

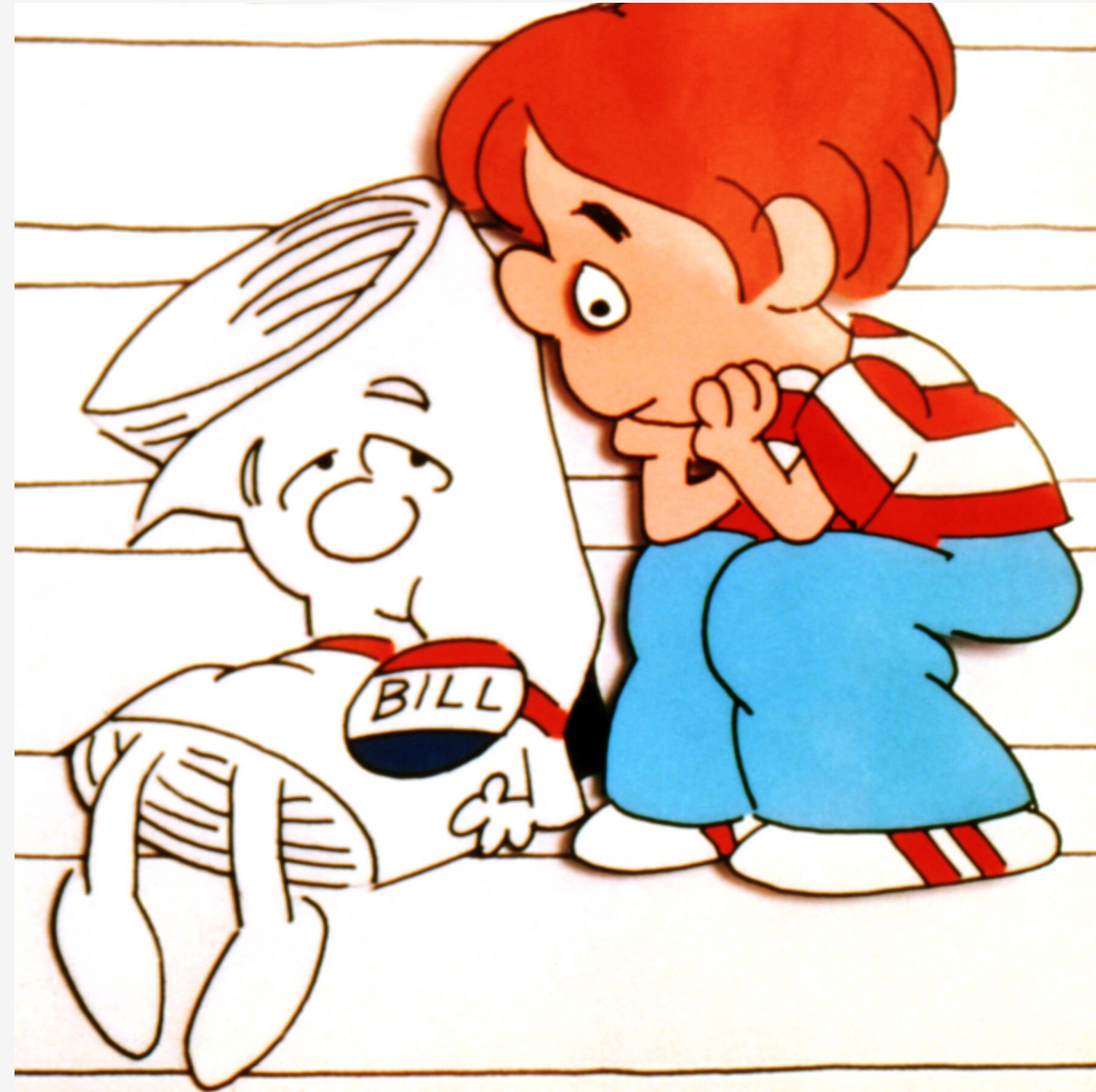
Voting Rights

Two topics

Drawing electoral districts

Regulating elections

What is the right to vote?



Federal Constitution

“The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.” 15th Amend. U.S. Const.

“The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.” 19th Amend. U.S. Const.

“The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.” 24th Amend. U.S. Const.

“The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.” 26th Amend. U.S. Const.

Right to Vote in State Constitutions?

What is gerrymandering?

Federal Backdrop

Under Article I, Section 4 of the U.S. Constitution, the “Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof.”

Under Supreme Court interpretation of the one-person-one-vote requirements of the Fourteenth Amendment, states must redraw state and federal district lines after each census. *Baker v. Carr*, 369 U.S. 186 (1962); *Reynolds v. Sims*, 377 U.S. 533 (1964).

Political gerrymandering can be a cognizable constitutional claim. *Davis v. Bandemer*, 478 U.S. 109 (1986).

Actually, no it can't: non-justiciable. *Rucho v. Common Cause*, 588 U.S. 684 (2019).

State constitutions' explicit gerrymandering provisions

“No general assembly district plan shall be drawn primarily to favor or disfavor a political party.” Ohio Const. Art. XI § 6(A)

“No apportionment plan or individual district shall be drawn with the intent to favor or disfavor a political party or an incumbent.” Fla. Const. Art. III § 20(a)

“Districts shall not be drawn for the purpose of favoring or discriminating against an incumbent, political candidate, or political party.” Cal. Const. Art. XXI §2(e)

Wait... let's talk about California

League of Women Voters of Pennsylvania v. Commonwealth of Pennsylvania

178 A.3d 737 (Pa. 2018)

“Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.” Article I, Section 5 Penn. Const.

Similar constitutional provisions related to state legislative elections:

(1) the population of such districts must be equal, to the extent possible; (2) the district that is created must be comprised of compact and contiguous geographical territory; and (3) the district respects the boundaries of existing political subdivisions contained therein, such that the district divides as few of those subdivisions as possible.

Harper v. Hall

886 S.E.2d 393 (N.C. 2023)

Prior cases:

Harper I

Harper II

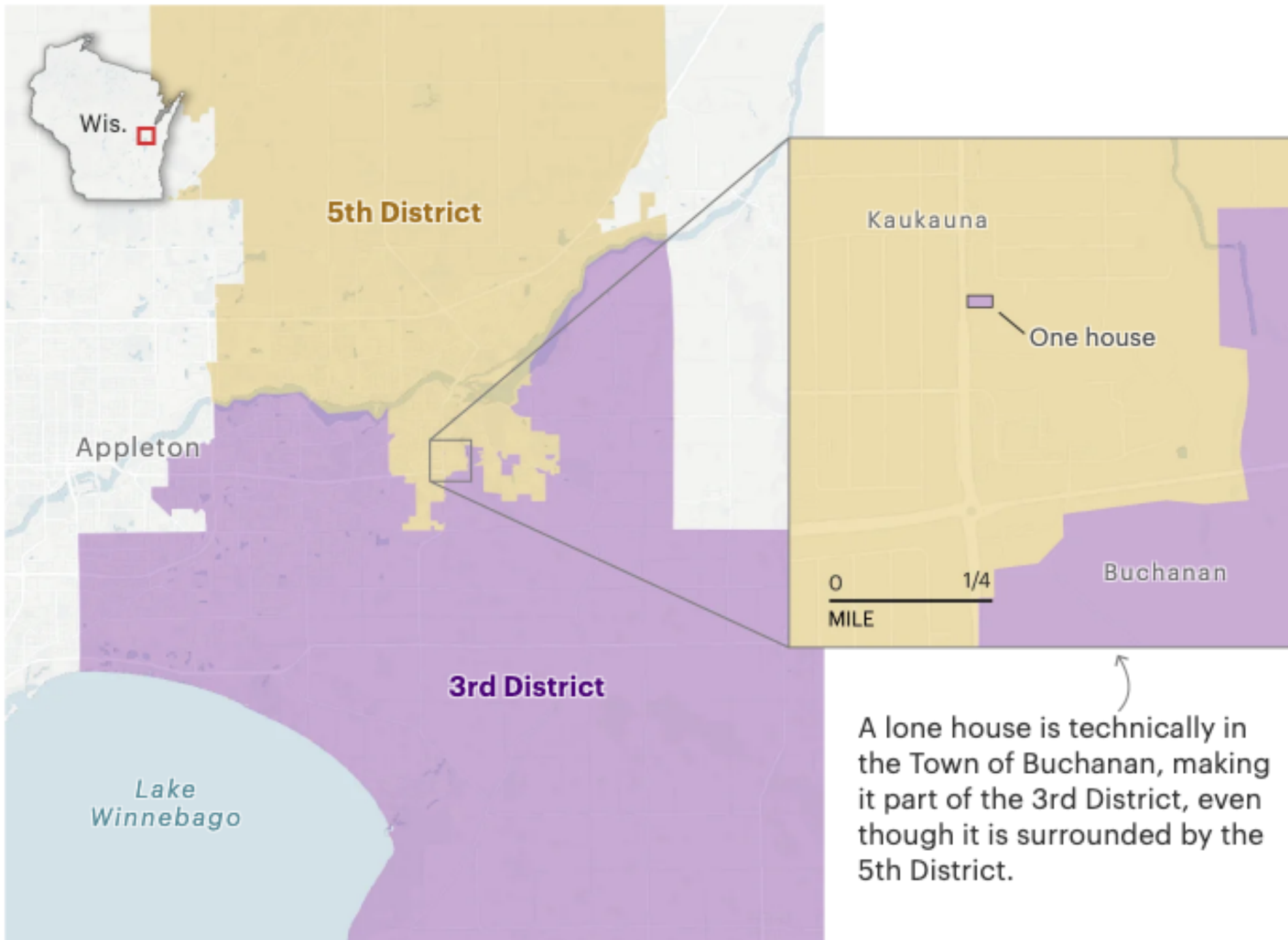
How to interpret?

Under Article I, Section 4 of the U.S. Constitution, the “Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof.”

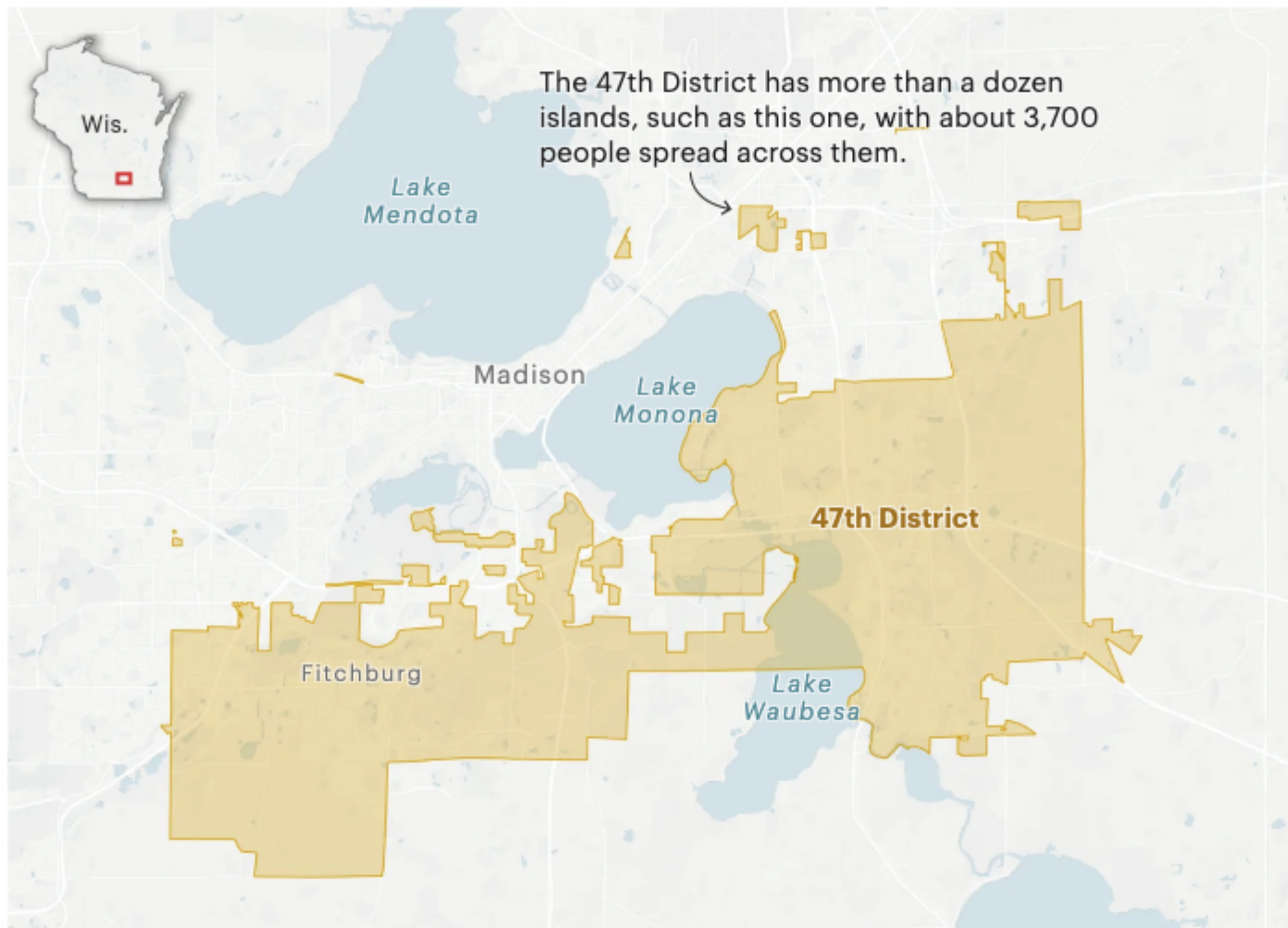
Clarke v. Wisconsin Elections Commission

998 N.W.2d 370 (Wis. 2023)

“The members of the assembly shall be chosen biennially, by single districts, on the Tuesday succeeding the first Monday of November in even-numbered years, by the qualified electors of the several districts, such districts to be bounded by county, precinct, town or ward lines, to consist of contiguous territory and be in as compact form as practicable.” Wis. Const. art. IV, § 4.



A lone house is technically in the Town of Buchanan, making it part of the 3rd District, even though it is surrounded by the 5th District.



Population estimate based on analysis of census data by [Marquette University Law School](#) redistricting researcher John Johnson.

Harkenrider v. Hochul

197 N.E.3d 437 (N.Y. 2022)

Grisham v. Van Soelen

539 P.3d 272 (N.M. 2023)

“No person shall be deprived of life, liberty or property without due process of law; nor shall any person be denied equal protection of the laws.” N.M. Const. art. II, § 18.

Test from Kagan's *Rucho* Dissent

(1) intent; (2) effects; and (3) causation

Compare

New Mexico Test:

(1) intent; (2) effects; and (3) causation

Pennsylvania Test:

(1) the population of such districts must be equal, to the extent possible;
(2) the district that is created must be comprised of compact and contiguous geographical territory; and (3) the district respects the boundaries of existing political subdivisions contained therein, such that the district divides as few of those subdivisions as possible.

Nature of the alleged constitutional violation

League of Women Voters of Pennsylvania v. Commonwealth of Pennsylvania
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Voter ID Laws

Federal Backdrop

Indiana law requiring photo identification to vote is not so burdensome to be a constitutional violation.

Crawford v. Marion County Election Board, 553 U.S. 181 (2008)

League of Women Voters of Wisconsin Education Network v. Walker

851 N.W.2d 302 (Wis. 2014)

Electors qualification

Electors. Section 1. Every United States citizen age 18 or older who is a resident of an election district in this state is a qualified elector of that district.

Implementation. Section 2. Laws may be enacted:

- (1) Defining residency.
- (2) Providing for registration of electors.
- (3) Providing for absentee voting.

Milwaukee Branch of the NAACP v. Walker

851 N.W.2d 262 (Wis. 2014)

Martin v. Kohls

444 S.W.2d 844 (Ark. 2014)

Section 1 of article 3 of the Arkansas Constitution provides as follows:

Except as otherwise provided by this Constitution, any person may vote in an election in this state who is:

- (1) A citizen of the United States;
- (2) A resident of the State of Arkansas;
- (3) At least eighteen (18) years of age; and
- (4) Lawfully registered to vote in the election.