement to sequentially number districts, although 2011 grid maps were
- Legal Considerations:
  - “Notwithstanding any other law, the legislative district that contains the city of Prescott, as the first territorial capital, is designated as legislative district one. If the city of Prescott is located in more than one legislative district, the legislative district that contains the largest percentage of the city's population is designated as district one.” A.R.S. § 16-1101.
  - “The independent redistricting commission shall establish congressional and legislative districts. The commencement of the mapping process for both the congressional and legislative districts shall be the creation of districts of equal population in a grid-like pattern across the state. Adjustments to the grid shall then be made as necessary to accommodate the goals as set forth below:” Ariz. Const. art. 4, pt. 2, § 1(14).
- Best practices:
  - Maintain numbering contiguity when moving from grid map, to draft map, to final map
  - Begin numbering Prescott area as LD1 starting with grid map

# 2011 Legislative Grid Maps vs. Final Map Adjustment



Grid Maps



Final Map

# Prohibited Considerations at Grid Map Stage: Registration

- “Party registration and voting history data shall be excluded from the initial phase of the mapping process but may be used to test maps for compliance with the above goals.” Ariz. Const. art. 4, pt. 2, § 1(15).
  - “Initial phase” implicitly means grid map phase.
- Definition of terms:
  - “Party registration” = no consideration of how many persons are registered Republicans vs. Democrats, etc., in each grid district.
  - “Voter history” = no consideration of whether persons in each grid district are registered to vote, how often they vote, or by what method they vote (early vs. in-person).
- IRC consultants will possess this information, but neither the Commissioners nor the consultants may use that information at the grid map stage.

# Prohibited Considerations: Incumbent Residence

- “The places of residence of incumbents or candidates shall not be **identified or considered.**” Ariz. Const. art. 4, pt. 2, § 1(15).
  - May not be used at *any* stage: grid map, draft map, *or* final map.
- May IRC consultants *acquire* incumbent/candidate address information? Probably.
  - “At trial, the [Plaintiff] offered some evidence that the Commission, through its counsel and/or consultants, possessed information that identified the proposed districts in which incumbents would be located. The Commission objected, noting that its consultant, Dr. Michael McDonald, needed this information to test the competitiveness of the proposed plan, and that the Commission, through its counsel, was required to obtain and convey such information to the DOJ as part of that agency’s review of the plans for compliance with the VRA. The trial court overruled the Commission’s objection.” *Ariz. Minority Coalition I* at 355.
  - “McDonald’s initial analysis of the 2000 elections used data on incumbents because he knew the districts in which incumbents lived, and again after the 2002 elections, he knew which districts had incumbents so he could “construct a measure of the vote in the district hypothetically [as] if no incumbent had run in the district.” *Id.* at 357, n.24.

# Prohibited Considerations: Incumbent Residence

- The practical realities were recognized in *Ariz. Minority Coalition I* at 356-57:
  - Media, political parties, organized interests will publish maps/stories with incumbency information.
  - Some lawmakers may appear at public hearings to comment, potentially completing a speaker slip with name and address. (IRC 1.0 staff redacted this information). Total ban on incumbent addresses would prohibit or inhibit lawmaker participation in public meetings.
  - Commissioners likely have personal knowledge of incumbent residences, at least the city/town of residence.
  - Commissioners or staff might inadvertently learn specific addresses of incumbents.

# Prohibited Considerations: Incumbent Residence

- Rule: Commissioners only prohibited from *using* incumbent/candidate addresses:
  - “Section 1(15) seeks not to erase all knowledge that there are incumbents located throughout the state who may or may not be “redistributed” by the new maps but rather is intended to prevent the Commission from attempting to either strengthen or weaken the incumbents’ political bases when deciding how to draw new district lines.”
  - “The purpose of Section 1(15) is not to require that ignorant and uninformed Commissioners and staff carry out the redistricting process. Rather it is to prevent the Commission from drawing new districts to either aid or hinder the interests of candidates or incumbent legislators in future elections. The key is the presence of knowledge combined with the use of that knowledge in drawing the new district lines. . . . Mere knowledge of even the specific residence of an incumbent, without the use of such knowledge to draw boundary lines, cannot render a plan unconstitutional.” *Ariz. Minority Coalition I* at 356-57.
- Conclusion for Commissioners:
  - Make no direction to use or incorporate
  - Make no mention at Commission meetings
  - Make no consideration

# Establishing the Draft Maps

## Overview

# Establishing the Draft Maps

Adjustments from the grid shall then be made as necessary to accommodate the goals as set forth below:

“The constitution does not dictate the mechanics of how the Commission is to adjust the Grid Map. The constitution does not prohibit the use of What-if Maps to explore multiple possible adjustments before committing to a particular change. The constitution does not mandate discrete, iterative steps. The Commission has considerable latitude in how it goes about adjusting the Grid Map to accommodate the goals.” *Leach v. AIRC*, CV2012-007344 at 6 (Maricopa Sup. Ct. 2017).

- A. Districts shall comply with the United States Constitution and the United States voting rights act;
- B. Congressional districts shall have equal population to the extent practicable, and state legislative districts shall have equal population to the extent practicable;
- C. Districts shall be geographically compact and contiguous to the extent practicable;
- D. District boundaries shall respect communities of interest to the extent practicable;
- E. To the extent practicable, district lines shall use visible geographic features, city, town and county boundaries, and undivided census tracts;
- F. To the extent practicable, competitive districts should be favored where to do so would create no significant detriment to the other goals.

# Establishing the Draft Maps

- Adjustments to the grid shall then be made as necessary to accommodate the goals as set forth below:
  - A. Districts shall comply with the United States Constitution and the United States voting rights act;**
    - U.S. Constitution:
      - Equal Protection Clause of the 14<sup>th</sup> Amendment
      - Apportionment Clause of Article I, § 2, cl. 3
  - B. Congressional districts shall have equal population to the extent practicable, and state legislative districts shall have equal population to the extent practicable;
  - C. Districts shall be geographically compact and contiguous to the extent practicable;
  - D. District boundaries shall respect communities of interest to the extent practicable;
  - E. To the extent practicable, district lines shall use visible geographic features, city, town and county boundaries, and undivided census tracts;
  - F. To the extent practicable, competitive districts should be favored where to do so would create no significant detriment to the other goals.

# Establishing the Draft Maps

Compliance with the U.S. Constitution:  
Equal Protection Clause of the 14<sup>th</sup> Amendment  
Apportionment Clause of Article I, § 2, cl. 3

# U.S. Constitution

- Equal Protection Clause of the 14<sup>th</sup> Amendment
  - Interpreted under the same standard as Arizona’s Equal Privileges & Immunities Clause, Ariz. Const. art. 2, § 13. *Ariz. Minority Coalition I* at n.10.
  - Types of potential Equal Protection violations:
    - Impairment of the right to vote on equal basis of others. *Id.* at 345-48.
      - Substantial or severe burden = strict scrutiny.
      - Right is also protected by 1<sup>st</sup> Amendment.
    - Decision based on race (or other suspect class). *Id.* at 348-49.
      - Race must be the predominant factor in drawing districts, unrelated to traditional redistricting principles.
        - Commonly known as “racial gerrymandering” (political gerrymandering is non-justiciable).
      - Substantially motivated by race = strict scrutiny.
    - Violation of “one person, one vote” for legislative districts. *Harris v. IRC*, 136 S.Ct. 1301 (2016).
    - Lack of uniform redistricting definitions does not constitute an equal protection violation. *Ariz. Minority Coalition I* at 348-52.
- Apportionment Clause of Article I, § 2, cl. 3
  - Congressional districts must have near perfect equality. *Wesberry v. Sanders*, 376 U.S. 1, 7-8 (1964); *Kirkpatrick v. Preisler*, 89 S.Ct. 1225, 1229 (1964); *Karcher v. Daggett*, 103 S.Ct. 2653, 2663-64 (1983).

# Establishing the Draft Maps

Compliance with § 2 of the Voting Rights Act  
(see companion presentation)

# Establishing the Draft Maps

Equal Population

# Equal Population

- Adjustments to the grid shall then be made as necessary to accommodate the goals as set forth below:
  - A. Districts shall comply with the United States Constitution and the United States voting rights act;
  - B. Congressional districts shall have equal population to the extent practicable, and state legislative districts shall have equal population to the extent practicable;**
  - C. Districts shall be geographically compact and contiguous to the extent practicable;
  - D. District boundaries shall respect communities of interest to the extent practicable;
  - E. To the extent practicable, district lines shall use visible geographic features, city, town and county boundaries, and undivided census tracts;
  - F. To the extent practicable, competitive districts should be favored where to do so would create no significant detriment to the other goals.

# Equal Population

- How close to “equal” must districts be?
  - Congressional districts must be as equal as possible under the “one person, one vote” principle in Art. 1, § 2. *Navajo Nation v. AIRC*, 230 F.Supp.2d 998, 1009 (D. Ariz. 2002).
    - “Art. 1, § 2 . . . means that as nearly as is practicable one man’s vote in a congressional election is to be worth as much as another’s.” *Wesberry v. Sanders*, 376 U.S. 1, 7-8 (1964).
    - “[T]he ‘as nearly as practicable’ standard requires that the State make a good faith effort to achieve precise mathematical equality. Unless population variances among congressional districts are shown to have resulted despite such effort, the State must justify each variance, no matter how small.” *Kirkpatrick v. Preisler*, 89 S.Ct. 1225, 1229 (1964).
    - “The State must . . . show with some specificity that a particular objective required the specific deviations in its plan, rather than simply relying on general assertions. The [required showing] is flexible, depending on the size of the deviations, the importance of the State’s interests, the consistency with which the plan as a whole reflects those interests, and the availability of alternatives that [further] those interests yet approximate population equality more closely.” *Karcher v. Daggett*, 103 S.Ct. 2653, 2663-64 (1983).
  - Requirement for equally populated legislative districts derives from the 14<sup>th</sup> Amendment, which allow for more flexibility in population deviations than congressional districts. *Navajo Nation* at 1009. Legislative districts may vary in population by up to 10% between the least populated and most populated districts. *Harris v. IRC*, 136 S.Ct. 1301 (2016).

# Establishing the Draft Maps

## Compactness and Contiguity

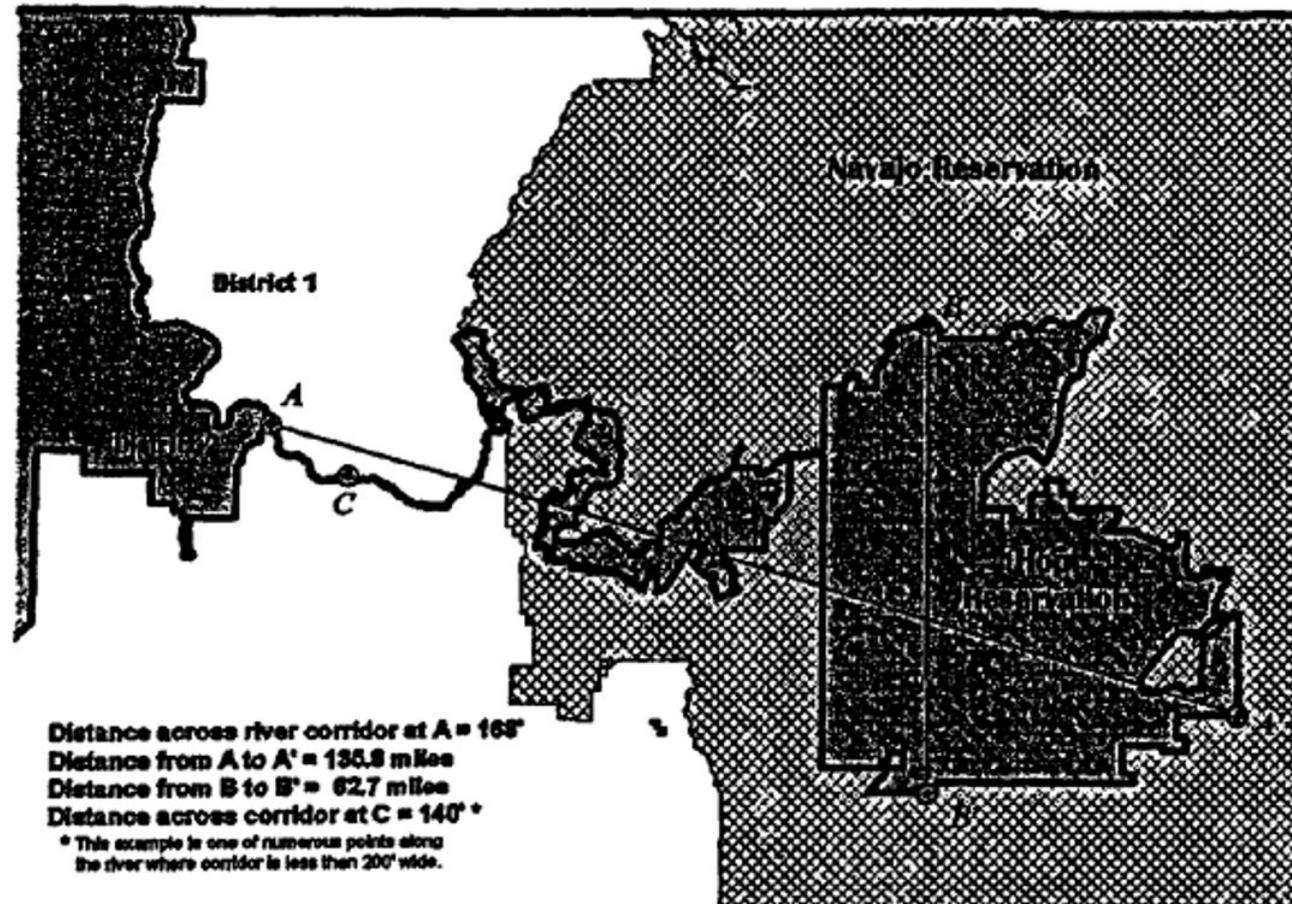
# Compactness and Contiguity

- Adjustments to the grid shall then be made as necessary to accommodate the goals as set forth below:
  - A. Districts shall comply with the United States Constitution and the United States voting rights act;
  - B. Congressional districts shall have equal population to the extent practicable, and state legislative districts shall have equal population to the extent practicable;
  - C. Districts shall be geographically compact and contiguous to the extent practicable;**
  - D. District boundaries shall respect communities of interest to the extent practicable;
  - E. To the extent practicable, district lines shall use visible geographic features, city, town and county boundaries, and undivided census tracts;
  - F. To the extent practicable, competitive districts should be favored where to do so would create no significant detriment to the other goals.

# Compactness and Contiguity

- District shape is significant.
  - Compactness and contiguity inhibit gerrymandering and help preserve communities of interest.
- Definitions:
  - “Compactness” refers to the length of the district’s borders. *Ariz. Minority Coalition I* at 363. The shorter the distance around the district, the more compact.
  - “Contiguity” means the geographic connection uniting the entirety of the district. *Id.* A geographically separated district is not contiguous.
- What is the minimal connection necessary for land to be considered “contiguous”?
  - Districts need only be “compact and contiguous to the extent practicable after striking a balance with the other goals set forth in Section 1(14).” *Id.* “We will not second-guess the balance struck as long as the Commission had a reasonable basis for its decision[.]” *Id.* at 364.

# Compactness and Contiguity



- “Contiguity” does not necessarily mean “accessibility.” Court allowed Hopi Tribe to be connected to CD2 (2001) west via the Colorado River through the Grand Canyon. *Ariz. Minority Coalition I* at 364.

# Establishing the Draft Maps

Communities of Interest

# Communities of Interest

- Adjustments to the grid shall then be made as necessary to accommodate the goals as set forth below:
  - A. Districts shall comply with the United States Constitution and the United States voting rights act;
  - B. Congressional districts shall have equal population to the extent practicable, and state legislative districts shall have equal population to the extent practicable;
  - C. Districts shall be geographically compact and contiguous to the extent practicable;
  - D. District boundaries shall respect communities of interest to the extent practicable;**
  - E. To the extent practicable, district lines shall use visible geographic features, city, town and county boundaries, and undivided census tracts;
  - F. To the extent practicable, competitive districts should be favored where to do so would create no significant detriment to the other goals.

# Communities of Interest

- Definition: a contiguous, geographically cohesive population with a common set of concerns or interests who would benefit from being united in a single district. Connected by common ethnic, racial, religious, lifestyle, or economic interests.
- IRC must avoid violating or interfering with communities of interest to the extent practicable. *Ariz. Minority Coalition I* at 361.
- To what extent may a community of interest be split?
  - Placing an entire community of interest in one district is one way to respect it - but not the only way. *Ariz. Minority Coalition I* at 362.
  - IRC may respect a community of interest by placing it into a district separate from a dominant community of interest with competing political interests. *Id.*
  - Example: even though 42 Navajo members were split into CD2 (2001) with the Hopi Tribe, IRC 1.0 appropriately refrained from interfering with the Hopi Tribe's community of interest by separating it from the Navajo Nation. *Id.*; *Arizonans for Fair Representation v. Symington*, 828 F.Supp. 684, 690 (D. Ariz. 1992) (placing Navajo Nation and Hopi Tribe into separate districts in court-ordered plan “[o]ut of respect” for historical tension and present competition between communities).

# Establishing the Draft Maps

Visible geographic features, city, town and county boundaries, and undivided census tracts

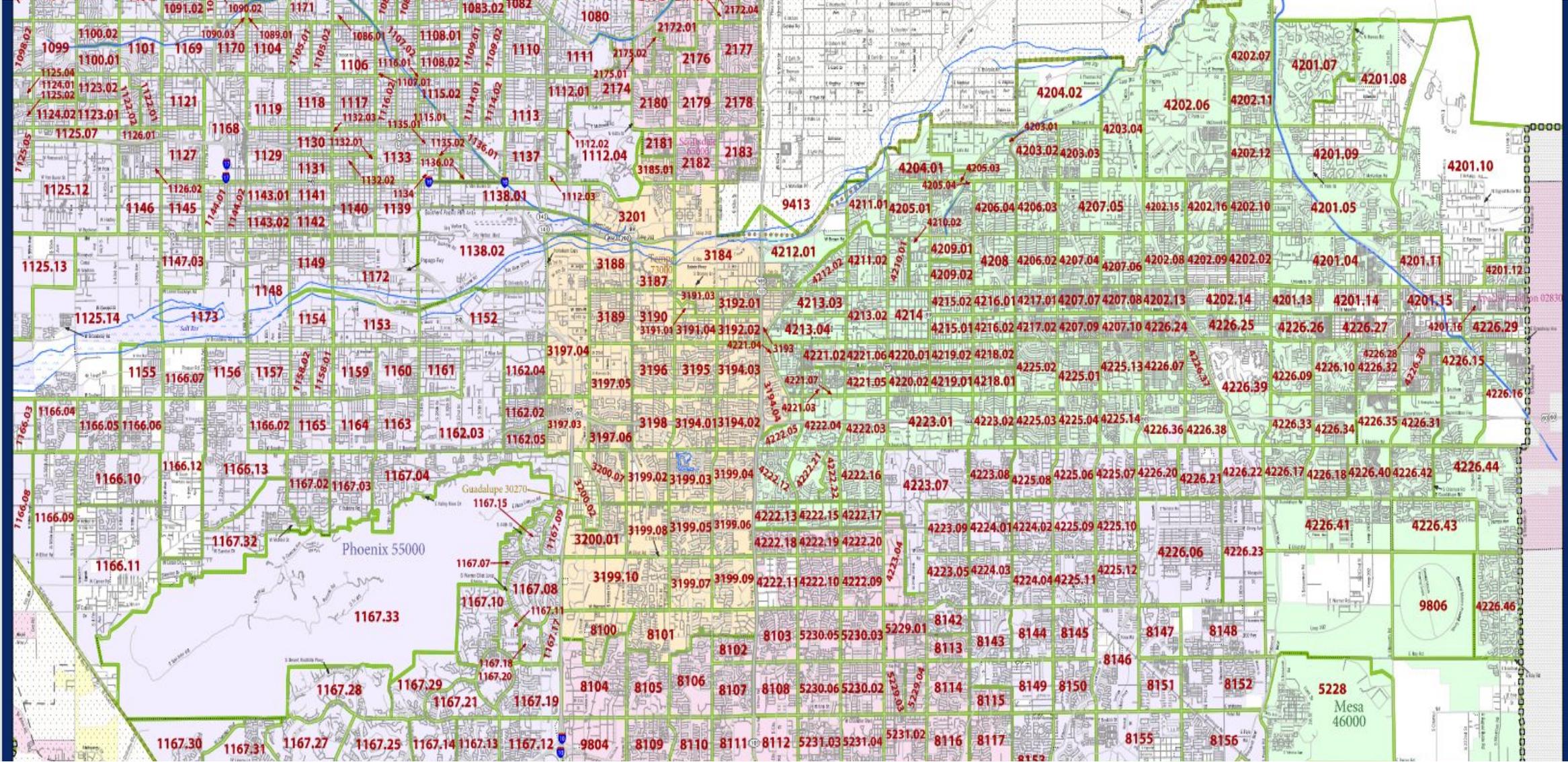
# Visible geographic features, city, town and county boundaries, and undivided census tracts

- Adjustments to the grid shall then be made as necessary to accommodate the goals as set forth below:
  - A. Districts shall comply with the United States Constitution and the United States voting rights act;
  - B. Congressional districts shall have equal population to the extent practicable, and state legislative districts shall have equal population to the extent practicable;
  - C. Districts shall be geographically compact and contiguous to the extent practicable;
  - D. District boundaries shall respect communities of interest to the extent practicable;
  - E. To the extent practicable, district lines shall use visible geographic features, city, town and county boundaries, and undivided census tracts;**
  - F. To the extent practicable, competitive districts should be favored where to do so would create no significant detriment to the other goals.

# Visible geographic features, city, town and county boundaries, and undivided census tracts

- Examples of visible geographic features:
  - Mountains, streets, roads, streams, railroad tracks, etc.
- Definition of a census tract: small, relatively permanent statistical subdivision of a county, uniquely numbered in each county with a numeric code. Average 4,000 residents and 1,600 housing units.
- To what extent may a census tract be divided?
  - The IRC may divide a census tract to accommodate another constitutional goal, such as respecting a community of interest. *Ariz. Minority Coalition I* at 364.
  - Example: IRC 1.0 divided a census tract in order to ensure the Hopi Tribe's community of interest was respected and not subsumed within the same district as the Navajo Nation. *Id.*

# Example of Maricopa County Census Tracts



# Establishing the Draft Maps

Competitiveness

# Competitiveness

- Adjustments to the grid shall then be made as necessary to accommodate the goals as set forth below:
  - A. Districts shall comply with the United States Constitution and the United States voting rights act;
  - B. Congressional districts shall have equal population to the extent practicable, and state legislative districts shall have equal population to the extent practicable;
  - C. Districts shall be geographically compact and contiguous to the extent practicable;
  - D. District boundaries shall respect communities of interest to the extent practicable;
  - E. To the extent practicable, district lines shall use visible geographic features, city, town and county boundaries, and undivided census tracts;
  - F. **To the extent practicable, competitive districts should be favored where to do so would create no significant detriment to the other goals.**

# Competitiveness

- Definition: districts having relatively even partisan balance, making competition between the two major parties more intense. Avoiding the creation of “safe” districts for a particular political party.
- How is competitiveness measured? Potential examples to be presented:
  - Mean-Median difference
  - Lopsided margins
  - Mann-Whitney test
  - Efficiency gap
  - Markov Chain software
  - Merge-Split algorithm
- IRC may utilize as many competitiveness measures as desired. *Ariz. Minority Coalition for Fair Redistricting v. AIRC*, 220 Ariz. 587, 599, n. 14 (“*Ariz. Minority Coalition II*”) (“Inquiries into the Commission’s chosen method for measuring competitiveness . . . fall outside the scope of judicial review”).
  - IRC may also use averages of the various measures.

# Competitiveness

- What is the role of competitiveness vs. other five goals?
  - Competitiveness cannot be completely ignored. *Ariz. Minority Coalition I* at 353. Best practice: include competitiveness discussion during draft map creation.
  - Achieving competitiveness is mandatory but conditional:
    - The Commission must make competitive districts when doing so will not cause any significant detriment to the other five goals. *Id.* at 354; *Ariz. Minority Coalition v. AIRC*, F.Supp.2d 1240, 1244 (D. Ariz. 2003).
    - “[I]f drawing competitive or more competitive districts **would not be practicable or would cause significant detriment to the goals** listed in subsections (B)—(E), the Commission **must refrain from establishing such districts**. Conversely, **if it would be practicable to draw competitive or more competitive districts and to do so would not cause significant detriment** to the goals listed in subsections (B)—(E), the Commission **must establish such districts**.” *Ariz. Minority Coalition II* at 598; *Ariz. Minority Coalition I* at 354.
  - Con’t...

# Competitiveness

- Although “competitiveness” must be considered as one of the constitutional goals, it is the only “conditional” goal which cannot be employed if it causes “significant detriment” to any of the other goals. *Ariz. Minority Coalition II* at 598.
- It was within the IRC’s discretion to determine if drawing a competitive district caused “significant detriment” to any of the other criteria. *Id.*
  - “If the record demonstrates that the Commission took this goal into account during its deliberative process, our procedural inquiry ends.” *Id.*
  - The [plaintiff] argues that the Commission failed to make objective findings of significant detriment to the other goals. The constitution, however, does not impose such an obligation. In fact, the constitution does not require the Commission to record any specific information as evidence of its deliberation.” *Id.*
- New Arizona Supreme Court likely leans more toward a plain reading of laws.

# Establishing the Draft Maps

Miscellaneous considerations

# Miscellaneous Considerations at Draft Map Phase

- Commission may consider party registration and voting history. *Ariz. Minority Coalition I* at 353.
- How do Commissioners balance the six constitutional goals?
  - Policy decisions are given “substantial deference.” *Ariz. Minority Coalition II* at 595.
  - “[D]istricting decisions require judgment, particularly because the Commission is charged with considering a number of variables that may often conflict with each other.”
  - “[T]he people of Arizona have entrusted a politically balanced group of five individuals with discretion to reach reasonable conclusions on how to draw district lines. Even if the Commission adopts a definition of ‘competitive’ or ‘compact’ so that proposed districts may be measured against an agreed-upon yardstick, the Commission still must have flexibility to give more emphasis to one goal over another when, for example, to respect a community of interest, a district must be less compact and contiguous.”
  - “This is not to say that the Commission can ignore any of the constitutional criteria, can favor one criterion without considering the others, or can apply or interpret them in a way that no rational Commission would.” *Ariz. Minority Coalition I* at 351-52.

# Miscellaneous Considerations at Draft Map Phase

- What is the role of Commissioners' personal knowledge?
  - “[W]e . . . assume that candidates for a position on the Commission bring their personal knowledge and experience to the task. We know of no constitutional principle that requires Commissioners to ignore that knowledge or experience although . . . their discretion is not unfettered. Simple reliance on personal knowledge and experience cannot substitute for careful and honest consideration and application of the criteria in Section 1(14).” *Ariz. Minority Coalition I* at 360.
- What is the role of the courts in evaluating the maps?
  - “[I]t is not the function of the trial or appellate court to direct how the Commission should change or improve plans, or to determine which of a number of proposed plans is superior. Such discretion is given solely to the Commission. Instead, judicial review is necessarily confined to constitutional challenges to the selected plans.” *Ariz. Minority Coalition I* at 344.
  - However, unlike traditional legislative acts, the court will also review “the process” upon which the IRC proceeded. *Ariz. Minority Coalition II* at 596.

# Miscellaneous Considerations

- What standard will the courts employ to judge the maps?
  - Courts must uphold a redistricting plan if it has “**a reasonable, even though debatable, basis** for adoption” unless the plan clearly violates the constitution. *Ariz. Minority Coalition I* at 360. The court is “required to presume the constitutionality of the plan[.]” *Id.*
- What if a plaintiff can create a “better” map?
  - Court will not second-guess the IRC if its decision is reasonable and not clearly unconstitutional. *Id.* at 363.
  - Example: IRC 1.0 was not required to accept Navajo Nation’s proposed alternatives that would have kept its 42 members in CD1 (2001) by using highways or other routes as connectors. *Id.* at 362-63.
- In what order will the Commission create draft maps?
  - Create congressional map before legislative map, or vice versa?

# Advertising the Draft Maps

Public comments

# Public Comments on the Draft Maps

- Will the draft congressional and legislative maps be sequentially or simultaneously advertised for public comment?
- How will the IRC receive public comment?
  - Website and email comments
  - Townhalls and in-person hearings?
- How will the IRC review and ingest all those public comments?

# Advertising the Draft Maps

Legislature recommendations

# Legislature Recommendations on Draft Maps

- IRC must “consider” the legislative leadership’s comments / proposed maps.
- What does “consideration” look like?
  - Disagreement with how the IRC uses the legislature’s recommendations, or what proper weight is attached, is not sufficient. *Ariz. Minority Coalition II* at 599, n. 14.
    - “This Court believes that assessing the sufficiency or ‘completeness’ of the individual commissioner’s consideration of the legislature’s reports involves interpretation of a commissioner’s decision-making and is therefore precisely the type of judicial activism that *Minority Coalition II* prohibits. Discretionary judgment calls -- such as the weight to be given to the views of the state’s politicians -- are what the ‘voters assigned to the Commission, not to the courts. . . .
    - The record clearly demonstrates that **the legislature submitted reports, expressed concerns and offered encouragement** to the Commission. The reports were submitted to the individual commissioners. Topics set forth in **the reports were subsequently discussed by the Commission**. The Court finds as a matter of undisputed fact that the Commission did engage in the required deliberative process in receiving and considering the legislature’s recommendations. Whether the Commission considered the legislative reports to plaintiffs’ satisfaction is not for the courts to decide.” *Leach v. AIRC*, CV2012-007344 at 12 (Maricopa Sup. Ct. 2017).

# Establishing the Final Maps

## Overview

# Establishing the Final Maps

- The IRC must incorporate the public comments / legislative recommendations, as necessary, and approve the final maps.

# Certification to the Secretary of State

## Overview

# Certification to the Secretary of State

- Upon certification, the Secretary of State must use the maps in the next election. *Ariz. Minority Coalition I* at 351.
- IRC staff has begun coordination with Secretary of State's office.
- IRC should make best efforts to finalize by January 2, 2022 preferred deadline.

# Thank you Questions?

© 2021 Snell & Wilmer L.L.P. All rights reserved. The purpose of this presentation is to provide information on current topics of general interest and nothing herein shall be construed to create, offer, or memorialize the existence of an attorney-client relationship. The content should not be considered legal advice or opinion, because it may not apply to the specific facts of a particular matter. As guidance in areas is constantly changing and evolving, you should consider checking for updated guidance, or consult with legal counsel, before making any decisions. The material in this presentation may not be reproduced, distributed, transmitted, cached or otherwise used, except with the express written consent of Snell & Wilmer.