

Local Redistricting in California in 2021: The Same... But Different

A Presentation for  ROSE INSTITUTE
OF STATE AND LOCAL GOVERNMENT
CLAREMONT MCKENNA COLLEGE



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Redistricting in 2021 Under New California Rules and Federal Case Law

Redistricting will be different this time around.

This Webinar presents an outline of what to expect.

Looking for More Information?

- **Join us at the Rose Institute Local Redistricting Conference on April 2, 2020, at Bauer Center on the campus of Claremont McKenna College for a day of discussion of the law, policy, and practical considerations applicable to local redistricting in 2021, including in-depth panels on the major issues and best practices.**

Federal Law Considerations

- Population Equality
- Voting Rights Act
- Equal Protection/Restrictions on Racial Gerrymandering

Drawing the Lines—Legal Considerations: Population Equality

- Overriding criterion is total population equality, *see Reynolds v. Sims*, 377 U.S. 533 (1964).
- Unlike congressional districts, local electoral districts do not require perfect equality—some deviation acceptable to serve valid governmental interests.
- Total deviation less than 10% presumptively constitutional. (Caution: the presumption *can* be overcome!)

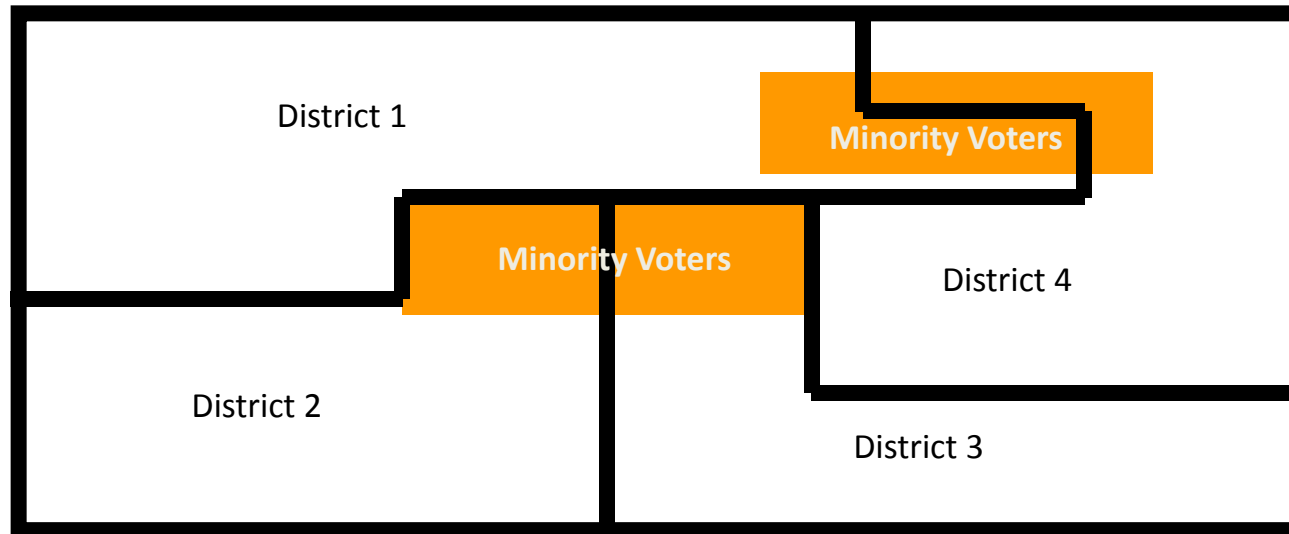
Population Equality: What's Changed?

- As a matter of federal law, some clarification on population base, but questions remain.
 - *Evenwel v. Abbott*, 136 S. Ct. 1120 (2016)
 - *Burns v. Richardson*, 384 U.S. 73 (1966)
- As a matter of state law, total population is mandatory, except that incarcerated persons only count in specified circumstances. See Elec. Code §§ 21500(a), 21601(a) & 21621(a)

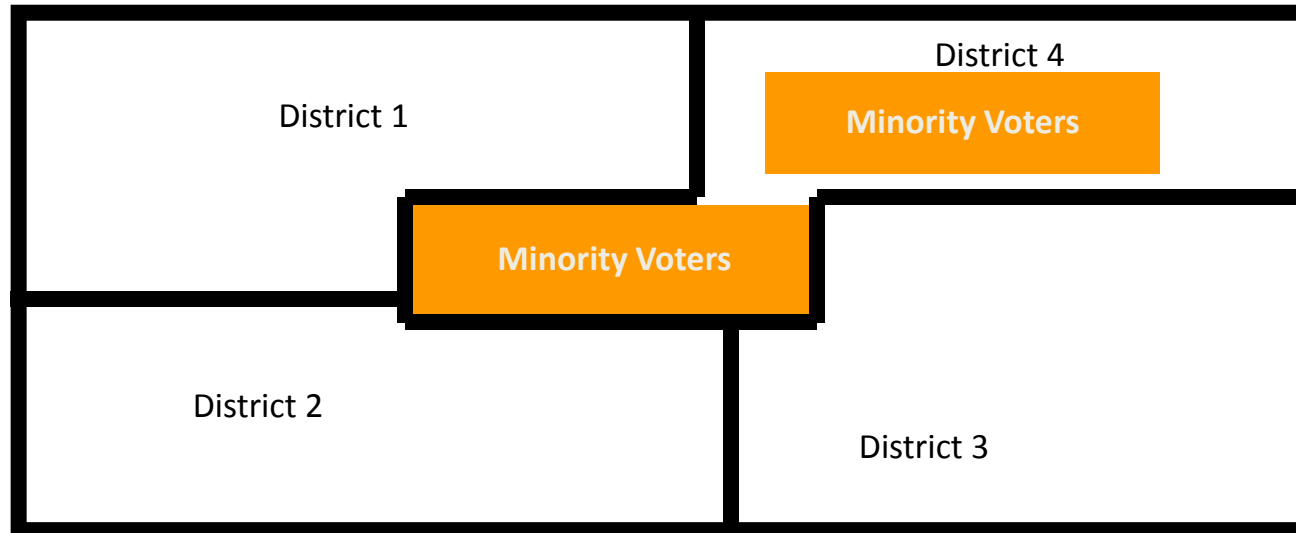
Drawing the Lines—Legal Considerations: Federal VRA

- Section 2 of the federal Voting Rights Act prohibits electoral systems (including district plans), which dilute racial and language minority voting rights by denying them an equal opportunity to nominate and elect candidates of their choice.
- “Language minorities” are specifically defined in federal law: to mean persons of American Indian, Asian American, Alaskan Natives or Spanish heritage. CVRA expressly adopts the definition of “language minority.”
- Creation of minority districts required only if the minority group can form the majority in a single member district that otherwise complies with the law. *Bartlett v. Strickland*, 556 U.S. 1 (2009).

Voting Rights Act: Cracking



Voting Rights Act: Packing



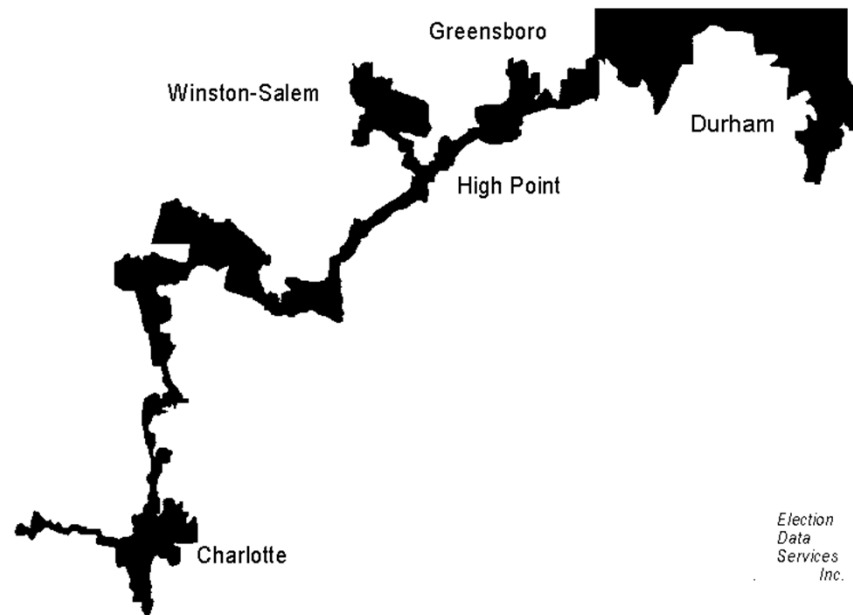
Voting Rights Act: What's Changed?

- Section 5 invalidated.
 - *Shelby County v. Holder*, 570 U.S. 529 (2013).
- Move to reduce minority-majority percentages—
increased focus on “packing” claims.
 - Relates to racial gerrymandering developments

Drawing the Lines—Legal Considerations: No Gerrymandering

- The Fourteenth Amendment restricts the use of race as the “predominant” criterion in drawing districts and the subordination of other considerations. *Shaw v. Reno*, 509 U.S. 630 (1993); *Miller v. Johnson*, 515 U.S. 900 (1995).
 - Such predominant use must be justified as narrowly tailored to fulfill a compelling state interest – *i.e.*, strict scrutiny
- Looks matter! Bizarrely shaped electoral districts can be evidence that racial considerations predominate. (See next slide, NC CD 12 stretched 160 miles across the central part of the State, for part of its length no wider than the freeway right-of-way.)
- But bizarre shape is not required for racial considerations to “predominate.”
- Fourteenth Amendment does not, however, prohibit all consideration of race in redistricting. *Easley v. Cromartie*, 532 U.S. 234 (2001).
- **Focus on communities of interest.**

Drawing the Lines—Legal Considerations: No Gerrymandering



No Gerrymandering: What's Changed?

- Lots
 - *Ala. Legis. Black Caucus v. Alabama*, 135 S. Ct. 1257 (2015)
 - *Harris v. Ariz. Indep. Redistricting Comm'n*, 136 S. Ct. 1301 (2016)
 - *Bethune-Hill v. Va. State Bd. of Elections*, 137 S. Ct. 788 (2017)
 - *Cooper v. Harris*, 137 S. Ct. 1455 (2017)
 - *Abbott v. Perez*, 138 S. Ct. 2305 (2018)
 - *North Carolina v. Covington*, 138 S. Ct. 2548 (2018)

Drawing the Lines—Legal Considerations: State Law Criteria

- In the following order of priority:
 - (1) To the extent practicable, supervisorial [or council] districts shall be geographically contiguous. Areas that meet only at the points of adjoining corners are not contiguous. Areas that are separated by water and not connected by a bridge, tunnel, or regular ferry service are not contiguous.
 - (2) To the extent practicable, the geographic integrity of any local neighborhood or local community of interest shall be respected in a manner that minimizes its division. A “community of interest” is a population that shares common social or economic interests that should be included within a single supervisorial [or council] district for purposes of its effective and fair representation. Communities of interest do not include relationships with political parties, incumbents, or political candidates.

Drawing the Lines—Legal Considerations: State Law Criteria

- In the following order of priority (continued):
 - (3) To the extent practicable, the geographic integrity of a city or census designated place [for supervisorial districts] or local neighborhoods or communities of interest [for council districts] shall be respected in a manner that minimizes its division.
 - (4) Supervisorial [or council] district boundaries should be easily identifiable and understandable by residents. To the extent practicable, supervisorial [or council] districts shall be bounded by natural and artificial barriers, by streets, or by the boundaries of the county.
 - (5) To the extent practicable, and where it does not conflict with the preceding criteria in this subdivision, supervisorial [or council] districts shall be drawn to encourage geographical compactness in a manner that nearby areas of population are not bypassed in favor of more distant populations.
- Districts “shall not adopt boundaries for the purpose of favoring or discriminating against a political party.”

State Law Criteria: What's Changed?

- Lots
 - Other than equal population, Voting Rights Act, and equal protection, criteria were formerly discretionary and permissive (the board or council “may” consider the others). Now appear mandatory.
 - Criteria now ranked in order of priority.
 - No longer clear that non-statutory criteria can be considered.
 - Consideration of incumbency and political parties now restricted.
 - Explicitly made applicable to charter cities. Constitutional issues?
 - Exclusion of prisoners previously a policy choice; not now.
 - Note: school districts and special districts remain under old rules.
 - Mid-decade redistricting previously allowed; now only under specific circumstances.

Drawing the Lines—Legal Considerations: State Law Process

- **Timing:**
 - **THEN:** before the first day of November of the year following the year in which each decennial federal census is taken
 - **NOW:** no earlier than August 1, 2021, and August 1 in each year ending in the number one thereafter, but no later than 151 days before the jurisdiction’s next regular election occurring after March 1, 2022, and after March 1 in each year ending in the number two thereafter.
 - Charter cities can set their own timing
 - Timing for counties with March elections compressed

Drawing the Lines—Legal Considerations: State Law Process

- **Backup Procedure if Deadline Missed:**
 - **THEN:** specified redistricting commission for counties, or default to at-large elections for general law cities
 - **NOW:** petition to the superior court, which may use special masters and experts at the expense of the jurisdiction, and local facilities, computers and personnel
 - Charter cities may have their own default procedures

Drawing the Lines—Legal Considerations: State Law Process

- **Hearings:**
 - **THEN:** one public hearing on the proposal prior to the public hearing at which the governing body votes to approve or defeat the proposal.
 - **NOW:** at least four public hearings: at least one before draft maps are drawn (and can be conducted by staff or consultant); at least two after draft maps are drawn; at least one on a Saturday, Sunday or after 6:00 P.M. Monday through Friday

Drawing the Lines—Legal Considerations: State Law Process

- **Public Outreach**
 - **THEN:** None in particular required, except compliance with Brown Act
 - **NOW:** jurisdiction must encourage public participation through
 - Media outreach
 - Good government, civil rights, civic engagement & community groups
 - Live translation, if requested 72 hours in advance of meeting
 - Publication of notices on the internet
 - Publication of a draft map at least seven days before adoption
 - Publication of relevant demographic data
 - Receipt of maps or testimony from the public in writing or electronically

Drawing the Lines—Legal Considerations: State Law Process

- **Recordkeeping**
 - **THEN:** None in particular required, except compliance with Public Records Act
 - **NOW:** record of each public comment and governing body deliberations at every public hearing or workshop – made available to the public within two weeks
 - Internet webpage maintained for 10 years in multiple languages that includes:
 - An explanation of the redistricting process
 - Procedures for testifying or submitting written testimony
 - Calendar of all hearings and workshops
 - Notice and agenda for each hearing and workshop
 - Recording or written summary of each hearing and workshop
 - All draft maps & adopted map

Drawing the Lines—Legal Considerations: State Law Process

- **Mid-Decade Redistricting**
 - **THEN:** At any time, based on a mid-decade Census or population estimates prepared by the State Department of Finance
 - **NOW:** Never, unless in conjunction with judicial proceedings, or jurisdictional boundary changes, and then with qualifications
 - Charter cities can have different rules pertaining to mid-decade redistricting

Drawing the Lines—Legal Considerations: State Law Process

- **Reminder:**
 - school districts and special districts remain under old rules

Drawing the Lines—Legal Considerations: State Law Process

- **There are other options for cities and counties –**
 - A variety of redistricting commissions, including an advisory commission (specifically referenced in AB 849), a hybrid commission, or an independent commission
 - Commissions mandatory for Los Angeles and San Diego County Boards of Supervisors
 - Note: numerous restrictive qualifications for appointment as commissioner
 - Note: specific limitations on subsequently political activities of commissioners

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Question Time

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