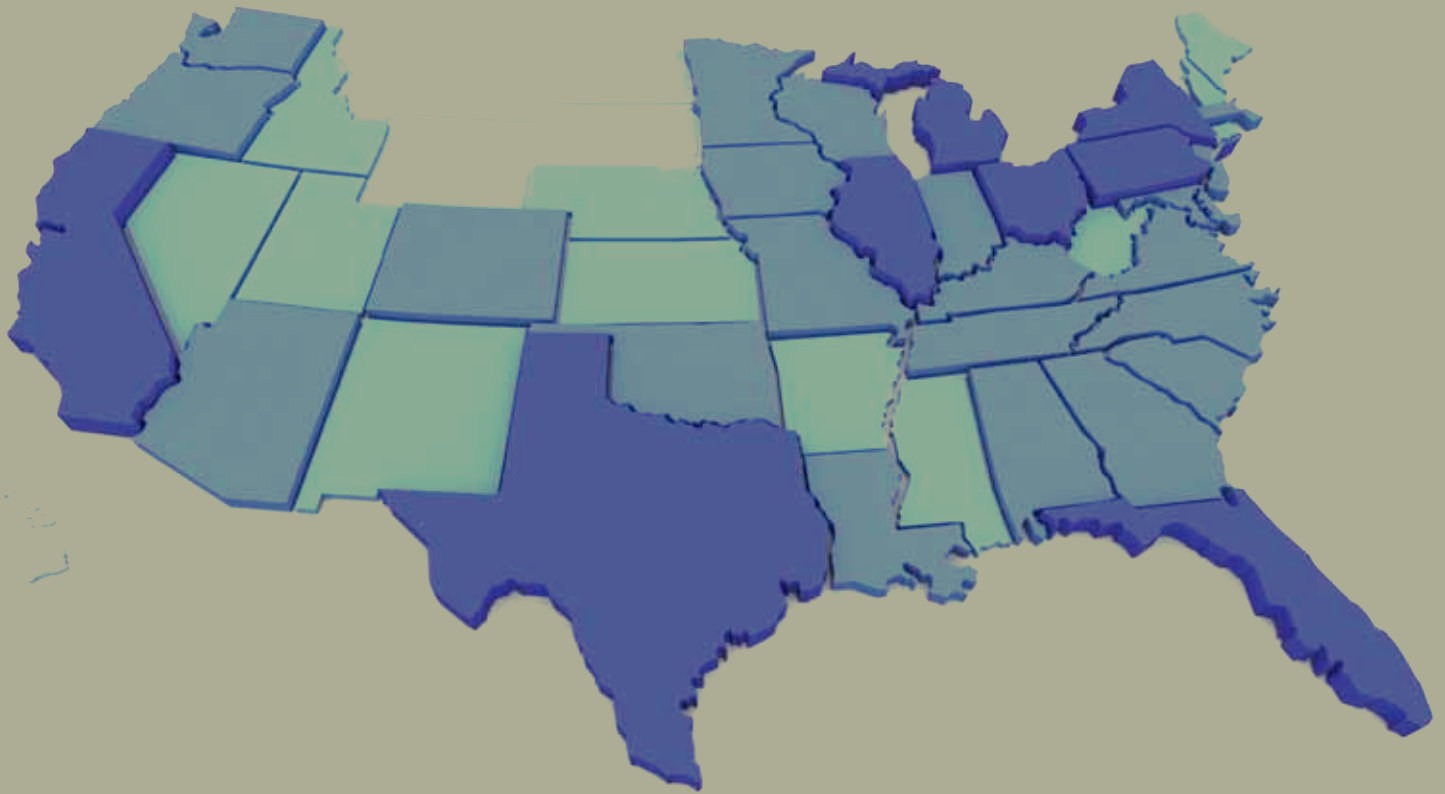


The Impact of Redistricting in **YOUR** Community

A GUIDE TO REDISTRICTING

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THE IMPACT OF REDISTRICTING IN YOUR COMMUNITY

A Guide to Redistricting

TABLE OF CONTENTS

1	CHAPTER 1 Frequently Asked Questions About Redistricting
4	CHAPTER 2 Key Redistricting Standards and Concepts
9	CHAPTER 3 Participating in the Redistricting Process
14	CHAPTER 4 The Role of Section 2 of the Voting Rights Act During Redistricting
20	CHAPTER 5 Section 5 of the Voting Rights Act and Redistricting
24	CHAPTER 6 Language Assistance at the Polls and the Voting Rights Act
29	CHAPTER 7 The Impact of Census Data and Policies on Redistricting
33	CHAPTER 8 Non-Citizens and Political Representation
35	CHAPTER 9 Redistricting Reform Measures
39	Conclusion
40	Appendix 1: List of Jurisdictions Covered Under Section 5 of the Voting Rights Act
41	Appendix 2: Redistricting in Your State
74	Appendix 3: Glossary of Redistricting Terms
76	Partner Organizations



Collaborative Redistricting Guide

By the year 2011, America's demographics will have greatly changed and we will have become a much more diverse nation. You've probably noticed these changes taking place in your neighborhoods and schools. African Americans, Asian Americans, Latinos, Native Americans, Native Hawaiians, and Pacific Islanders make up at least one-half of the residents in one out of every ten of the nation's counties.¹

The changing face of America raises important questions throughout our society, especially in electoral politics. Are minorities fairly represented at all levels of politics? Do we have an equal voice and an equal opportunity to elect representatives who consider our needs and interests?

The process called "redistricting" will determine how our local school board, city council, state legislative and congressional districts are drawn. How can our communities participate? How can we ensure that our interests are being heard and represented by our elected officials? How can we ensure that the voting strength of our communities is not weakened? What are the important factors to consider in redistricting?

This handbook will answer these questions by laying out the importance of getting involved with the redistricting process, and providing resources and contact information.

The Legal Framework for Redistricting

In this handbook, you will find information about the legal issues involved in redistricting, including information about how recent U.S. Supreme Court decisions impact your redistricting efforts. This handbook is not intended to be a complete summary of redistricting law. It is only intended to provide a basic understanding of the fundamentals of redistricting laws as they currently exist.

¹Press Release, U.S. Census Bureau, *Census Bureau Releases State and County Data Depicting Nation's Population Ahead of 2010 Census* (May 14, 2009), available at <http://www.census.gov/Press-Release/www/releases/archives/population/013734.html>.

Community Concerns Related to Redistricting

You will also find information that will help you get involved in your local, state and congressional redistricting processes. You will obtain guidance for determining where lines for districts should be drawn, analyzing socioeconomic data on your communities to see if communities of interest exist, gathering historical data on minority communities, and using training materials to educate yourself and your community about the redistricting process.

The Importance of the Voting Rights Act

Finally, you will find analyses that explore issues relevant to our communities. For example, how does the Voting Rights Act help ensure that voters receive language assistance to vote? How is the redistricting process influenced by the requirements of the Voting Rights Act?

Additional issues addressed in this handbook include the redistricting reform movement and how it affects our ability to protect minority voting rights, as well as the role of noncitizens in the redistricting process. You will also find a handy appendix that includes practical information, such as a glossary of redistricting terms and important information about the deadlines and procedures that apply in your state during the redistricting process.

Our hope is that this handbook will encourage and assist your community in participating in this important event of redistricting. Redistricting following the census will determine political representation for the decade to come, and we must ensure that our communities' voices are heard, their needs addressed, and their rights protected.



Chapter 1

Frequently Asked Questions About Redistricting

How is the census connected to redistricting?

The federal government counts how many people reside in the United States once every ten years for reapportionment, among other purposes. The census count happens at the beginning of each decade. The accuracy of the census count is very important as the distribution of federal funds at the local level and the distribution of political power at all levels of government depend on it.

United States
Census
2010

The census is also important because redistricting is based on the population data collected by the decennial census. During redistricting, the political lines are redrawn so that each district is equal in population size based on the decennial census data.

After the 2010 Census, most of the census data relevant to redistricting will be publicly available by April of 2011. Some redistricting data may be released later in 2011. The U.S. Census Bureau will release all other data after 2012. (See Chapter 7 for more information about the link between the census and redistricting.)

What is the redistricting process?

Redistricting is the process by which census data is used to redraw the lines and boundaries of electoral districts within a state. This process affects districts at all levels of government — from local school boards and city councils to state legislatures and the United States House of Representatives.

Is there a difference between reapportionment and redistricting?

Yes. Reapportionment and redistricting are two different concepts, but many people mistakenly refer to them as though they mean the same thing.

Reapportionment is the allocation of the 435 seats in the U.S. House of Representatives (House) to each state and does not involve map drawing. The 435 House seats are divided among the 50 states based upon each state's population as determined by the census. The larger the state population, the more congressional representatives (and districts) the state will be allocated.

Redistricting, on the other hand, involves map drawing—the actual division or drawing of the district boundaries for United States congressional representatives and state or local officials elected within a state. Redistricting can occur at any level of



government. Even if a state does not gain or lose a seat during reapportionment, it must redraw districts to make them equal in population size.

Why is the redistricting process important?

How and where districts are drawn in your state will often determine if your community can elect representatives of choice to sit on your local school board, city council, state legislature and Congress. It can also influence whether or not your elected officials respond to your needs, such as ensuring equal educational opportunities or health care for everyone.

When does the redistricting process take place?

Redistricting takes place every ten years, soon after data from the census is received. Each state will receive census information regarding the population, age and race of its residents. However, different states will have different timelines for finishing the redistricting process. (See Appendix 2, Redistricting in Your State).

Are there any examples of redistricting plans harming minority voters?

Minority voters have frequently faced discrimination in voting during the redistricting process. The following examples summarize some of the most egregious acts that denied opportunities for minority voters to elect a candidate of choice in recent redistricting cycles.



African Americans

During the redistricting process in the State of Louisiana that followed the 2000 Census, Louisiana adopted a discriminatory plan for its State House of Representatives that worsened the position of Black voters.

The results of the 2000 Census showed that the African-American population in Louisiana increased in real numbers and as a percentage of the overall state population. In January of 2001, however, the Louisiana legislature created a redistricting plan that completely eliminated a majority-minority district in the New Orleans area where there was no Black population loss according to the 2000 Census. The proposed redistricting plan also reduced the percentage of African-American voters in several other districts where African-Americans had a reasonable opportunity to elect their candidate of choice.

With regard to the proposed elimination of the New Orleans district, the State admitted that it eliminated the district in a conscious effort to limit African-American voting strength in the New Orleans area and to increase electoral opportunities for white voters. In the state's view, white voters were entitled to proportional representation in Orleans Parish, though proportionality did not exist for African-Americans elsewhere in the state or under the Voting Rights Act.

Notwithstanding this discrimination, Louisiana sought judicial approval for its reapportionment plan under Section 5 of the Voting Rights Act (see chapter 5 for more information) and vigorously argued that its 2001 redistricting plan was valid. On the eve of trial, and after fifteen months of litigation, evidence emerged that the 2001 plan violated the State's own redistricting principles. It was only at that point that the State withdrew the discriminatory redistricting plan and created a new redistricting plan that did not dilute African-American voting strength.

This is only one of many examples of the unlawful exclusion of African-American voters and their representatives from the redistricting process. Most notably, every initial state legislative redistricting plan for the Louisiana House of Representatives has drawn an objection since the Voting Rights Act was passed in 1965.

Asian Americans

Involvement in the redistricting process has been a relatively recent endeavor for Asian Americans. Asian American participation in redistricting began after the 1990 Census. Historically, areas with significant Asian American populations were split into different districts, reducing the voting power of those populations.

In 1992, the riots in Los Angeles took a heavy toll on many neighborhoods, including the area known as Koreatown. It is estimated that the city suffered damages of more than \$1 billion, much of it concentrated on businesses operated by Koreans and other Asian immigrants. When residents of these neighborhoods appealed to their local officials for assistance with the cleanup and recovery effort, however, each of their purported

representatives – members of the City Council and the State Assembly – passed the buck, claiming that the area was a part of another official’s district. This was because new district lines drawn after the 1990 Census fractured Koreatown. Koreatown, barely over one mile square, was split into four City Council districts and five State Assembly districts, and because Asian Americans did not make up a significant portion of any official’s constituency, officials were left with little incentive to respond to the Asian American community.¹

In Chicago, there was similar fracturing during redistricting efforts. Even though the Asian American population is now nearly 5% of the state’s population, and in some neighborhoods, Asian Americans make up around 30% of the population, no Asian American has ever been elected to the Illinois General Assembly or any statewide office, or the Chicago City Council.² After the 2000 Census, five Illinois Senate districts were over 10% Asian American; yet, after the lines were redrawn in 2001, only two Senate districts were over 10% Asian American. The 2001 redistricting divided Chicago’s Chinatown—a compact community whose members have common ground in terms of history, ethnicity, language, and social concerns—from two Illinois Senate districts into three Senate districts, and from three Illinois House districts into four House districts.³ In addition to the Chicago Chinatown area, there are several other Asian American communities that have been fragmented by past redistricting, including the area encompassing Devon Avenue, Lincolnwood, and Skokie, which was divided into two different Senate districts, and the Albany Park area in Chicago, which was similarly divided.⁴

Latinos

After the 2001 California statewide redistricting, MALDEF challenged the legality of three California districts. MALDEF asserted that two congressional districts had been racially gerrymandered to exclude Latino voters in order to limit the influence of the Latino vote. MALDEF also challenged a state legislative district under the Voting Rights Act because it was not drawn as a majority-Latino district. The court ruled against MALDEF and the districts were allowed to stand.

¹Carol Ojeda-Kimbrough, Eugene Lee, Yen Ling Shek, UCLA Asian American Studies Center, *The Asian Americans Redistricting Project: Legal Background of the “Community of Common Interest” Requirement 6* (2009), available at [http://www.aasc.ucla.edu/policy/CCI_Final\(2\).pdf](http://www.aasc.ucla.edu/policy/CCI_Final(2).pdf). See also Justin Levitt with Bethany Foster, *A Citizen’s Guide to Redistricting*, Brennan Center for Justice (July 1, 2008), available at, http://www.brennancenter.org/content/resource/a_citizens_guide_to_redistricting/.

²*The Voting Rights Act and Other Legal Requirements of Redistricting: Hearing Before the Ill. S. Committee on Redistricting* (2009) (statement by the Asian American Institute), available at <http://www.aachicago.org/PDF%20Files/AAI%20Dec%202009%20IL%20Senate%20Redistricting%20Committee%20Testimony.pdf>.

³*Id.*

⁴*Id.*

In 2003, Texas redrew its congressional district boundaries and dismantled the Latino-majority 23rd Congressional District along the U.S.-Mexico border. The incumbent in that district, who was not the preferred candidate of Latinos, faced an increasing threat of removal by the growing Latino electorate in the district. In order to shore up the re-election chances of the incumbent, Texas moved over 100,000 Latinos out of the 23rd Congressional District and reduced the Latino citizen voting age population of the district from 57% to 45%. MALDEF represented Latino voters of Congressional District 23 in a challenge to the redistricting plan and in 2006 won a ruling from the U.S. Supreme Court that Texas had discriminated against Latinos in violation of Section 2 of the federal Voting Rights Act. (See Chapter 4 for more information on Section 2.)

How can my involvement in redistricting make a difference for my community?

Your voice and participation in the redistricting process can help ensure that the redistricting plans adopted by your jurisdiction do not harm your community. (See Chapter 3 for more detailed information on how you can get involved in the redistricting process.)



Chapter 2

Key Redistricting Standards and Concepts

This chapter focuses on key redistricting standards and concepts, and highlights some of the changes in the law over the last decade. It also identifies resources and strategies to help you protect your community's voting rights during the upcoming redistricting cycle.

Who does the redistricting?

After the release of census data, political bodies such as state legislatures, county commissions, city councils and school boards begin the process of redistricting. Usually, each political body redistricts itself. For example, the state legislature is generally responsible for redrawing the lines for congressional districts as well as state house and state senate districts. Likewise, local governments at the county and city level redraw their own district lines.

In certain instances, redistricting is not left to the incumbent politicians, but rather is performed by one or more redistricting commissions. These commissions are discussed in further detail in Chapter 9.

Each state has its own deadlines governing when redistricting must be completed. (See Appendix 2, Redistricting in Your State.)

How many people go into a single district?

In the 1960s, the U.S. Supreme Court established the “one person, one vote”¹ rule, one of the most basic principles of redistricting. The rule requires that legislative and congressional districts be of equal population, meaning that each district of the same type must have the same number of people.

The one person, one vote standard for legislative districts may vary by state but the Supreme Court has developed a standard of population equality that requires state and local legislative districts to differ by no more than ten percent from the smallest to the largest, unless justified by some “rational state policy.”² There is a higher standard of equality, however, for congressional

districts. Congressional districts must be virtually equal in population, unless justified by some “legitimate state objective.”³

The process of redrawing a district, therefore, starts by determining the “ideal” population. In a single-member district plan, the “ideal” population is equal to the total population of the jurisdiction divided by the total number of districts. For example, if a state's population is one million and there are ten legislative districts, the “ideal” population of each district is 100,000. Any amount less or greater than this number is called a “deviation.” As stated above, the law allows for some deviations in state and local redistricting plans. However, when redrawing congressional plans, you must strive for the “ideal” population.

Are there any additional federal requirements that govern redistricting?

Jurisdictions must also comply with the federal requirements of the Voting Rights Act during redistricting. A number of states explicitly identify compliance with the Act at the top end of their list of traditional redistricting principles to underscore the importance of complying with this federal law during the redistricting process.

Compliance with the Voting Rights Act helps ensure protection of minority voting rights during the redistricting process.

³See *Karcher v. Daggett*, 462 U.S. 725 (1983).

¹See *Reynolds v. Sims*, 377 U.S. 533 (1964); *Wesberry v. Sanders*, 376 U.S. 1 (1964); *Baker v. Carr*, 369 U.S. 186 (1962).

²See *White v. Regester*, 412 U.S. 755 (1973); *Gaffney v. Cummings*, 412 U.S. 735 (1973).



How does the Voting Rights Act impact the redistricting process?

Section 2 of the Voting Rights Act prohibits minority vote dilution. Section 2 provides that a voting practice is unlawful if it has a discriminatory effect. A voting practice has a discriminatory effect if, based on the totality of circumstances, minorities have “less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.” Section 2 also prohibits the enactment of redistricting plans (and other voting practices) that were adopted with a discriminatory purpose. Section 2 of the Voting Rights Act is discussed more fully in Chapter 4 of this handbook.

Section 5 of the Voting Rights Act prohibits the enforcement or administration by covered jurisdictions of “any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting” without first receiving preclearance from the U.S. Department of Justice or the U.S. District Court for the District of Columbia (the federal court in Washington, D.C.). A full discussion of Section 5 is included in Chapter 5 of this handbook.

Why are Voting Rights Act protections important?

During the redistricting process, state and local officials may create districts that fairly reflect minority voting strength, or they may move to dismantle districts that provide minority voters an opportunity to elect candidates of their choice. In the latter case, such action could be based on partisan or incumbency motivations or even a misinterpretation about the role that race can play in redistricting. Being able to discuss Voting Rights Act protections can help position you to advocate, protect, and defend the interests of minority voters from discriminatory decisions during the redistricting process.

What role does race play in redistricting?

Those charged with the responsibility of drawing district lines generally rely upon census data to determine where people live. These data can also be used to show the racial and ethnic composition of an area. Although the Supreme Court’s decision in *Shaw v. Reno*, 509 U.S. 630 (1993), prohibits certain uses of race in redistricting, the Voting Rights Act still requires the creation of districts that provide an opportunity for minorities to elect a candidate of choice when certain conditions are met. Race remains a permissible consideration if and when necessary to satisfy a compelling state interest, such as compliance with the requirements of the Voting Rights Act. In addition, states may also voluntarily choose to provide minority voters opportunities to elect a candidate of choice even when the Voting Rights Act does not require them to do so.⁴ In fact, race is always a part of the redistricting process and merely being race-conscious or aware of race during the redistricting process is not, by itself, illegal.⁵ Indeed, state and local officials must give some consideration to race to help ensure that the redistricting plans they create do not dilute minority voting strength and comply with the requirements of the Voting Rights Act.

The Supreme Court has clearly stated that a redistricting plan will not be held invalid simply because the “redistricting is performed with consciousness of race” or because a jurisdiction intentionally creates a majority-minority district.⁶ A plaintiff challenging a majority-minority district for improperly using race to draw the district:

must show at a minimum that the legislature subordinated traditional race-neutral districting principles . . . to racial considerations. Race must not simply have been a motivation for the drawing of a majority-minority district, but the predominant factor motivating the legislature’s districting decision. Plaintiffs must show that a facially neutral law is unexplainable on grounds other than race.⁷

⁴See *Bartlett v. Strickland*, 129 S. Ct. 1231, 1246 (2009).

⁵See *United States v. Hays*, 515 U.S. 737, 745 (1995) (“We recognized in *Shaw*, however, that ‘the legislature always is aware of race when it draws district lines, just as it is aware of age, economic status, religious and political persuasion, and a variety of other demographic factors. That sort of race consciousness does not lead inevitably to impermissible race discrimination.’”) (citation omitted) (emphasis in original).

⁶*Easley v. Cromartie*, 532 U.S. 234, 253-54 (2001) (quoting *Bush v. Vera*, 517 U.S. 952, 958 (1996)); A majority-minority district is a district where the minority population is a numerical majority (fifty percent plus one or more) of the population in the district.

⁷*Easley*, 532 U.S. at 241 (citations omitted) (internal quotation marks omitted). Among the “race-neutral districting principles” are “compactness, contiguity, [and] respect for political subdivisions or communities defined by actual shared interests.” *Miller v. Johnson*, 515 U.S. 900, 916 (1995) (citing *Shaw*, 509 U.S. at 647).

The Court's decision in *Easley v. Cromartie* clarified the heavy burden on those plaintiffs who argue that the state has relied too heavily on race in creating minority districts where states also base districts on party affiliation.⁸ Under *Easley*, when race and partisan affiliation are highly correlated, the plaintiff must also prove that a plan that is more consistent with traditional redistricting criteria and less racially imbalanced would achieve the same partisan balance.⁹ Moreover, states and local jurisdictions still have the responsibility to comply with the Voting Rights Act, including creating majority-minority districts to avoid diluting minority voting strength. Even though race can be a factor considered in the redrawing of district lines, it is also particularly important to respect legitimate "traditional redistricting principles" in the process.¹⁰

What role do communities of interest play in the redistricting process?

A community of interest can be defined in various ways. It can be a neighborhood or community that would benefit from being maintained in a single district because of shared interests, views or characteristics. During redistricting, a community of interest should be kept together within the same district to the extent possible.

For some minority communities, the community of interest approach is a mainstay of their redistricting efforts. This is particularly true for Asian American communities, which are often not large enough in population size to constitute majority-minority districts by themselves. Where Asian American communities are not large enough to constitute majority-minority districts they may be characterized as a community of interest in order to advocate for districts that promote responsive representation by elected officials and protect against the fracturing of their communities. Communities of interest can be multi-racial communities that include Latino, Asian American and/or African American populations.

What are traditional redistricting principles?

In redrawing district boundaries, officials may identify some set of "traditional redistricting principles" to help guide the process in your state or locality. These principles may include compliance with federal requirements such as one person, one vote and compliance with the Voting Rights Act. These principles may also include considerations deemed important at the local or state level including preserving cores of districts and respecting natural boundaries.

⁸532 U.S. 234

⁹*Id.* at 258.

¹⁰Plaintiffs seeking to prove a case under the doctrine outlined in *Shaw v. Reno* must "show[] that race, rather than politics, predominantly accounts for the result." *Easley*, 532 U.S. at 257.



It is important, however, to ensure that officials are not elevating subjective traditional redistricting principles above compliance with the one person, one vote principle or the Voting Rights Act of 1965. There may be instances where local traditional redistricting principles need to give way to federal requirements such as compliance with the one person, one vote rule or the Voting Rights Act. Indeed, the Supreme Court recently observed that "[i]t is common ground that state election-law requirements . . . may be superseded by federal law."¹¹

How can you determine whether traditional redistricting principles are being used to achieve other objectives?

Determining traditional redistricting principles can be done by examining the legislative history and any court decisions on voting issues in your area. It will also be important to determine whether the state has deviated from any of these redistricting criteria in the past to meet other redistricting goals, such as protecting incumbents. For example, if the state has been willing to compromise compactness in order to protect an incumbent in the past, you could ask why the state is unwilling to relax its desire for compactness in order to now meet your community's redistricting goals.

¹¹*Bartlett*, 129 S. Ct. at 1239 (2009).

What are some examples of traditional redistricting principles?

1) Compactness and Contiguity

“Compactness” and “contiguity” are terms used to refer to the appearance of a district.

Contiguity is simple to evaluate. A district is contiguous if all of the lines that create it are connected. A district consisting of two or more unconnected areas is not contiguous. Of course, the degree to which all districts in a particular map are contiguous can be limited by natural boundaries.

Measuring compactness is more complex because there is no one particular method for measuring compactness. In some cases, the **appearance and function** of a district may be the appropriate measure of compactness. If an appearance and function analysis is used, those drawing the lines will consider the overall shape of the district, looking to see how tightly drawn the lines are and how smooth the edges are. If the districts drawn are too irregular-looking, it may become a signal to the courts that the lines may have been motivated by a desire to engage in race-based redistricting, which may be held unlawful.¹²

In other cases, a **mathematical formula** may be the best way to measure compactness. There are various methods for calculating the compactness of a district including looking at how the population is distributed within the district, measuring the borders of the district, or evaluating the area of the district.

Many state laws require compactness in redistricting, but fail to define or specify how compactness is determined. If a state fails to define compactness, it can lead to difficulty in determining whether the ultimate map is, in fact, compact.

Both compactness and contiguity are important principles because a map that is not “compact or contiguous” can serve as the basis of a racial gerrymandering lawsuit. The consideration of the compactness of a district may help avoid lawsuits and could also prove helpful in advocating for districts to be drawn in particular ways. For this reason, redistricting authorities that believe a plan is likely to be challenged for lack of compactness or contiguity may be less likely to adopt the plan.

At the same time, the Voting Rights Act may require the creation of a majority-minority district to avoid minority vote dilution. Efforts to achieve perfect compactness and contiguity may lead to the creation of districts that fail to comply with the Voting Rights Act.

¹²See *Shaw*, 509 U.S. 630.

2) Communities of Interest

In seeking to preserve communities of interest, district line drawers should be careful not to divide populations or communities that have common “needs and interests.”¹³ Communities of interest can be identified by referring to the



census, demographic studies, surveys, or political information to assess what social and economic characteristics community members share. You can also talk to community activists, civic leaders, and review local reports and studies. Some examples of relevant social and economic characteristics are:

- Income levels
- Educational backgrounds
- Housing patterns and living conditions (urban, suburban, rural)
- Cultural and language characteristics
- Employment and economic patterns (How are community residents employed? What is the economic base of the community?)
- Health and environmental conditions
- Policy issues raised with local representatives (concerns about crime, education, etc.)

While much of this information will be available through census data, your local government may also be a good source of information. Often, local governments compile information on school enrollment and attrition rates, socio-economic disparities, crime rates, etc.

¹³*League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 435 (2006).



You should also supplement these sources by gathering information through stakeholder surveys and organizational interviews, as well as information conveyed at public hearings. Additionally, you should identify the issues of special concern for your area, by talking to community activists, politicians, and civic leaders, and reviewing local reports and studies.

Finally, courts have also played a role in identifying communities of interest and you should determine whether courts in your state have identified or rejected state-specific standards for articulating communities of interest.

Once a sufficient amount of data is collected, maps showing how the socioeconomic data impacts a geographic area can be produced. The resulting maps may demonstrate particular similarities among individuals. For example, a map showing poverty-level residents, non-high school graduates, or households that predominantly speak a language other than English can be used as an indication of a “community of interest” within a particular geographic area.

3) Protection of Incumbents and Achieving Political Goals

The term “political gerrymander” has been defined as the “practice of dividing a geographical area into electoral districts, often of highly irregular shape, to give one political party an unfair advantage by diluting the opposition’s voting strength.”¹⁴ However, courts have had difficulty determining when officials illegally use partisanship in the redistricting process. In 2004, the Supreme Court ruled, in a fractured opinion, that it was unable to adjudicate a political gerrymandering claim that arose in Indiana. The Court did not, however, foreclose the possibility that it would intervene when sufficient facts and a manageable standard were available.¹⁵ It remains to be seen whether we will see more of these kinds of challenges during the upcoming redistricting cycle.

¹⁴Black’s Law Dictionary 696 (7th ed.1999).

¹⁵See *Vieth v. Jubelirer*, 541 U.S. 267 (2004).

What remains clear, however, is that jurisdictions cannot divide cohesive groups of minority voters who are able to elect a candidate of choice in order to protect an incumbent or political party.

Is there software that can help me understand the redistricting process better?

Yes. Computer programs capable of performing calculations with geographic data are available. The computer programs that perform these tasks are known as Geographic Information Systems (GIS). GIS programs are sophisticated, and users may require some time, and possibly formalized training, to learn their operation. There are some programs that have been specifically tailored for redistricting, so they include functions to calculate compactness measures. If your group’s membership does not include people with advanced computer skills, seek help in your community from high school teachers, community college or university students and faculty, and others.

Chapter 3

Participating in the Redistricting Process

Who may participate in the redistricting process?

Anyone may participate! Interested parties—including non-profit organizations, community leaders, and political parties—may use maps and population counts of their states, counties and cities to advocate for where they believe district boundaries should be drawn. This information can also be used to present alternative maps to redistricting decision-makers. All redistricting proposals, including alternative redistricting plans, should be closely analyzed to ensure that they do not violate the Voting Rights Act of 1965 or the U.S. Constitution. Alternative redistricting proposals should be presented to the appropriate

Why should I participate in the redistricting process?

Participating in redistricting will give your community a voice, which is critical to ensuring that it has equal access to the political process. This participation can also encourage citizens to register, vote, and remain politically engaged. It can also help lead to the adoption of redistricting plans that provide minority communities a meaningful opportunity to elect candidates who represent their interests on issues that are important to their lives, from getting street lamps in their neighborhoods, to securing safe schools and new playgrounds. Take advantage of opportunities to participate in all phases of the redistricting process!

What happens when redistricting plans are adopted without meaningful participation by minority communities?

Until fairly recently, minority residents have often had little say in the creation of redistricting plans approved by state legislatures. As a result, in some instances, minority communities were divided up, fractured and placed into many different districts (known as “cracking”). In other instances, they were unnecessarily concentrated in a small number of districts, which prevents fair representation across a greater number of districts (known as “packing”). Since the 1980s and 1990s, we have seen progress that is largely attributable to the protections afforded by the Voting Rights Act and more engagement of minority communities in the redistricting process. (See Chapter 4 for more information about cracking and packing.)

Community members can testify at public hearings about proposed maps and provide feedback on the maps proposed by the official redistricting body and others. This is particularly important when proposed maps are detrimental to your community. A proposed map can be detrimental, for instance, if it fractures your community and prevents opportunities for your community to elect a candidate of choice.

In addition, if you live in a Section 5 jurisdiction, you can participate by sending comment letters to the U.S. Department of Justice regarding the submitted redistricting map. Your comment letter can explain how the proposed redistricting map impacts your community. (See Chapter 5 for more details.)

governmental body or committee before the redistricting deadlines that have been established in each state. Interested parties can also aid the redistricting process by presenting testimony about your community, its interests, and evidence of ongoing discrimination faced by your community.





Can a community member present his or her own redistricting map?

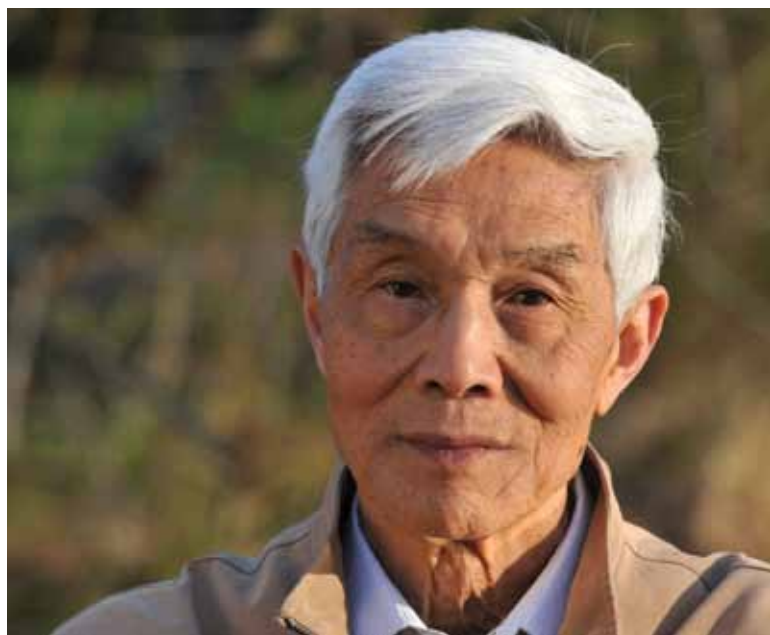
If you are interested in presenting an alternative redistricting map that could improve opportunities for your community to elect a candidate of choice, there are several steps you as a community member will need to take in order to get involved:

- Determine at what level(s) of government you want to get involved (i.e. Congressional, state, county or city redistricting).
- Determine the schedule of hearings, and any deadlines for the submission of maps and testimony.
- Learn what resources will be made available to members of the public for data analysis and mapping.
- Advocate for public access to all redistricting plans created by the redistricting body.
- Determine the rules for submitting alternative maps (i.e., whether one must submit a map for the entire jurisdiction being redistricted, or whether one can submit a partial map for just one district or regional area).
- Find out when the PL 94-171 data will be released to the public in your state.¹

- Identify any additional sources of data you can rely on, including data you may need to collect yourself (such as exit poll data and surveys).
- Discuss your proposed alternative plan with other stakeholders and racial minority communities. Work together to create a map that everyone can agree on.
- Conduct an analysis of the potential legal claims your alternative map may face if the redistricting plan is drawn the way you prefer.
- Conduct an analysis to help ensure that your alternative map is able to withstand any legal challenge.
- Conduct discussions with legislative members to learn what their priorities are (and to find out what pitfalls to avoid).

How can I create an alternative map if I don't have the financial resources, software, or redistricting expertise?

Even if you do not have the capacity to produce your own map, you can get involved in the redistricting process to ensure your community's needs and concerns are heard. One way to participate is to work in coalition with other communities and organizations that are engaged in the redistricting process. Even if you do not have the capacity to create your own map, a collaborative effort may provide the opportunity for you to take your community's needs and concerns into consideration if one of the coalition partners has the capacity to conduct mapping and create an alternative map. Additionally, you can always comment on other people's proposed maps, regardless of whether you have proposed an alternative map yourself.



¹Public Law 94-171, enacted in 1975, directs the U.S. Census Bureau to make special preparations to provide redistricting data within one year following Census Day (i.e., by April 1, 2011 for Census 2010).

What other benefits are there to working in coalition with other communities?

Collaboration can help lead to a better understanding of other communities' needs and concerns. At the same time, a collaborative process can lay the groundwork for achieving a strong collective voice.

Why do we need to involve experts in the 2011 redistricting process?

Experts can help ensure that officials are drawing plans that comply with one person, one vote requirements and the Voting Rights Act of 1965. Experts can also help support your advocacy efforts during redistricting. The following individuals may provide value in your redistricting advocacy efforts: map drawers, demographers, political scientists, historians, and attorneys. Local colleges or universities may be a good place to locate individuals with the relevant expertise.

1. A **map drawer** uses census data to draw or redraw redistricting maps. He or she can help map demographic information such as where people of a particular income, education, immigration status, occupation or other background live. He or she will also analyze the proposed redistricting maps and create alternative maps on behalf of your community.

2. A **demographer** will analyze census data and the characteristics of the population in a given geographic area. He or she will study their age, racial makeup, and other demographic characteristics relevant to redistricting. A demographer can work with a map drawer to draw or redraw district maps.

3. A **political scientist** will analyze a variety of election information, including election returns and voter registration rolls, to determine voting patterns among white and minority voters. The results of his or her analysis will be used to determine whether minority voters tend to support the same candidates

and whether white voters tend to vote against those candidates. This information is used to determine whether minority voters have an equal opportunity to elect candidates of their choice under the current electoral system. A political scientist can also analyze non-demographic factors to help determine where communities of interest reside and have developed "an efficacious political identity."²

4. A **historian** will study the history of race relations in your community and in the state and record the history of racial segregation and discrimination in voting, education, housing, and employment. He or she could also help record the history of how your community has evolved over the years and what its residents have shared in common. Such information could be useful in developing evidence of communities of interest.

5. An **attorney** may be able to suggest the types of experts you need and provide legal advice about the specific information you will need to collect and present in preparation for the redistricting process. A lawyer may also be able to advise you on what information to submit at public hearings and to governing bodies in order to protect your rights during the redistricting process. Also, during the Section 5 administrative process (discussed in Chapter 5), you may need a lawyer to present important legal arguments on your behalf before the U.S. Department of Justice.



How can the redistricting process help minority communities?

Participation and involvement in the local redistricting process can help empower our communities from the start. There are many examples of successful community involvement in the redistricting process.

²LULAC v. Perry, 548 U.S. 399, 435 (2006).

• *African Americans*

Regrettably, each redistricting cycle has been marked by efforts to thwart African-American voting strength.

Resistance by officials was evident in communities that had experienced substantial African-American population growth. For example, in Georgia, officials in the city of Griffin sought to adopt a redistricting plan under which only two of the six single member districts would be majority black even though the city's black population had recently increased from 42 to almost 50 percent. In its review of the plan under Section 5 of the Voting Rights Act, DOJ requested more information about the adoption of the plan. (See Chapter 5 for more information on the preclearance process). However, officials were nonresponsive to the request. Instead, the city abandoned the proposed change and moved forward with efforts to hold elections using the illegal "malapportioned" districts. It was only when the local NAACP filed suit that the city agreed to a redistricting plan with three majority-minority districts. In the next election, held under a fairly drawn plan, three African-American candidates won.

Discriminatory redistricting plans at the local level were also evident. In 2003, officials in the Town of Delhi, Louisiana, adopted a plan that made a major reduction in the black voting-age population of one of the town's wards. In objecting to the plan, DOJ found that officials adopted the plan despite the availability of more favorable alternative maps that had been presented during the process. DOJ also found evidence of discriminatory intent underlying the process noting that the reduction was made in the face of steady Black population growth over the course of the preceding three decades and adopted over concerns raised by the town's own hired demographer.

Late-decade efforts to redraw boundary lines also proved problematic. For example, officials in Webster County, Georgia, adopted a new redistricting plan on the eve of the last redistricting cycle for the county board of education. The plan would have significantly reduced the black population in three of the board's five single-member districts. In blocking the plan, DOJ observed that there were serious doubts as to whether minorities would continue to have an equal opportunity to elect candidates of choice in either district. DOJ also found evidence of discriminatory purpose underlying the adoption of the plan noting that the move to adopt a new redistricting plan was initiated only after the school district elected a majority black school board for the first time in 1996. DOJ concluded that the

reasons advanced by officials for adoption of the redistricting plan were merely pretexts for intentionally decreasing the opportunity of Black voters to participate in the political process.

• *Asian Americans*

In California, the Coalition of Asian Pacific Americans for Fair Redistricting (CAPAFR) was formed in 2001 to organize the Asian American and Pacific Islander communities across California to engage in the statewide Assembly redistricting process. CAPAFR created the first-ever statewide mapping proposal on behalf of the Asian American community, working closely with other advocacy organizations such as MALDEF. CAPAFR's advocacy resulted in the 2001 Assembly lines unifying seven key communities of interest, including a core area of the San Gabriel Valley in Los Angeles County that contains



several cities with majority or near-majority Asian-American populations.

In Chicago, Asian Americans did not ultimately make gains in the 2000 redistricting cycle, but there were key lessons learned in the process and a substantive increase in the general awareness about the importance of redistricting throughout the Asian-American community. Because it was a new effort to engage in the redistricting process, including the formation of the Asian American Redistricting Coalition, advocates faced significant challenges during the effort, such as being able to focus the members on one community or district level. However, the community involvement in the 2000 redistricting cycle did lead to some gains for the Asian-American community, including the development of significant relationships, both with other

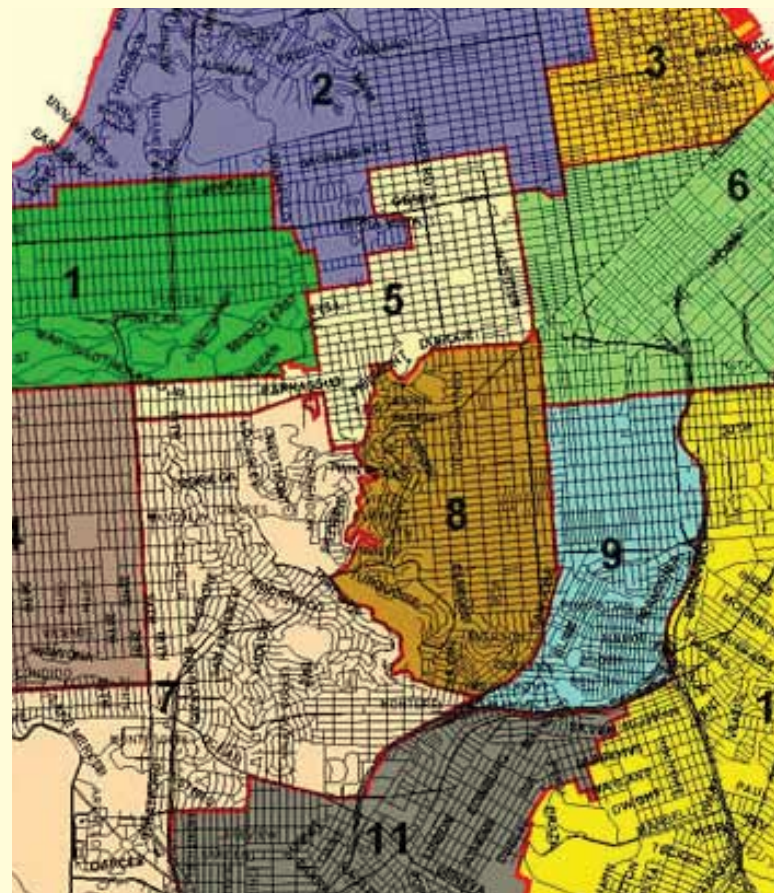


District united the two largest Latino population areas in Chicago, one predominantly Mexican American, the other Puerto Rican. In doing so, it preserved an African-American majority district — which necessitated the unusual shape of the Latino-majority district. Although the federal court agreed that the district was necessary to remedy a Voting Rights Act claim, years later, a white resident of the district sued on Equal Protection grounds claiming that the 4th Congressional District

was race-based and that Mexican Americans and Puerto Ricans were too different to be “politically cohesive.” The plaintiff even hired an “expert” who explained that Mexicans and Puerto Ricans eat different types of rice and beans!

The Latino community as a whole rallied in support of the district, and, after trial, a three-judge panel upheld the district as an appropriate remedy to a Voting Rights Act violation. Eventually, the U.S. Supreme Court agreed and summarily affirmed this decision.⁴

⁴See *King v. Illinois State Bd. of Elections*, 522 U.S. 1087 (1998) (per curiam).



ethnic organizations and with policymakers, that have had a lasting impact for the community. For example, public officials in charge of voting procedures began reaching out to the Asian American community for their input and elected officials paid increased attention to community concerns.

The experience also taught community members to get engaged earlier in the process. To that end, community leaders in Chicago are already meeting and strategizing about creating new predominantly Chinese American ward boundaries that better reflect the needs of Chinese American communities during the 2011 redistricting cycle. For example, community leaders are looking at an area south of Chinatown called Bridgeport, which is now home to more Asian Americans than Chinatown itself. The number of Asian Americans in Chinatown and Bridgeport has more than doubled since 1990³ and community leaders hope that earlier planning and strategizing will allow their community to realize the potential of this emerging political voice when new district lines are drawn in 2011.

• **Latinos**

In 1991, Chicago had a Latino population of approximately 20%. The state legislature, bogged down in partisan politics, could not agree on a redistricting plan. A coalition of Latinos called the Illinois Latino Committee for Fair Redistricting advocated strongly for the creation of a Latino majority congressional district. Eventually, Latinos were forced to sue in federal court for the adoption of a redistricting plan that was fair. After showing the court the legal necessity for a Latino majority congressional district, the Latino Committee worked together to create the 4th Congressional District, the first Latino majority district in the entire Midwest. The 4th Congressional

³Oscar Avila and Antonio Olivo, “Chinatown’s New Reach Expands its Old Borders,” *Chicago Tribune*, July 18, 2004. <http://www.chicagotribune.com/topic/mmx-040718-neighborhoods-chinatown,0,6904659.story>.

Chapter 4

The Role of Section 2 of the Voting Rights Act During Redistricting

The Importance of the Voting Rights Act

After the Civil War, African Americans and other minorities were denied access to the ballot box through laws such as “poll taxes,” “grandfather clauses,” “literacy tests,” and “character reference laws.” These restrictive barriers prevented minorities from exercising their most fundamental civil right, the right to vote. In 1965, Congress passed the Voting Rights Act. It was intended to make the “right to vote” for all persons a reality.



During the last several decades, the Voting Rights Act has provided important protections during redistricting efforts that happen at the local and state levels throughout the nation. Advocates, lawyers and community groups have worked to ensure that officials observe and adhere to the requirements of the Act.

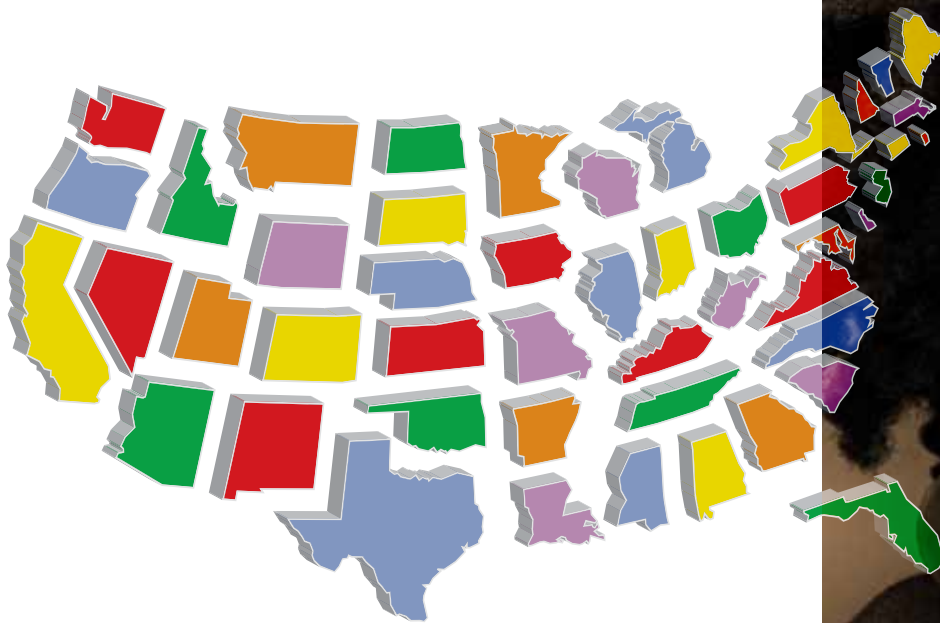
How does Section 2 of the Voting Rights Act affect redistricting?

Section 2 of the Voting Rights Act is a key provision that applies nationwide. Section 2 protects minority voters from practices and procedures that deprive them of an effective vote because of their race, color or membership in a particular language minority group.¹ Practices that have the effect of depriving minority voters of an equal opportunity to elect a candidate of choice constitute **minority vote dilution**. During every redistricting cycle, officials must ensure that they draw plans that do not dilute minority voting strength (or deny it altogether) as they otherwise face liability under the Act.

Special attention must be paid to the Voting Rights Act whenever redistricting occurs. Section 2 requires that officials draw plans that do not unfairly dilute minority voting strength. If officials draw and enact plans that violate Section 2, such plans could be subject to legal challenge. A Section 2 lawsuit can be filed by the Attorney General of the United States, who bears primary enforcement responsibility under the Act, or by private individuals and organizations. Redistricting-related litigation can prove both costly and protracted, preventing the implementation of a final plan for several years. Thus, advocates must be vigilant in demanding adherence to, and officials should make a good-faith effort to comply with, Section 2 of the Voting

¹Section 2 of the Voting Rights Act of 1965, 42 U.S.C. § 1973, as amended, prohibits any practice that has the intent or the result of denying a citizen of the United States the right to vote on account of race, color or status as a language minority. Section 2 states in pertinent part:

- (a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2), as provided in subsection (b).
- (b) A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.



Rights Act during the course of redistricting and ensure that vote dilution does not occur in the first place.

How does vote dilution occur?

Vote dilution most commonly occurs when those who draw redistricting plans compress minority communities into a small number of districts (packing) or spread them thinly into a large number of districts (cracking, fracturing, or splitting). For example, packing can occur when two districts are created with 90% African-American population in both. This kind of packing might be found to violate Section 2 when three African-American majority districts could be drawn if the African-American population was spread out more evenly across three districts instead of being unnecessarily concentrated in two districts.² Conversely, cracking can occur if two districts are created that have 35% Latino population in each. Such splitting could be found to violate Section 2 if, for example, it were possible to place the Latino population into a single district where they would form a majority and could have a better opportunity to elect a candidate of their choice.

Both packing and cracking are illustrative of the kind of actions that can dilute the minority group's vote and deny them an equal opportunity to elect candidates of their choice. Section 2 of the Voting Rights Act can be used either to advocate for or litigate to obtain a more reasonable and fairly drawn plan that better reflects the voting strength of minority voters in a particular area.

²For a recent example, see, e.g., *Bone Shirt v. Hazeltine*, 461 F.3d 1011 (8th Cir. 2006) (rejecting South Dakota's statewide redistricting plan for packing one district with 90% American Indians next door to a district with 30% American Indian population).

What must plaintiffs show in court to demonstrate a violation under Section 2?

Section 2 prohibits states and local governments or jurisdictions (political bodies such as cities, towns, school districts, etc.) from adopting practices, procedures and redistricting plans that dilute minority voting strength. Whether there is a dilution of minority voting strength is governed by the legal principles set forth in the case of *Thornburg v. Gingles*.³ There, the Supreme Court set forth three factors a minority group must prove in order to establish a violation of Section 2 of the Voting Rights Act:

1. that the minority group is sufficiently large and geographically concentrated to make up a majority in a single-member district;
2. that the minority group is politically cohesive—that is, it usually votes for the same candidates; and,
3. that, in the absence of special circumstances, the white majority votes together to defeat the minority's preferred candidate.

If the minority group can establish those three things (known as preconditions), the Supreme Court has said that the next question is whether, under “the totality of the circumstances,” the minority group had less opportunity than other members of the electorate to participate in the electoral process and to elect representatives of its choice.⁴

³478 U.S. 30 (1986).

⁴See, e.g., *Black Political Task Force v. Galvin*, 300 F. Supp. 2d 291, 315 (D. Mass. 2004) (striking down the state's redistricting plan for reducing Black voting strength).



What types of electoral districts impact minority opportunities to elect a candidate of choice?

Majority-Minority Districts: A majority-minority district is one in which racial or language minorities form a majority (at least 50% or more) of the voter eligible population. The definition of eligible voter population varies by state and can include factors such as age (over 18) and U.S. citizenship.

Minority-Coalition Districts: A minority-coalition district is a type of majority-minority district in which two or more minority groups combine to form a majority in a district. Thus, a district that is 25% African-American, 20% Latino and 6% Asian American is a majority-minority district, but it is not a majority African-American, majority-Latino, or majority-Asian American district. In

most jurisdictions, when two or more minority groups form a coalition that collectively meets the *Thornburg v. Gingles* requirements, the coalition may be able to seek relief under Section 2 if officials fail to create a minority-coalition district.⁵ The Supreme Court has not addressed this issue.⁶

Crossover Districts: A crossover district is one in which minorities do not form a numerical majority but still reliably control the outcome of the election with some non-minority voters “crossing over” to vote with the minority group. While states can and should consider creating crossover districts, the Supreme Court in 2009 held that the Voting Rights Act does not require their creation.⁷

Influence Districts: An influence district is one that includes a large number of minority voters but fewer than would allow voters from the minority group to control the result of the election when voting as a bloc. The number or proportion necessary to allow a minority group to influence or shape an election outcome is determined by a review of past elections in your particular area - there is no “magic number.” In the case of influence districts, a sizable minority group can be said to be able to “influence” the outcomes of elections, but not control them.

⁵See, e.g., *Bridgeport Coalition for Fair Representation v. City of Bridgeport*, 26 F.3d 271, 275 (2d Cir. 1994), vacated and remanded on other grounds, 512 U.S. 1283 (1994); *Campos v. Baytown*, 840 F.2d 1240, 1244 (5th Cir. 1988), cert. denied, 492 U.S. 905 (1989); *Badillo v. Stockton*, 956 F.2d 884, 891 (9th Cir. 1992); *Concerned Citizens of Hardee County v. Hardee County Bd. of Comm'rs*, 906 F.2d 524, 526 (11th Cir. 1990); *Nixon v. Kent County*, 76 F.3d 1381, 1393 (6th Cir. 1996) (en banc). See also *Hall v. Virginia*, 385 F.3d 421, 431 (4th Cir. 2004) (disapproving of “multiracial coalitions” in the context of a white-minority coalition).

⁶See *Grawe v. Emison*, 507 U.S. 25, 41 (1993).

⁷See *Bartlett v. Strickland*, 129 S. Ct. 1231, 1249 (2009) (plurality opinion).

Are officials required to draw districts that are less than 50 percent minority?

Section 2 of the Voting Rights Act requires that redistricting officials draw new and preserve existing majority-minority districts when possible but does not require the creation of districts that are less than 50 percent minority. However, the Voting Rights Act certainly does not prevent authorities from drawing districts where minority groups may constitute less than 50 percent of a district. Indeed, creating these districts may be particularly appropriate in communities that have experienced significant growth in their minority population over the course of the last decade. Drawing these districts may fairly recognize increasing minority population that may soon be large enough to constitute a majority-minority district.





Officials should proceed carefully to ensure that they are not altering a district that provides minority voters with a real opportunity to elect candidates of their choice in a way that would render it a mere influence district. Influence districts can be found to dilute minority voting strength if they are put in place to replace effective majority-minority districts.

Are states permitted to create new majority-minority districts?

States are permitted and sometimes required to create new majority-minority districts under the Voting Rights Act to avoid diluting minority voting strength during redistricting. States with significant minority population growth over the course of the last decade, for instance, may need to create new majority-minority districts to ensure that redistricting plans comply with the requirements of Section 2 of the Act. Plans that dilute minority voting strength by failing to create feasible majority-minority districts may be quickly challenged following adoption. Since Section 2 litigation can be both costly and time-consuming, officials in many states set out to draw plans that fairly reflect minority voting strength at the beginning of the redistricting process. The need to comply with Section 2 of the Voting Rights Act to avoid minority vote dilution can serve as a compelling justification for both preserving and creating new majority-minority districts, which helps protect these districts from constitutional attack.⁸

⁸The Supreme Court and several district courts have endorsed the principle that jurisdictions have a compelling interest in complying with the Voting Rights Act during redistricting and that complying with the Act is at least a partial defense against constitutional attack. Most recently, in 2006, in *League of United Latin American Citizens v. Perry (LULAC)*, 126 S. Ct. 2594 (2006), eight Justices agreed that compliance with Section 5 of the Voting Rights Act is a compelling state interest, sufficient to satisfy the strict scrutiny that, under *Shaw v. Reno*, 509 U.S. 630 (1993) and its progeny, applies whenever race is the predominant factor motivating districting decisions. See *LULAC*, 126 S.Ct. at 2643 (Stevens, J., joined by Breyer, J., concurring in part and dissenting in part); *id.* at 2648 n.2 (Souter, J., joined by Ginsburg, J., concurring in part and dissenting in part); *id.* at 2667 (Scalia, J., joined by Roberts, C.J., Thomas, J., and Alito, J., concurring in the judgment in part and dissenting in part). See also *King v. State Bd. of Elections*, 979 F. Supp. 619, 621-27 (N.D. Ill. 1997), *aff'd*, 522 U.S. 1087 (1998) (per curiam); *DeWitt v. Wilson*, 856 F. Supp. 1409, 1413-15 (E.D. Cal. 1994), *aff'd*, 515 U.S. 1170 (1995). Even if a district survives attack on this ground, however, it may still

How can I make the case for the creation of new majority-minority districts in my state?

It is important that information proving the need for the creation of a particular majority-minority district is included in the legislative or redistricting record developed by map drawers, legislators, and community participants. The information can take the form of public hearing testimonials, studies, reports, articles, expert analyses or any other information acceptable to redistricting officials. This information is important in showing that unless a majority-minority district is created, the minority group in question will have less opportunity than other voters to participate in the political process and elect their candidate of choice.⁹ This information should include the following:¹⁰

- Maps demonstrating that reasonably compact majority-minority districts can be drawn.
- An examination of whether voting is racially polarized in your community. You can evaluate racial polarization voting patterns by interviewing community members and candidates who have run for office in your area and through an analysis of election returns. To establish racially polarized voting, you must determine whether minority voters tend to vote for the same particular candidates (minority voters are cohesive) and if white voters tend to vote against the candidate whom minority voters tend to choose (white bloc voting against minority

be vulnerable if a court finds that the plan drawers took race into account more than necessary to comply with the Voting Rights Act (in which case the district will not be “narrowly tailored” to achieve the compelling interest).

⁹See 42 U.S.C. § 1973; *Johnson v. De Grandy*, 512 U.S. 997 (1994); *Gingles*, 478 U.S. 30.

¹⁰See *Gingles*, 478 U.S. at 30; Senate Report accompanying amended Section 2, S. Rep. No. 97-417, at 28-29 (1982), at 28-29, *reprinted in* 1982 U.S.C.A.N. 177, 207. Courts have also included, in the analysis of the totality of circumstances evidence, that neutral, as opposed to racial, factors have caused the polarized voting. See *Vecinos De Barrio Uno v. City of Holyoke*, 72 F.3d 973, 983 (1st Cir. 1995); *United States v. Charleston County*, 365 F.3d 341, 348 (4th Cir. 2004) (distinguishing causation as relevant to the totality inquiry but not the *Gingles* preconditions).



candidates of choice). A political scientist can help you analyze the data and evidence to evaluate racially polarized voting patterns.

- An assessment of the extent to which minority candidates are excluded from nominating processes such as private meetings or caucuses or other processes for placing candidates on ballots.
 - An assessment of the history of discrimination in your community and in the state related to voting, including poll taxes, literacy tests, and similar barriers. You should also include any current, ongoing barriers or limitations placed on minority voters' ability to cast ballots in your community, such as the accessibility of polling places to minority voters and the availability of language translation and other assistance at the polls.
 - A list of the electoral practices that have been shown to have a discriminatory impact on the ability of minority voters to cast an effective vote and that are used in the jurisdiction, including majority-vote requirements and restrictions against single-shot voting.¹¹
 - An assessment of the history of discrimination in your community and in the state against minorities in areas such as education, employment, and health. You should also include any current, ongoing discrimination in these areas.
- An assessment of the social and economic disparities between minorities and non-minorities in your community and the state in areas such as education, employment and health.
 - Examples of overt or subtle appeals or references to race that have been made in relatively recent elections, such as a reference to a minority candidate's racial background or the inclusion of a photograph of a minority candidate in his/her opponent's advertising. Such examples are usually found in newspaper accounts of elections and in the candidate advertising.
 - A record of the electoral successes and losses suffered by candidates of choice of minority voters and how many of these successes and losses occurred when the minority candidates ran in a majority-minority district.
 - Any lack of responsiveness of the governing body being redistricted, such as the city council or county commission, to the needs of the minority community.
 - An assessment of how tenuous a jurisdiction's policy reason may be for not creating majority-minority districts.

Are there any court opinions interpreting Section 2 of the Voting Rights Act that will affect redistricting in 2011?

The rules governing redistricting and the protection of minority voting rights have evolved since the last redistricting cycle. In particular, two Supreme Court cases have a particularly significant impact on the 2011 redistricting cycle.

¹¹When used in connection with at-large elections, both majority vote requirements (when a candidate must receive the majority of the votes cast to win an election) and anti-single shot provisions (preventing opportunities for voters to select a single candidate in a multi-candidate race) can prevent opportunities for minorities to aggregate their votes and elect a candidate of choice.

***Bartlett v. Strickland* and Section 2:** The Supreme Court’s 2009 ruling in *Bartlett v. Strickland* affects the population threshold that must be met to state a Section 2 vote dilution claim.¹² In *Bartlett*, the Court decided that Section 2 of the Voting Rights Act does not require the drawing of districts in which racial minorities would make up less than 50 percent of the voting age population of a district. The Court’s ruling establishes that crossover districts are not required by Section 2.

Communities should, however, continue to advocate for districts that would provide a geographically concentrated minority population an opportunity to elect candidates of choice even when such districts might fall short of the 50 percent requirement. Such advocacy can help ensure that the final plan fairly reflects minority voting strength. Indeed, in *Bartlett*, the Court noted that officials who redraw district lines retain discretion to create crossover districts that provide minorities with an opportunity to elect a candidate of choice even if the minority population falls short of the 50 percent requirement. In addition, *Bartlett* does not address whether a Section 2 claim may be brought by two or more minority groups that are unable to meet the 50 percent threshold alone but can collectively meet the *Thornburg v. Gingles* requirements when their populations are combined; as a result, nothing prevents officials from drawing such districts.

Additionally, Section 2 continues to protect minority communities of all sizes from purposeful discrimination.¹³ For example, a jurisdiction that specifically targets and dismantles crossover districts could find itself subject to a challenge that its redistricting plan was drawn with a discriminatory purpose. Redistricting plans that are infected with a discriminatory

purpose can also be found to violate Section 2. Finally, some jurisdictions are subject to the special protections provided by the Section 5 preclearance provision of the Act, as described in Chapter 5. Section 5 may prevent the dismantling of districts with substantial numbers of minority voters.

***LULAC v. Perry* and Section 2:** The Supreme Court’s 2006 decision in *League of United Latin American Citizens v. Perry* (“*LULAC*”) clarified that partisan justifications are not acceptable explanations for minority vote dilution. In *LULAC*, the Court found that the state legislature wrongfully dismantled a Latino majority voting district to protect an incumbent when the district contained substantial numbers of politically cohesive minority voters who were growing in size and were poised to oust the incumbent. The Court emphasized the fact that it was only when Latinos had organized into a cohesive group and gained in population enough to defeat the incumbent that the state divided them.¹⁴ The Court also rejected the state’s proposed trade-off: a district that would offset the loss of the majority minority district by combining two Hispanic communities 300 miles apart elsewhere in the state. The court emphasized that this trade-off district did not offset the resulting voting dilution in the district at issue because of both the distance between the two Hispanic communities that were joined and the differences in their “needs and interests.”¹⁵

LULAC v. Perry clarifies that state legislatures cannot resort to certain redistricting criteria, such as incumbency protection, to justify dilution of minority voting strength. Jurisdictions must vigilantly comply with the Voting Rights Act during redistricting, and officials will not be able to use most traditional districting principles as an excuse for their failure to do so.¹⁶

¹²129 S. Ct. 1231 (2009).

¹³See *Bartlett v. Strickland*, 129 S. Ct. 1231, 1246 (2009).

¹⁴See *Supra* note 8.

¹⁵*Id.* at 435.

¹⁶*Id.*



Chapter 5

Section 5 of the Voting Rights Act and Redistricting

The previous chapter discussed the importance of Section 2 of the Voting Rights Act to redistricting. This chapter focuses on Section 5, another very important part of the Act, which also provides critical protections for the rights of minority voters. Unlike Section 2, which applies nationwide, Section 5 of the Voting Rights Act applies only to “covered jurisdictions.” “Covered jurisdictions” are states, towns or counties with an egregious history of discrimination against minority voters. Section 5 requires that officials seek preapproval of any voting change in these jurisdictions from the Department of Justice (DOJ) or the District Court of the District of Columbia before it can be implemented, a process known as “preclearance.” The Section 5 preclearance provision of the Voting Rights Act has helped eliminate barriers to political participation and provided greater levels of access to minority voters.

Section 5 will most certainly play an important role throughout the covered jurisdictions during the 2011 redistricting cycle. Those areas that are covered by Section 5 must have their redistricting plans approved by DOJ or the District Court of the District of Columbia before they can be in effect.

What does Section 5 require?

Section 5 requires covered jurisdictions to submit proposed voting changes to DOJ or the District Court of the District of Columbia for preclearance prior to their implementation. Section 5 also prohibits covered jurisdictions from adopting voting changes with a discriminatory purpose or with a retrogressive effect.¹ A change is retrogressive if it puts minorities in a worse position than if the change did not occur. For example, a redistricting plan might be deemed to worsen the position of minority voters if it contains only one majority-minority district where it previously contained two. A plan might also worsen the position of minority voters if the minority population percentage of a district is reduced to a level that will make it more difficult or impossible for minority voters to continue to elect candidates of their choice. In these

¹See *Reno v. Bossier Parish Sch. Bd. (Bossier II)*, 528 U.S. 320 (2000); *Richmond v. United States*, 422 U.S. 358, 378-79 (1975); *Beer v. United States*, 425 U.S. 130, 140-42 (1976); *Rome v. United States*, 446 U.S. 156, 172 (1980); *Busbee v. Smith*, 549 F. Supp. 494, 516-17 (D.D.C. 1982), *aff'd*, 459 U.S. 1166 (1983); *Wilkes County v. United States*, 450 F. Supp. 1171, 1177 (D.D.C. 1978); 28 C.F.R. § 51.54.



cases, through the Section 5 preclearance process, these kinds of discriminatory redistricting plans may not be approved and cannot be implemented in the covered jurisdiction.

What is preclearance?

The process of seeking review for voting changes is commonly referred to as “preclearance.” Preclearance can be obtained from DOJ or the United States District Court for the District of Columbia (the federal court in Washington, DC).² For several reasons, including cost and convenience, jurisdictions tend to seek preclearance through the administrative process conducted by DOJ rather than through litigation in the district court. If a jurisdiction fails to obtain preclearance for the change, DOJ or private individuals can bring a Section 5 enforcement action to stop the jurisdiction from implementing or enforcing the change until preclearance is obtained.³

What is a “covered jurisdiction?”

Places that must submit voting changes for preclearance under Section 5 are referred to as “covered jurisdictions.” These covered jurisdictions are states, towns, or counties with an egregious history of discrimination against minority voters. Because of the long history and continued pattern of voting discrimination in these covered jurisdictions, Section 5 requires that the officials submitting the change prove that the submitted change is not intentionally discriminatory and will not have a discriminatory effect on minority voters.⁴



²See 42 U.S.C. § 1973c; 28 C.F.R. § 51.1.

³For more information regarding Section 5 preclearance process and information on the way that communities can play a role in the process, see Kristen Clarke, NAACP Legal Defense and Educational Fund, Inc., *Tearing Down Obstacles to Democracy & Protecting Minority Voters (August 12, 2008)*, available at http://www.naacpldf.org/content/pdf/vra/Tearing_Down_Obstacles_Manual.pdf.

⁴See *Bossier II*, 528 U.S. 320; (covered jurisdiction has burden of proof under Section 5); *Georgia v. United States*, 411 U.S. 526, 538 (1973) (same); 28 C.F.R. §§ 51.52(a) (same). This is very different than Section 2, which requires voters to prove that an electoral system is discriminatory.

The following States are covered by Section 5:

Alabama
Alaska
Arizona
Georgia
Louisiana
Mississippi
South Carolina
Texas
Virginia⁵

Only certain Counties or Towns in the following states⁶ are covered under Section 5:

California
Florida
Michigan
New Hampshire
New York
North Carolina
South Dakota

It must be noted, however, that even if only a part of a jurisdiction is covered by Section 5, congressional and state legislative redistricting plans for the entire state must be submitted for review.⁷

What must a covered jurisdiction do under Section 5?

Covered jurisdictions are required to submit for preclearance all voting changes such as redistricting plans, the relocation of a polling place, changes affecting voter registration, changes in language assistance for jurisdictions also covered under Section 203, and changes affecting eligibility or qualifications for voting and running for office. If DOJ or the district court determines that the changes are discriminatory, it will not approve the changes and officials must propose alternatives that are not discriminatory.

When will Section 5 apply during redistricting?

At the conclusion of the redistricting process, when legislative plans have been finalized, a covered jurisdiction must submit the plan to the federal government for review. A covered jurisdiction should also submit for review any rules or procedures related to redistricting that may have changed since the last redistricting cycle. If you learn that a covered jurisdiction has



not made a required submission, you should contact one of our organizations or the DOJ immediately.

How does a jurisdiction obtain administrative preclearance for a redistricting plan or other voting change?

To begin the administrative process, a Section 5 covered jurisdiction will submit the voting change to DOJ. DOJ will then determine if the change was adopted with a discriminatory intent or will have a discriminatory effect. DOJ has 60 days to review the change and could either decide (1) that the change is not discriminatory and approve or “preclear” the change, or (2) that the jurisdiction has failed to show that the change is not discriminatory and disapprove or “object” to the change.

How can individuals and communities provide public comment and participate in the Section 5 preclearance process?

DOJ invites interested individuals and community groups to participate in the Section 5 review process. Your goal in participating in the Section 5 review process should be to assist DOJ in making a decision that will best protect your community’s voting rights. This may include writing a Comment Letter encouraging DOJ to object to a proposed change that is discriminatory. Your Comment Letter to DOJ

⁵A number of jurisdictions in Virginia have successfully moved to terminate their responsibilities under Section 5 through a process called “bailout.” Those jurisdictions include the Counties of Augusta, Essex, Frederick, Greene, Pulaski, Roanoke, Rockingham, Shenandoah, Warren and Botetourt and the Cities of Fairfax, Harrisonburg and Salem and Winchester.

⁶See Appendix 1 for the counties and towns subject to Section 5 in these states.

⁷See *Lopez v. Monterey County*, 525 U.S. 266 (1999); 28 C.F.R. §§ 51.2, 51.6.

should include your perspective regarding the facts and process leading up to the creation and adoption of the proposed redistricting plan or other voting change. Our organizations frequently work with citizens and local groups in the covered jurisdictions to prepare Comment Letters outlining concerns regarding pending voting changes. In preparing Comment Letters, your organization or community should be mindful of the following steps:

- First, inform yourself about the change by participating in and collecting detailed information about the process that led to the creation of the redistricting plan or any applicable voting change. Helpful information may be obtained by attending public hearings, by thoroughly reviewing records or minutes of the governmental body that instituted the change, by gathering information from local newspapers and other media, and by engaging in conversations with voters affected by the change.
- Second, under the Freedom of Information Act (FOIA), request a copy of the proposed submission from DOJ or the local government office seeking approval for the change (such as your local school board, board of supervisors, or county commissioners). You can submit a FOIA request to the DOJ by email at voting.section@usdoj.gov.
- Third, let DOJ know what you think by submitting a Comment Letter regarding the change. The DOJ has established a single address for the receipt of all United States Postal Service mail, including certified and express mail. All mail to the Voting Section must have the full address listed here:

Chief, Voting Section
 Civil Rights Division
 Room 7254 - NWB
 Department of Justice
 950 Pennsylvania Ave., N.W.
 Washington, DC 20530

Deliveries by overnight express services such as Airborne, DHL, Federal Express or UPS should be addressed to:

Chief, Voting Section
 Civil Rights Division
 Room 7254 - NWB
 Department of Justice
 1800 G St., N.W.
 Washington, DC 20006

You can also call DOJ with your comments at 1-800-253-3931 or arrange to meet with DOJ to discuss the proposed voting change. Finally, you may check the status of DOJ's review of the change by logging on to the Voting Section's website at www.usdoj.gov/crt/voting/.

- Fourth, after DOJ has made its determination, you should ask DOJ or local officials for a copy of DOJ's decision. If you have participated in the Section 5 process, DOJ should send you a copy of its decision.

When must the public submit its comments on a Section 5 submission?

Comment Letters concerning changes may be sent at any time. However, given the 60-day review period, it is important to share your views regarding voting changes as soon as possible and with enough time for DOJ to consider your comments before the expiration of the review period.



What information should the public provide to DOJ during the Section 5 process?

- An assessment that the proposed plan has a discriminatory effect or that the plan is retrogressive, such that minority voters are in a worse position under the new plan than under the existing plan.
- A detailed description of community support for your position. Be certain that your letter describes the views of others in your community who may share your concerns about the proposed change. For example, you could include a petition bearing signatures from individuals or local community groups. If possible, provide contact information for other members of your community who might be contacted to help further aid DOJ's analysis of the voting change.
- Direct evidence of any discriminatory purpose that may underlie the adoption of the redistricting plan. The most direct evidence of discriminatory purpose includes statements from those officials who adopted the change. Thus, it is important to thoroughly review the legislative or administrative history of the redistricting decision, including statements by the members of the governing body, minutes of their meetings and public hearings, and any testimony by the decision makers regarding their intentions in creating the redistricting plan and any assessment of the plan's potential impact on minority voters.
- If no direct evidence can be found, you may still be able to establish that a voting change was adopted with a discriminatory purpose through circumstantial evidence. You may find such evidence in the historical background of the redistricting decision, including any alternative plans proposed by the community and the redistricting body's response to those alternatives. You may also discuss the steps taken to create the proposed plan and specific examples, if any, of instances where the redistricting body altered their normal redistricting process from past practices. For example, you could include information regarding whether public or private hearings were held and if your community was given the opportunity to participate.

Can precleared redistricting plans be subject to challenge on other grounds?

A decision by DOJ to preclear a redistricting plan or other voting change is final and cannot be challenged in court. This means that a DOJ decision to preclear a voting change cannot be appealed.

However, a redistricting plan or other voting change that is precleared may be subject to a legal challenge on other grounds. For example, a redistricting plan may be precleared under Section 5 but could still be challenged under Section 2 of the Voting Rights Act if the plan dilutes minority voting strength. The reach of Section 5 is limited in that it only bars the implementation of changes that have a discriminatory purpose or changes that worsen the position of minority voters. However, other federal or state laws may provide a source of relief. Contact any of our organizations to discuss the other forms of relief that may be pursued in these instances.

Are there any changes to Section 5 of the Voting Rights Act that will affect redistricting in 2011?

In 2006, Congress voted to reauthorize the Section 5 preclearance provision. During the reauthorization, Congress made several changes to Section 5 that helped to clarify its intent regarding the kinds of voting changes deemed to worsen minority voting strength. Congress also made clear the standard for determining when minority voters have the ability to elect candidates of choice. It is important that officials be made aware of these changes to Section 5 during the 2011 redistricting cycle, if they are not already.

While redistricting involves a number of factors and requires the balance of many competing interests, the protection of minority voting rights under Section 5 is still the law and a critical component of any successful redistricting process.

Can jurisdictions terminate their Section 5 obligations?

Some covered jurisdictions may move to terminate their responsibilities under Section 5 by seeking what is referred to as a "bailout." A jurisdiction may seek a bailout by filing a legal action (declaratory judgment action) in the District Court of the District of Columbia. Jurisdictions seeking to bail out must demonstrate the absence of racial discrimination in voting by satisfying certain criteria and by receiving no objections from the DOJ to preclearance requests for ten years. For a number of decades, the ability to bail out was limited to "political subdivisions," which the Act defines as "any county or parish... [or] any other subdivision of a State which conducts registration for voting."⁸ However, in June 2009, the Supreme Court ruled that political subunits, including school boards, water districts, utility districts and city councils, among others, could apply to bail out under the Act.⁹

⁸42 U.S.C. § 1973l(c)(2).

⁹*Nw. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S., 129 S. Ct. 2504 (2009).



Language Assistance at the Polls and the Voting Rights Act

The right to vote is a fundamental right guaranteed to all citizens of the United States. Many citizens, however, especially those who are recently-naturalized, are not fully proficient in English and, thus, cannot effectively participate in the electoral process. Barriers to understanding voting materials, such as voter registration forms, ballots and complicated referenda issues that appear on ballots, can discourage many citizens from exercising their right to vote.



Recognizing the link between language barriers and low voter turnout, Congress enacted Section 203 of the Voting Rights Act in 1975. Section 203 requires certain counties and jurisdictions to provide bilingual voting materials in communities with language minorities and limited-English proficient residents. Congress reauthorized and strengthened Section 203 in 1992 to make bilingual assistance at the polls a reality for thousands of additional “language minority” voters and again reauthorized it recently in 2006.¹ By enacting Section 203, Congress recognized that many minority citizens were not exercising their fundamental right to vote due to high illiteracy rates and unequal educational opportunities.²

Another important section of the Voting Rights Act is Section 4(e), which prohibits denying the right to vote on the basis

¹The Voting Rights Act defines a “language minority group” to mean “persons who are American Indian, Asian American, Alaskan Natives or of Spanish Heritage.” 42 U.S.C. §1973aa-1a(e).

² 42 U.S.C. §1973aa-1a(a).

of English literacy tests for persons educated in American-flag schools where the predominant language is not English.³ This section applies to persons including those living in American territories or the Commonwealth of Puerto Rico who are eligible to vote as U.S. citizens but were not educated in the English language. Section 4(e) prohibits persons who successfully complete the sixth grade in schools accredited by any state or territory or the Commonwealth of Puerto Rico, among others, from being denied the right to vote in local, state or federal elections because of the lack of English skills.⁴

In addition, some citizens are unable to effectively participate in the voting process because of illiteracy, disability, or blindness. Section 208 of the Voting Rights Act provides another valuable resource for voters who face these challenges, by allowing such voters to receive assistance in the voting booth from a person of the voter’s choice. In addition, voters who experience difficulty with the English language and who do not have access to translated election materials can receive assistance in their primary language under Section 208.

What does Section 203 of the Voting Rights Act do?

Section 203 requires certain jurisdictions to provide language assistance to voters through the following means:

- Translations of written materials such as ballots, petitions, registration materials and other information critical to exercising the right to vote.⁵
- Additionally, to the extent that the jurisdictions utilize technology to provide English information to voters, such as websites designed to educate voters, they must do the same for the covered languages.
- Oral assistance by bilingual employees and trained interpreters who staff poll sites and assist with voter registration.⁶

³42 U.S.C. §1973b(e).

⁴See *Katzenbach v. Morgan*, 384 U.S. 641 (1966).

⁵28 C.F.R. §§ 55.15, 55.19.

⁶28 C.F.R. §§ 55.18(e), 55.20.

- Outreach to local community-based organizations that work with and have a connection to the covered communities, including promoting the availability of language assistance at the polls, recruiting for bilingual poll workers, and assessing the efficacy of the jurisdiction's proposed language assistance plan.
- Publicity regarding the availability of bilingual assistance through notices at voter registration and polling sites, announcements in language minority radio, television and newspapers, and direct contact with language minority community organizations.⁷

When is a jurisdiction required to comply with Section 203 of the Voting Rights Act?

In 1992, after extensive national advocacy by a broad coalition of civil rights groups, Congress reauthorized Section 203 for a period of fifteen years and made several helpful amendments. Under the amendments, communities may qualify for language assistance by (1) meeting a numerical benchmark of 10,000 or 5% of the citizen voting age population, (2) demonstrating the requisite level of limited English proficiency, and (3) establishing that the language group in the jurisdiction has a higher illiteracy rate than the national average.⁸ This amendment has made it possible for Asian Americans, American Indians, Alaskan Natives and additional Latino voters to receive the benefits of Section 203.

In 2006, Congress renewed Section 203 for another twenty-five years (until 2032) based on evidence of continued discrimination. This development ensures continued access to the ballot box for many of this country's non-English speaking minority citizens.

Currently, which jurisdictions are obligated to provide language assistance under Section 203?

There are 296 jurisdictions that are required to provide language assistance under Section 203 of the Voting Rights Act.⁹ Language assistance may have to be provided in Spanish, American Indian, Alaskan Native and several Asian languages depending on the needs of the community.¹⁰



Some jurisdictions have provided language assistance voluntarily with the encouragement of civil rights and advocacy organizations, even though they are not legally required to do so. For example, the advocacy efforts of the Asian Pacific American Legal Center (APALC), an affiliate of the Asian American Justice Center (AAJC), led Los Angeles County to provide language assistance in Korean in the 1990s, prior to its coverage.

Even with the language assistance provisions of the VRA, a recent U.S. Government Accountability Office (GAO) report determined that election officials continue to face challenges in providing language assistance in voting. These challenges include difficulties in recruiting and ensuring quality performance by bilingual poll workers, targeting bilingual voting assistance in the appropriate precincts, designing and translating materials, and allocating sufficient resources to provide bilingual assistance.¹¹

What rights do voters have to bring someone into the voting booth to help them read their ballot?

Section 208 of the Voting Rights Act was added in 1982 to ensure that voters get the assistance they may need in order to cast a ballot. Section 208 protects those voters who need assistance because of “blindness, disability, or inability to read or write.”¹² This provision allows these voters to take a person

⁷28 C.F.R. § 55.20.

⁸42 U.S.C. § 1973aa-1a(b). This demographic information shall be based on the American Community Survey data.

⁹U.S. Government Accountability Office, *Bilingual Voting Assistance: Selected Jurisdictions' Strategies for Identifying Needs and Providing Assistance*, January 2008. <http://www.gao.gov/new.items/d08182.pdf>.

¹⁰*See* Voting Rights Act Amendments of 1992, Determinations Under Section 203, 67 Fed. Reg. 144 (July 26, 2002), available at, http://www.justice.gov/crt/voting/sec_203/203_notice.pdf.

¹¹*See Supra* note 9.

¹²42 U.S.C.A. § 1973aa-6.



of their choice into the voting booth to assist with the voting process. Section 208 has been applied to language minorities and has been an effective tool for groups that are not covered by Section 203.

Section 208 was recently used in Florida during the 2000 presidential election when poll workers in Florida denied Haitian American voters the opportunity to receive voting assistance from persons who were bilingual in Creole and English. As a result of a successful legal challenge brought under Section 208, the county retrained poll workers, launched a voter education campaign, and sent bilingual poll workers to targeted precincts where Creole language assistance was required.¹³

How is Section 2 of the Voting Rights Act used to assist language minorities?

Section 2 of the Voting Rights Act can also be used to enforce minority language rights when a jurisdiction's failure to provide language assistance results in the denial or abridgement of the right to vote on account of membership in a language minority group resulting in denying them an equal opportunity to participate in the political process and to elect representatives of their choice. For example, in 2005, the DOJ filed a legal action against the City of Boston for using election practices that discriminated against Latino, Chinese and Vietnamese citizens and that denied their right to vote, in violation of the Voting Rights Act (Section 203 for Latino voters and Section 2 for Chinese and Vietnamese voters). The City of Boston had, among other violations, failed to make available bilingual personnel to assist language minority voters, failed to provide provisional ballots, and refused requests by language minority voters to use individuals of their choice to assist them by translating the ballot. This lawsuit was successfully resolved when the parties reached an agreement that included requiring the City to consult with relevant community groups regarding translation of election materials and procedures and providing for the appointment of federal examiners to monitor the elections.

¹³ *United States v. Miami-Dade County*, No. 02-21698, (S.D. Fla. June 17, 2002) (Consent Order).

Do Latino and Asian American voters benefit from language assistance at the polls?

Yes. Asian American and Latino voters have indicated that the provision of language voting assistance makes them more likely to participate in the electoral process.

In APALC's Los Angeles exit polls in 2008, 56% of Korean voters, 26% of Chinese voters, 28% of Filipino voters, and 53% of Vietnamese voters used language assistance.¹⁴ In an Asian American Legal Defense Fund (AALDEF) sponsored exit poll in New York, New Jersey, Massachusetts, Rhode Island, Michigan, Illinois, Pennsylvania and Virginia in 2004, 41% of Asian Americans expressed that they were limited-English proficient, while 14% identified English as their native language. Almost a third (38%) of all respondents who needed some form of language assistance to vote were first-time voters.¹⁵

The need for bilingual voting assistance can also be reflected in the number of requests received by county registrars when there is adequate outreach and publicity of the availability of language assistance. For example, Los Angeles County received over 6,000 requests for assistance in Chinese, Japanese, Tagalog and Vietnamese for the 1993 elections. By the November 2008 elections, the number of requests had increased to over 195,000 in Chinese, Japanese, Tagalog, Vietnamese, Korean and Spanish, increasing to almost 200,000 by September 2009.¹⁶

Inadequate language assistance at polling places continues to also be a problem for Spanish speaking voters. According to the

¹⁴ Asian Pacific American Legal Center et al., *Los Angeles County's Asian American And Pacific Islander Vote, 2008 Presidential Election Preliminary Findings From The 2008 Southern California Voter Survey*, (November 2008), available at <http://demographics.apalc.org/wp-content/uploads/2008/11/2008-11-06-pr-voter-survey-prelim-full.pdf>.

¹⁵ Asian American Legal Defense Fund, *The Asian American Vote: A Report on the AALDEF Multilingual Exit Poll in the 2004 Presidential Election*, at 4, 5, 7 (2005) available at <http://www.aaldef.org/docs/AALDEF-Exit-Poll-2004.pdf>

¹⁶ Los Angeles County Registrar-Recorder Multilingual Voter Requests (on File from 1993-September 2009), available at the Office of the Elections Program Coordinator, Los Angeles County, California.



results of a 2006 national election hotline for Spanish language voters sponsored by the National Association of Latino Elected and Appointed Officials Educational Fund, almost 25% of all documented complaints resulted from a lack of Spanish language assistance at polling places.¹⁷ Without the language assistance provisions of the Voting Rights Act many jurisdictions would not provide language assistance to voters.

Aside from Sections 203 and 208 of the Voting Rights Act, are there state laws that provide assistance to language minority voters?

Yes. Several states, including California, Colorado and Florida, have enacted laws that provide additional protections for language minority voters.¹⁸ For example, California law requires all polling sites to include Spanish translations of the ballot, ballot measures and ballot instructions, unless the jurisdiction

¹⁷ See NALEO Educational Fund, “Latino Voters Face Significant Challenges at Polls During Elections 2006,” available at www.calvec.org/latf/cf%7BOB971047-D03E-4C61-845A-E9A2BE44A3D1%7D/VOCESNOV06_LATINOEELECTIONDAY_RPRTFIN.PDF

¹⁸Jocelyn Friedrichs Benson, *Towards Full Participation: Solutions for Improvements to the Federal Language Assistance Laws*, 2 *Advance J. Am. Const. Soc’y L. & Pol’y* 123 (Spring 2008), available at http://www.aclaw.org/Advance%20Spring%2008/Benson_Towards%20Full%20Participation.pdf.

must already provide this information under Section 203 of the Voting Rights Act.¹⁹ California law also allows for translation of these materials into other languages if there is “a significant and substantial need.”²⁰ In both California and Colorado, where 3% of the voting age citizens are limited-English proficient, local jurisdictions must provide language assistance in the form of translated election materials or bilingual staff.²¹

Is providing language assistance materials expensive?

No. The costs of compliance are modest, to the extent that costs are incurred. In 2005, a majority of covered jurisdictions incurred no additional costs for written or oral language assistance. As for jurisdictions that did incur additional costs as a result of providing language assistance, the costs were minimal overall, comprising less than 1.5% of total election costs for oral assistance and less than 3% of total election costs for written assistance.²²

Why do we need language assistance in voting? Aren’t all United States citizens, even naturalized citizens, expected to be proficient in English?

Voting is a fundamental right, and no citizen should be denied the right to vote because they do not understand English perfectly. Although the citizenship exam requires individuals to demonstrate a certain level of English proficiency, it may not be enough to enable voters to decipher complex referenda or voter initiatives. Furthermore, certain persons are exempt from English literacy requirements when applying for citizenship, including older applicants who have resided in the United States for a long period of time and persons who are physically or developmentally disabled. Even native speakers of English are often confused by the legal language contained in referenda and initiatives. Translating these materials into another language greatly aids those who may speak English well but are unable to accurately understand what is stated in voting materials.

How does the government monitor compliance with Sections 203 and 208?

The Civil Rights Division of DOJ enforces compliance with Sections 203 and 208. When jurisdictions fail to comply with Sections 203 or 208, DOJ may bring a civil action to enforce compliance. DOJ may also enter into a settlement agreement that outlines the steps a jurisdiction must take to comply with the law. These agreements may include details such as the

¹⁹Cal. Elec. Code § 14201(a)(1).

²⁰*Id.*

²¹Cal. Elec. Code § 14201(c); Col. Rev. Stat. Ann. § 1-2-202(4).

²²See Dr. James Thomas Tucker & Dr. Rodolfo Espino, *Minority Language Assistance Practices in Public Elections* at 80 (2006), [http://www.ucdc.edu/faculty/Voting_Rights/Papers/16%20%20Tucker%20&%20Espino%20\(Partial\).pdf](http://www.ucdc.edu/faculty/Voting_Rights/Papers/16%20%20Tucker%20&%20Espino%20(Partial).pdf)

number of bilingual poll workers required and where they should be placed. Finally, in Section 5 jurisdictions, DOJ will also analyze changes concerning minority language assistance to determine whether the proposed voting change has a retrogressive effect. *See* Chapter 5 to learn more about Section 5 of the Voting Rights Act.

Civil rights groups such as MALDEF, AAJC, and LDF have also monitored compliance with Section 203 and Section 208 and brought problems to DOJ's attention. For example, in recent years, AAJC and its affiliates have prepared reports and updates on how the following jurisdictions are complying with Section 203: Cook County, IL; Harris County, TX; King County, WA; Los Angeles County, CA; Orange County, CA; San Diego County, CA; San Mateo County, CA; and Santa Clara County, CA.

In addition, community members can report deficiencies in providing language assistance directly to DOJ and request an investigation. Collected data can also support a claim of vote denial under Section 2 of the Voting Rights Act. *See* Chapter 4 to learn more about Section 2 of the Voting Rights Act.

Moreover, the Help America Vote Act of 2002 (HAVA) established the U.S. Election Assistance Commission (EAC) to serve as a national clearinghouse for resources to administer federal elections, including tools for assisting limited-English proficient voters.²³ HAVA also requires the EAC to periodically study access to voting for non-English speaking voters and provides federal funds to assist states in complying with the provision on language assistance.

²³For example, the EAC has translated the national voter registration form into Spanish and other Asian languages. The National Voter Registration Act ("NVRA") requires that states accept the national voter registration form. The form is available at http://www.eac.gov/voter_resources/register_to_vote.aspx.

Chapter 7

The Impact of Census Data and Policies on Redistricting

The connection between redistricting and the census goes back to the founding of this nation and is grounded in the Constitution. In fact, the census was created to determine the number of people living in each state in order to apportion the seats in the United States House of Representatives among the various states according to their population. Apportionment will occur again in 2010.

Early in 2011, the U.S. Census Bureau will release population data reflecting race/ethnic origin and voting age as collected during the 2010 Census. This data is called the Public Law 94-171 data and is sometimes referred to as the “PL data.” Additional census data is provided through the American Community Survey, discussed below. Jurisdictions will use census data to draw new district lines, and the Department of Justice will use the same data to help to evaluate whether a redistricting plan discriminates against minorities during its Section 5 review process. (See Chapter 5 for more information on how census data is used in the Section 5 review process.) The same data will be used to help to determine whether a Section 2 violation exists. (See Chapter 4 for more information on Section 2.)

This chapter reviews several key census issues that will affect the 2011 redistricting cycle, including the new American Community Survey and how and where prisoners are counted during the census.

What is the decennial census?

The decennial census is a count of the entire U.S. population that occurs once every ten years. During this time, the Census Bureau sends out survey forms to all households and uses the result of data from these forms to determine the official population count of the United States. Through the census, the Census Bureau is also able to collect basic population information, such as age, gender, race, and Hispanic origin, for the different states and counties.

The data obtained through the decennial census is specifically collected for the purpose of apportionment and redistricting. It is used to determine the number of seats each state will receive in the U.S. House of Representatives for a ten year period, whether the population is equally divided among districts, and whether districts comply with the Voting Rights Act.



Does the decennial census include the long form?

In the past, the Census Bureau distributed a short form to all households nationwide and a long form to a random sample of one in six households. After the 2000 Census, the Census Bureau discontinued the use of the long form and replaced it with the American Community Survey (“ACS”). While 100 percent of households receives the short form, only a small subset of the population receives the ACS.

What is the American Community Survey?

The ACS is part of the Census program but does not serve the same purpose as the census. Unlike the census, which takes a snapshot of the entire population once every ten years, the ACS is designed to provide a continuous update on population data over a ten-year period and is designed to provide an estimate of the characteristics of a geographic area after the decennial census is taken. ACS forms are sent to a sampling of households (approximately 3 million housing unit addresses annually), with surveys being mailed out on a monthly basis.

Are the data sets provided by the ACS and the long form different?

ACS data are not exactly the same as data once collected by the long form. First, the ACS intends to provide data *over* ten years as compared to the census data gathered from the long form, which used to be collected only at the beginning of each decade. More specifically, the ACS is designed to provide period estimates, which describe the average characteristics of a geographic area over the entire period of data collection. One-year, three-year, and five-year estimates are available through the ACS.

What information does the ACS collect?

The ACS asks detailed questions regarding specific characteristics of the American population and will provide data on the following subjects:

Table 1. Subjects Included in the American Community Survey

Demographic Characteristics	Social Characteristics	Housing Characteristics
Age	Marital Status and Marital History*	Year Structure Built
Sex	Fertility	Units in Structure
Hispanic Origin	Grandparents as Caregivers	Year Moved Into Unit
Race	Ancestry	Rooms
Relationship to Householder (e.g., spouse)	Place of Birth, Citizenship, and Year of Entry	Bedrooms
Economic Characteristics	Language Spoken at Home	Kitchen Facilities
Income	Educational Attainment and School Enrollment	Plumbing Facilities
Food Stamps Benefit	Residence One Year Ago	House Heating Fuel
Labor Force Status	Veteran Status, Period of Military Service, and VA Service- Connected Disability Rating*	Telephone Service Available
Industry, Occupation, and Class of Worker	Disability	Farm Residence
Place of Work and Journey to Work		Financial Characteristics
Work Status Last Year		Tenure (Owner/Renter)
Vehicles Available		Housing Value
Health Insurance Coverage*		Rent
		Selected Monthly Owner Costs

*Marital History, VA Service-Connected Disability Rating, and Health Insurance Coverage are new for 2008.
Source: U.S. Census Bureau.

What should be considered if using ACS data for redistricting purposes?

ACS data provides valuable characteristics about the communities that we live in.¹ Specifically, ACS provide socio-economic data of communities, such as poverty, education level, income, language ability, and citizenship.

A number of states will likely rely upon ACS data for redistricting purposes. There are some considerations that should be taken into account when using ACS data for redistricting.

- ACS data may be able to support the argument that a particular community shares common characteristics. This may be helpful in advocating that officials preserve a “community of interest” when redistricting occurs. (For further discussion about communities of interest, see Chapter 2.)
- When comparing ACS data with decennial census data, officials and experts will need to consider the statistical methodology before drawing conclusions about the characteristics of the actual population count.

¹ACS data is not the same as the population count, which is taken from the decennial census.



- ACS data that is provided on a one-year estimate is done so for geographic areas that have a population of at least 65,000. A three-year estimate is available for geographic areas that have a population of at least 20,000 people. Demographic information, including housing, social, and economic characteristics, is only available at the block group level when the ACS data delivers a five-year estimate. 2010 is the first year that the ACS will deliver a five-year estimate.
- It is important to note that the Census Bureau advises that ACS estimates should only be compared to those of the same duration. That is, one-year estimates should only be compared to other one-year estimates, three-year estimates to three-year estimates, and five-year estimates to five-year estimates.

PRISONERS & THE CENSUS COUNT

A major issue with respect to the census and redistricting has been how and, more importantly, where prisoners are counted during the decennial census. Under residence rules that govern where people are counted in the decennial census, prisoners are counted at their places of incarceration on Census Day, not at their home addresses. This becomes a significant problem in the context of redistricting because prisoners are not usually incarcerated in the same community as where they actually reside. This residence rule skews the balance of political power by inflating the population counts of communities where prisons are located by including the non-voting prison populations in these districts during the redistricting process.

Over the last several decades, the percentage of Americans incarcerated in prisons has increased four-fold.² Incarcerated persons are often held in areas that are geographically and demographically far removed from their home communities. For instance, although non-metropolitan counties contain only 20% of the national population, they host 60% of new prisons.³

In addition, because Latinos and African Americans are incarcerated at three to seven times the rate of Whites,⁴ where incarcerated people are counted has tremendous implications for how African-American and Latino populations are reflected in the census, and, consequently, how these communities are impacted through redistricting.

New York provides a stark example of how the census miscount of prisoners can distort political representation in the



redistricting process. In New York, most of the state's prisoners come from New York City (66%) but virtually all of them are incarcerated upstate (91%), in a more rural and less populated region. When electoral districts are drawn, the prison population is included in the total population of the districts in which these prisons are located. Yet, in these districts, which host a large prison population, non-incarcerated residents do not share the prisoners' concerns or interests. In addition, prisoners do not establish ties to these communities while they are incarcerated, and it is unlikely that ex-prisoners will remain in the community upon their release. Hence, the practice of including non-voting prisoners in the population of electoral districts where prisons are located provides distorted data of the actual residents who benefit from and are affected by the policies and programs in these districts.

New York also demonstrates how the census miscount creates a clear imbalance of political power between the rural communities (which tend to be white) and the communities from which prisoners actually originate (which tend to be disproportionately minority). For example, without the prison populations, seven of New York's upstate State Senate districts would not meet minimum one-person, one-vote requirements under federal law and would have to be redrawn, changing district lines across the state.⁵

²Peter Wagner, Eric Lotke & Andrew Beveridge, Prison Policy Initiative, *Why The Census Bureau Can And Must Start Collecting the Home Addresses of Incarcerated People*, at 1 (Feb. 10, 2006), available at <http://www.prisonpolicy.org/homeaddresses/CollectingHomeAddresses.pdf>.

³*Id.* at 3.

⁴*Id.*

⁵Prison Policy Initiative, *Gerrymandering in New York State*, available at: <http://www.prisonsofthecensus.org/nygerrymander.html>.

A growing number of advocacy organizations, including the Prison Policy Initiative, Brennan Center for Justice at NYU School of Law, Dēmos, NAACP Legal Defense and Educational Fund, National Coalition on Black Civic Participation, NAACP, National Urban League, and Unity Diaspora Coalition, advocated for a change in the prisoner residence rule during the 2010 Census. The advocates argued that the frequent placement of prisons in rural counties with otherwise small populations artificially inflates political representation for these areas.

Several state legislatures, including New York's, are now considering proposals to correct the misuse of prison populations in state redistricting plans.⁶ In 2010, Maryland became the first state to adopt a bill to count incarcerated persons at their home for redistricting purposes.

To help address these concerns, in February 2010, the Census Bureau agreed to release block-level information on the location of group quarters facilities, such as prisons, by May 2011, which would allow state and local legislatures to redraw district lines without including inmates.⁷ This agreement, reached between

U.S. Census Director Robert Groves and the Chairman of the House Subcommittee on Information Policy, Census and National Archives, Congressman Lacy Clay, will allow interested legislatures to consider the data in the redistricting process.

This is an important first step by the Census Bureau toward improving its practices on counting incarcerated persons. However, advocates are engaged in a long-term campaign to encourage the Bureau to implement a more permanent solution under which the decennial census would identify the home communities of incarcerated persons and count them at their home locations. Steps should be taken during the 2010 Census and through the upcoming decade to make this a reality by the 2020 Census.

⁶Prison Policy Initiative, *Legislation*, available at <http://www.prisonersofthecensus.org/legislation.html>.

⁷Prison Policy Initiative, *Advocates Commend Census Bureau for Enhancing States' Access to Data on Prison Populations in 2010 Census*, Feb. 10, 2010, available at <http://www.prisonersofthecensus.org/news/2010/02/10/newdata/>



Chapter 8

Non-Citizens and Political Representation

Redistricting is based on the premise that there is equal representation for equal numbers of people. The redistricting process is not intended solely to protect the voting power of citizens. Non-citizens, as well as citizens, should count for purposes of apportionment.



Do non-citizens get political representation too?

Yes, non-citizens get political representation even if they are not eligible to vote. Non-citizens are “persons” under the Constitution and are entitled to protection under our laws. Despite this constitutional promise, immigrants have been the target of increasing anti-immigrant rhetoric and laws in our nation. When Congress failed to pass comprehensive immigration reform in 2006, some states and local governments passed laws targeting immigrants. Some of those laws required proof of legal status to rent housing or prohibited laborers from gathering on streets to solicit work. Members of Congress also attempted to pass legislation that would exclude non-citizens from being counted in the re-apportionment process.

How many non-citizens live in America currently?

The Department of Homeland Security (DHS) provides the most current statistics on the number of immigrants living in the United States. According to the DHS, as of January 1, 2008, the number of non-citizens equaled approximately 31.3 million (19.7 million legal residents and approximately 11.6 million unauthorized immigrants).¹ Most legal permanent residents are eligible for naturalization after a minimum of five years of residence or three years if they are married to a U.S. citizen. Immigrants who are allowed to live in the United States but are not given permanent residence include individuals authorized to work or temporary visitors. All people working in the United States, regardless of immigration status, are obligated to pay taxes.

Do states have to use total population data to draw districts? Can states just use data on citizens since they are the ones eligible to vote?

As a preliminary matter, if a state decides to exclude non-citizens from the redistricting base while including other non-voters, such actions could be deemed discriminatory

¹Michael Hoefler, Nancy Rytina, & Bryan C. Baker, *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2008*, Department of Homeland Security, Office of Immigration Statistics, Population Estimates, at 4 (Feb. 2009), available at http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_ill_pe_2008.pdf

or unconstitutional.² It also amounts to “taxation without representation.

Depending on the region of the U.S., states have the option to use either the total population or the citizen population in apportioning districts.³ In certain jurisdictions, including those within the Ninth Circuit, all persons must be counted for determining the size of political districts.⁴ However, not all jurisdictions have adopted this standard. Those jurisdictions within the Fifth Circuit have the option of counting all persons or those who are eligible to vote.⁵

Why should non-citizens be considered in redistricting?

Non-citizens are “persons” under the Constitution and are entitled to protection under our laws.

Non-citizens have many opportunities for civic participation, even though they cannot vote in most jurisdictions. They can participate in public hearings and government meetings and meet with their elected representatives. A number of jurisdictions around the country allow non-citizens to vote in local elections. Non-citizens are allowed to vote for local school boards in Chicago and they have been allowed to vote in Takoma Park, Maryland in local elections since 1992. Other small communities in Maryland allow non-citizen voting as well. In City Heights, California all residents are allowed to vote for members of the Planning Committee.⁶ In New York, non-citizens were allowed to vote in community school board elections for more than three decades before Mayor Bloomberg dismantled the school board in 2003. In 2010, non-citizen parents were allowed to vote in an election to determine what organizations would run low-performing schools in the Los Angeles Unified School District. Moreover, elected officials have a duty to represent everyone in their district, not just the people who voted for them, not just the people who are old enough to vote, and not just the people who are citizens.



²See Carl E. Goldfarb, *Allocating the Local Apportionment Pie: What Portion for Resident Aliens?*, 104 Yale L.J. 1441, 1454 (1995) (arguing that discriminatory exclusion of only non-citizens will trigger strict scrutiny based on alienage and requires a compelling justification); *Yick Wo v. Hopkins*, 118 U.S. 356 (1886) (holding that the Fourteenth Amendment is not limited to the protection of citizens).

³Compare *Garza v. Los Angeles County*, 918 F.2d 763 (9th Cir. 1990) with *Chen v. City of Houston*, 206 F.3d 502 (5th Cir. 2000). See also *Daly v. Hunt*, 93 F.3d 1212 (4th Cir. 1996) (addressing redistricting based on voting age population).

⁴*Garza*, 918 F.2d at 774-75. The Ninth Circuit includes Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, Guam and the Northern Mariana Islands.

⁵*Chen*, 206 F.3d 502. The Fifth Circuit includes Louisiana, Mississippi and Texas.

⁶Stanley Renshon, Center for Immigration Studies, *The Debate Over Non-Citizen Voting: A Primer* (April 2008), available at http://www.cis.org/noncitizen_voting_primer.html.

Chapter 9

Redistricting Reform Measures

With so much at stake, any effort to reform the way that redistricting is carried out must ensure that protections afforded by the Voting Rights Act (VRA) are observed and safeguards to threats against minority voting rights are included. Moreover, reforms should address existing and measurable barriers to full representation of minority communities. Reforms that seek to address the effect of the miscount of prisoners provide a good starting point.

In this Chapter, we identify and discuss some (though certainly not all) of the various redistricting reform proposals that have surfaced in recent years, including redistricting commissions and correcting the census miscount of prisoners.

What do modern redistricting reform measures attempt to address?

Current redistricting reform measures are generally offered as a response to legislative gridlock and highly partisan viewpoints. As a result, most of the current redistricting reform measures focus on eliminating political gerrymandering—manipulating the redistricting process for a particular political or partisan outcome—and preventing incumbents from manipulating the redistricting process to retain their elected position.

The focus of modern redistricting reform measures, however, can have the same effect as the current process when partisan or political ideals conflict with the full protection of minority voting rights. In fact, just like the current process, some redistricting reform measures attempt to create a particular partisan outcome to the greatest extent possible and minority



voters face the same risks without adequate protection embedded in the redistricting reform proposals.

True redistricting reform, therefore, will do more than shift the focus from partisan domination and incumbency protection to an arguable alternative partisan ideal. Modern redistricting reform measures must carefully approach redistricting reform and ensure that no proposed partisan or political ideal occurs at the expense of minority voting rights principles. At the same time, modern redistricting reform measures must address two of the long-standing barriers to the full inclusion of minority voters—felon disfranchisement laws and the census miscount, which have the continued impact of limiting the ability of all citizens to fully participate in the political process.

Is there more than one type of redistricting commission reform measure?

Most states charge members of the state legislature with the responsibility of redistricting. One redistricting reform measure that has surfaced in several states calls for the creation of Independent Redistricting Commissions (IRCs). These proposals aim to take responsibility for redistricting away from elected officials and transfer that responsibility to an appointed body.

While some redistricting commission reform measures have the goal of increasing transparency and opportunities for public input, other redistricting commission reform proposals have called for the adoption of stringent criteria that the legislature or a politically appointed commission must follow in the process of redrawing district lines.



Which states have adopted Independent Redistricting Commissions?

Arizona and California have commissions which completely exclude elected officials from the redistricting decision-making process. However, in California, the legislature continues to be responsible for drawing Congressional lines. Many other states have some type of “commission” that participates in the redistricting process.¹ These commissions have varying forms. Some commissions include selected members of the state legislature, while other commissions play an advisory role to help guide the legislature during the course of redistricting. Other commissions are only activated to break a stalemate when the legislature cannot agree on a final plan. Several states, including Iowa, Idaho, Montana, and Washington, have a commission that involves elected officials at some point during the redistricting decision-making process by giving elected officials the opportunity to veto a plan or appoint partisan representatives to the commission.

How do the changes proposed by redistricting commission reform measures impact minority voters?

The opportunity for minority communities to elect candidates of their choice can be, and often is, dramatically affected by the drawing of district lines. Therefore, it is very important to closely analyze whether proposed reforms would place minority voters in a more vulnerable position for a particular partisan outcome. Unfortunately, proposals calling for the creation of redistricting commissions may be focused on a potential cure to perceived partisan or incumbency problems at the expense of providing adequate safeguards to prevent the dilution of minority voting strength during the redistricting process. Indeed, during the 2000 redistricting cycle, the legislative redistricting plan adopted by the Arizona IRC resulted in an objection under Section 5 of the VRA.²

Would minority voters benefit if a redistricting commission curtailed partisan gerrymandering?

While adopting an IRC reform measure may change redistricting, there is little evidence that an IRC is the best way to curtail partisanship or eliminate political gerrymandering. Moreover, our nation’s long history of discrimination in the electoral process requires that we carefully examine and assess all proposals to reform the redistricting process, no matter how

¹For more information regarding this measure of reform, see NAACP Legal Defense and Educational Fund, Inc., *Independent Redistricting Commissions: Reforming Redistricting Without Reversing Progress Toward Racial Equality* (June 9, 2010), available at http://www.naacpldf.org/content/pdf/barriers_to_voting/IRC_Report.pdf.

²See Letter from Ralph F. Boyd, Jr., Assistant Attorney General, U.S. Department of Justice to Lisa T. Hauser, Esq. and José de Jesús Rivera, Esq., Phoenix, Arizona (May 20, 2002), available at http://www.justice.gov/crt/voting/sec_5/ltr/l_052002.php.



neutral they may appear. Each redistricting cycle, unfortunately, has been followed by long and protracted litigation under the VRA. Given this history and the ongoing struggle to protect minority voting rights, those redistricting proposals that aim largely to address issues of partisanship and incumbency protection must be carefully reviewed. In fact, all proposals that seek to alter the way in which redistricting is carried out should adhere to the requirements of the VRA and be guided by principles consistent with it.

At the same time, any process that transfers redistricting authority from elected officials to an appointed commission must be carefully monitored and assessed to ensure that the interests of minority communities are adequately represented. Commissions should take into account principles of diversity and accountability; otherwise they run the risk of rolling back progress toward racial equality in the redistricting decision-making process. In our view, diversity among line-drawers and the unequivocal commitment to protecting the interests of minority voters are two issues of paramount importance in the context of any redistricting effort and should be of particular concern during any effort to reform the process. With over 40 years of enforcement of the VRA at stake, IRC proposals must not lead to a process that places minority voting rights in a more vulnerable position.

Will strict criteria in an IRC proposal improve redistricting if it requires application of the Voting Rights Act?

All redistricting proposals must comply with the VRA because it is federal law. While a redistricting reform proposal that requires compliance with the VRA reiterates the status quo, it must also ensure that the process created by the proposed criteria does not create a tension with the VRA. A proposal can create tension with the VRA if it prevents or otherwise limits opportunities for minorities to elect a candidate of choice. The adoption of all criteria, therefore, must require that they are applied with flexibility so the map produced under a redistricting reform proposal does not discriminate against minority voters.

How does the census miscount of prisoners and felon disenfranchisement laws affect redistricting reform measures?

Although rarely discussed in the context of redistricting, both the census miscount of prisoners and felon disenfranchisement laws have a significant impact on minority communities. While much of the redistricting reform debate has focused on partisanship and IRCs, these proposals have failed to address two very significant problems faced by minority communities during the redistricting process.



The census miscount

As explained more fully in Chapter 7, the Census Bureau miscounts prisoners—a population disproportionately comprised of racial minorities in the United States—as residents of the prison where they are located, despite the fact that they have no ties to the surrounding community and, in most states, are prohibited from voting by felon disenfranchisement laws. This practice *artificially inflates* the population of the districts where prisons and jails are located. In many states, these artificially inflated population counts are used to create districts that are significantly padded by prisoners.³ This “prison gerrymandering” phenomenon distorts the “one person, one vote” principle, which requires that election districts hold roughly the same number of constituents. At the same time, the population of the districts where prisoners lived prior to their incarceration is *artificially deflated*. Moreover, incarcerated individuals almost always return to their home communities upon release (the average length of incarceration in state prison is less than three years); but the census count, that artificially deflates the population of these communities by not counting residents who are incarcerated elsewhere, remains in effect for an entire decade.

³For more information on the prison-based gerrymandering crisis, see NAACP Legal Defense and Educational Fund, Inc., *Captive Constituents* (June 1, 2010), available at http://www.naacpldf.org/content/pdf/felon/captive_constituents.pdf.

Felon disenfranchisement laws

Felon disenfranchisement laws prevent millions of Americans from voting because of a prior felony conviction.⁴ Because America's fractured criminal justice system and disproportionate policing and imprisonment repeatedly align along the lines of race and class, felon disenfranchisement laws result in the exclusion of vastly disproportionate percentages of racial minorities from the electorate as compared to non-minorities. Legislatures of many states intended this result when they adopted felon disenfranchisement laws after the Civil War as a reaction to the inclusion of Blacks as voters.

The felon disenfranchisement phenomenon diminishes the voting strength of entire minority communities, which are disproportionately plagued with concentrated poverty, sub-standard housing, limited access to healthcare and sub-standard education. Nationally, more than 5.3 million Americans are denied access to the right that is preservative of all other civil rights because of felony convictions.

According to data released by the Census Bureau in 2006, of the estimated 2 million people living in prisons, roughly 60% are African-American and Latino.

The disproportionate imprisonment of minorities directly interacts with felon disenfranchisement laws to exclude minority citizens from the political process. In fact, a staggering 13% of all African-American men in this country are disenfranchised, and in some states up to *one-third* of the entire African-American male population is denied the right to vote. Given current rates of incarceration, approximately one in three of the next generation of Black men will be disenfranchised at some point during their lifetime.

In sum, the census miscount of prisoners and felon disenfranchisement laws dilute minority voting strength. In order to prevent the dilution of minority

voting strength, therefore, all redistricting reform efforts, including calls for the creation of IRCs, must include corrective action to address the erroneous designation by the Census Bureau of prisoners' residences. Correcting the census miscount of prisoners can only be fully corrected by allowing prisoners to vote, either absentee or on a machine, with the voters in their home district.



⁴For more information about the impact felon disenfranchisement laws have on communities of color nationwide, see *Free the Vote: Unlocking Democracy in the Cells and on the Streets* (April 21, 2010), available at http://www.naacpldf.org/content/pdf/felon_free/Free_the_Vote.pdf.



Conclusion

Redistricting is one of the most important events in our democracy as it determines the allocation of political power. Participating in this process is vital. Providing input ensures that our interests are being heard and represented by our elected officials.

We are hopeful that this handbook has enabled you to gain the tools necessary to have an effective voice in redistricting. If you find that you may need some special assistance or advice on technical matters, please contact any of our three organizations. Individuals in these organizations may be able to provide guidance or refer you to other organizations or public entities that can assist your efforts.

APPENDIX 1:

List of Jurisdictions Covered Under Section 5 of the Voting Rights Act

Alabama
Alaska
Arizona
California:
Kings County Merced County Monterey County Yuba County
Florida:
Collier County Hardee County Hendry County Hillsborough County Monroe County
Georgia
Louisiana
Michigan:
Allegan County: Clyde Township Saginaw County: Buena Vista Township
Mississippi
New Hampshire:
Cheshire County: Rindge Town Coos County: Millsfield Township Pinkhams Grant Stewartstown Town Stratsford Town Grafton County: Benton Town Hillsborough County: Antrim Town Merrimack County: Boscawen Town Rockingham County: Newington Town Sullivan County: Unity Town
New York:
Bronx County Kings County New York County

North Carolina:
Anson County Beaufort County Bertie County Bladen County Camden County Caswell County Chowan County Cleveland County Craven County Cumberland County Edgecombe County Franklin County Gaston County Gates County Granville County Greene County Guilford County Halifax County Harnett County Hertford County Hoke County Jackson County Lee County Lenoir County Martin County Nash County Northampton County Onslow County Pasquotank County Perquimans County Person County Pitt County Roberson County Rockingham County Scotland County Union County Vance County Washington County Wayne County Wilson County
South Carolina
South Dakota:
Shannon County Todd County
Texas
Virginia¹



¹Fifteen political subdivisions in Virginia (Augusta, Botetourt, Essex, Frederick, Greene, Middlesex, Pulaski, Roanoke, Rockingham, Shenandoah, and Warren Counties and the Cities of Fairfax, Harrisonburg, Salem and Winchester) have “bailed out” from coverage pursuant to Section 4 of the Voting Rights Act. The United States consented to the declaratory judgment in each of those cases.

APPENDIX 2: Redistricting In Your State



42	Alabama
43	Alaska
44	Arizona
45	Arkansas
46	California
47	Colorado
48	Delaware
49	Florida
50	Georgia
51	Hawaii
52	Idaho
53	Illinois
54	Indiana
55	Louisiana
56	Maryland
57	Massachusetts
58	Michigan
59	Minnesota
60	Mississippi
61	Missouri
62	Nevada
63	New Jersey
64	New Mexico
65	New York
66	North Carolina
67	Ohio
68	Pennsylvania
69	South Carolina
70	Tennessee
71	Texas
72	Virginia
73	Washington

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	Congressional Districts	Legislative Districts
Selected state constitutional & statutory restrictions	1 representative per district. Ala. Code § 17-20-2 (2010).	Constitution forbids dividing any county between more than one district and allows for additional representation in the event new counties are created. Ala. Const. art. IX, § 200.
Description of current districts	Ala. Code § 17-20-1 (2010).	Ala. Code §§ 29-1-1.2, 29-1-2.3 (2010).
Number of districts	Present: 7 2010 (est.): 7	Senate: 35 House: 105 Multimember: No House districts nested within Senate districts? Yes
Districting responsibility	State legislature is responsible for redistricting. Ala. Const. art. IX, §§ 198-200. The legislature creates a bipartisan legislative committee on reapportionment. The committee prepares and develops redistricting plans which are adopted by the legislature. Ala. Code §§ 29-2-50 to 29-2-52.	State legislature is responsible for redistricting. Ala. Const. art. IX, §§ 198-200. The legislature creates a bipartisan legislative committee on reapportionment. The committee prepares and develops redistricting plans which are adopted by the legislature. Ala. Code §§ 29-2-50 to 29-2-52.
May Governor veto?	Yes	Yes
Covered under § 5 of the Voting Rights Act?	Yes (<i>See Appendix 1</i>)	
Self-imposed state deadlines and enforcement	None	First legislative session following the decennial census. Ala. Const. art. IX, §§ 199--200.

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	Congressional Districts	Legislative Districts
Selected state constitutional & statutory restrictions	None	House districts shall be contiguous and compact, containing as nearly as practicable a relatively integrated socio-economic area. Each senate district shall be composed as near as practicable of two contiguous house districts. Alaska Const. art. VI, § 6.
Description of current districts	Alaska comprises one at-large Congressional District	Alaska Division of Elections, Statewide District Descriptions, 2002 Amended Redistricting Plan, <i>available at</i> http://www.elections.alaska.gov/distdes.php .
Number of districts	Present:1 2010 (est.): 1	Senate: 20 House: 40 Multimember Districts: No House districts nested within Senate districts? Yes
Districting responsibility	N/A	Redistricting Board: 2 members appointed by the governor, 1 by the presiding officer of the Senate, 1 by the presiding officer of the House, and 1 by the Chief Justice of the Supreme Court. At least one board member must be a resident of each judicial district that existed on January 1, 1999. No public employees or officials may be board members. Alaska Const. art. VI, §8.
May Governor veto?	N/A	No
Covered under § 5 of the Voting Rights Act?	Yes (<i>See Appendix 1</i>)	
Self-imposed state deadlines and enforcement	N/A	“No later than ninety days after board has been appointed and the official reporting of the decennial census of the United States, the board shall adopt a final redistricting plan and issue a proclamation of redistricting.” Alaska Const. art. VI, § 10.

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	Congressional Districts	Legislative Districts
Selected state constitutional & statutory restrictions	Arizona's constitution requires compliance with the federal Voting Rights Act and the U.S. Constitution. Districts must also comply with specific criteria enunciated in the State Constitution. Ariz. Const. art. IV, Part 2, §1(14). Ariz. Rev. Stat. § 16-1103 (2010).	Arizona's constitution requires compliance with the federal Voting Rights Act and the U.S. Constitution. Districts must also comply with specific criteria enunciated in the State Constitution. Ariz. Const. art. IV, Part 2, §1(14). Ariz. Rev. Stat. § 16-1103 (2010).
Description of current districts	Arizona Independent Redistricting Commission, Final Congressional District Map, Certification List, <i>available at</i> http://www.azredistricting.org/?page=finalcong	Ariz. Rev. Stat. § 16-1102 (2010).
Number of districts	Present: 8 2010 (est.): 10	Senate: 30 House: 60 Multimember Districts: Yes House districts nested within Senate districts? Yes
Districing responsibility	Arizona Independent Redistricting Commission composed of 5 members. The Speaker of the House, minority leader in the House, the Senate President, and the minority leader of the Senate each appoints 1 member to the Commission. The fifth member, who shall act as chair, is selected by the other four members, and must not belong to any party already represented on the commission. If the four deadlock when selecting the fifth member, commission on appellate appointees shall make such appointment. Ariz. Const. art. IV, Part 2, §1.	Arizona Independent Redistricting Commission composed of 5 members. The Speaker of the House, minority leader in the House, the Senate President, and the minority leader of the Senate each appoints 1 member to the Commission. The fifth member, who shall act as chair, is selected by the other four members, and must not belong to any party already represented on the commission. If the four deadlock, commission on appellate appointees shall make such appointment. Ariz. Const. art. IV, Part 2, §1.
May Governor veto?	No	No
Covered under §5 of the Voting Rights Act?	Yes (<i>See Appendix 1</i>)	
Self-imposed state deadlines and enforcement	None	None

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	Congressional Districts	Legislative Districts
Selected state constitutional & statutory restrictions	Congressional districts shall be of substantially equal population in order to comply with the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. Ark. Code. Ann. § 7-2-101 (2009).	Senate districts must consist of contiguous territory, with no county divided in the formation of such districts. Ark. Const. art. VIII, §3.
Description of current districts	Ark. Code. Ann. §§ 7-2-Note to 7-2-105 (2009).	None.
Number of districts	Present: 4 2010 (est.): 4	Senate: 35 House: 100 Multimember Districts: No House districts nested within Senate districts? Yes
Districing responsibility		Board of Apportionment consisting of the Governor (Chair), Secretary of State and State Attorney General. Ark. Const. Art. VIII, § 1.
May Governor veto?	Yes	No
Covered under § 5 of the Voting Rights Act?	No	
Self-imposed state deadlines and enforcement	None	February 1 of the year following the decennial census. Ark. Const. art. VIII, §4.

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	Congressional Districts	Legislative Districts
Selected state constitutional & statutory restrictions	Cal. Const. art. XXI, §1 Each member of Congress shall be elected from a single-member district. The population for each district shall be reasonably equal. In adjusting boundary lines, the Legislature must apply criteria listed in Article XXI, §2(d)(2)-(5) and shall issue a report explaining basis for maps and compliance with criteria.	Single-member districts; reasonably equal population; comply with federal Voting Rights Act; contiguous and compact. Cal. Const. art. XXI, §§2(d)(1)-(6), 2(e)
Description of current districts	Congressional districts - Cal. Elec. Code §§ 21400-21453 (2009).	Senate districts - Cal. Elec. Code § 21100-21140 (2009). Assembly districts - Cal. Elec. Code § 21200-21280 (2009).
Number of districts	Present: 53 2010 (est.): 53	Senate: 40 House: 80 Multimember: No
Districting responsibility	Legislature is responsible for drawing Congressional districts. Cal. Const. art. XXI, §1.	14-member Citizen's Redistricting Commission composed of 5 registered with largest political party, 5 registered with second largest political party, and 4 not registered with either of the two largest political parties. Commission members must have voted in two of the last three statewide general elections and must not have changed political party affiliation within the last five years. Cal. Const. art. XXI, §§2(c)(2), (3).
May Governor veto?	Yes	No
Covered under § 5 of the Voting Rights Act?	Yes, selected counties (<i>See Appendix 1</i>)	
Self-imposed state deadlines and enforcement	The year following every decennial census. Cal. Const. art. XXI, §1.	Sept. 15, 2011 - Commission shall issue reports with maps explaining basis for maps and compliance with criteria. Cal. Const. art. XXI, §§2(g).

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	Congressional Districts	Legislative Districts
Selected state constitutional & statutory restrictions	<p>“The general assembly shall divide the state into as many congressional districts as there are representatives in congress apportioned to [the] state by the congress of the United States for the election of one representative to congress for each district....” Colo. Const. art. V, § 44.</p>	<p>“Each district shall be compact in area as possible and the aggregate linear distance of all district boundaries shall be as short as possible. Each district shall consist of contiguous whole general election precincts. Districts of the same house shall not overlap....communities of interest, including ethnic, cultural, economic, trade area, geographic, and demographic factors, shall be preserved within a single district.” Colo. Const. art. V, § 47.</p>
Description of current districts	Colo. Rev. Stat. §2-1-101 (2009).	Senatorial Districts: Colo. Rev. Stat. § 2-2-102 (2009). Representative Districts: Colo. Rev. Stat. § 2-2-202 (2009).
Number of districts	Present: 7 2010 (est.): 7	Senate: 35 House: 65 Multimember districts? No House districts nested within Senate districts? No
Districting responsibility	General Assembly. Colo. Const. art. V, § 44.	Reapportionment Commission. Colo. Const. art. V, § 48.
May Governor veto?	Yes	No
Covered under § 5 of the Voting Rights Act?	No	
Self-imposed state deadlines and enforcement	None	See Colo. Const. art. V, § 48(e).

DELAWARE

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	Congressional Districts	State Legislative Districts
Selected state constitutional & statutory Restrictions	None.	The representative and senatorial districts shall be contiguous, nearly equal in population, and bounded by major roads, streams or other natural boundaries. Districts shall not be created as to unduly favor a person or party. Del. Code Ann. Tit. 29, § 804 (2010).
Description of Current Districts	Delaware comprises one at-large congressional district.	House of Representatives –Del. Code Ann. tit. 29, § 821 (2010) Senate – Del. Code. Ann. tit. 29, § 831 (2010).
Number of Districts	Present: 1 2010 (est.): 1	Senate: 21 House: 41 Multimember districts: 0
Districting Responsibility	N/A	The legislature. The leadership in both houses is responsible for drawing separate plans for their respective houses.
May Governor Veto?	N/A	Yes
Covered under § 5 of the Voting Rights Act?	No.	
Self-imposed State Deadlines and Enforcement	N/A	Legislature must adopt a plan by June 30, 2011. Del. Code. Ann. tit. 29, § 805 (2010).

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	Congressional Districts	Legislative Districts
Selected state constitutional & statutory restrictions	Fla. Const. art.X, § 8(a); Fla. Stat. tit. II, ch. 8.	Senate and representative Districts must be of either contiguous, overlapping or identical territory. Fla. Const. art. III, § 16.
Description of current districts	Fla. Stat. § 8.0002 (2009).	Fla. Stat. §§ 10.00002 ☒10.00003 (2009)
Number of districts	Present: 25 2010 (est.): 26	Senate: 40 House: 120 Multimember Districts: No House districts nested within Senate districts? No
Districting responsibility	State legislature.	State legislature. Fla. Const. art. III, § 16.
May Governor veto?	Yes	No
Covered under § 5 of the Voting Rights Act?	Yes, selected counties (<i>See Appendix 1</i>)	
Self-imposed state deadlines and enforcement	N/A	During the regular session in the second year following the decennial census (e.g. 2012). If the joint resolution does not pass within that time, the governor must reconvene the Legislature for a special apportionment session not to exceed 30 days during which reapportionment will be mandatory. Fla. Const. art. III, § 16(a)-(e). If the legislature fails to adopt a resolution of apportionment or should the apportionment be invalid, the supreme court shall, not later than 60 days after receiving the petition of the attorney general, file an order making such apportionment. Fla. Const. art. III, § 16(b), (f).

¹In 2010, Florida voters will adopt or reject amendments to the state constitution requiring that the legislature follow redistricting criteria.

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	Congressional Districts	Legislative Districts
Selected state constitutional & statutory restrictions	None	The general assembly must compose the Senate and House districts from contiguous territory. Ga. Const. art. III, § 2, para. 2.
Description of current districts	Ga. Code Ann. § 21-1-2	Ga. L. 2006, p. 12, § 1/HB 1137
Number of districts	Present: 13 2010 (est.): 14	Senate: 56 House: 180 Multimember Districts: No House districts nested within Senate districts? No
Districting responsibility	State legislature	State legislature
May Governor veto?	Yes	Yes
Covered under § 5 of the Voting Rights Act?	Yes (<i>See Appendix 1</i>)	
Self-imposed state deadlines and enforcement	None	None

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	Congressional Districts	Legislative Districts
Selected state constitutional & statutory restrictions	Haw. Const. art. IV, § 4-6.	Haw. Const. art. IV, § 4-6.
Description of current districts	None	None
Number of districts	Present: 2 2010 (est.): 2	Senate: 25 House: 51 Multimember Districts: No House districts nested within Senate districts? Yes
Districting responsibility	Reapportionment commission may be required at times to redraw congressional district lines. Haw. Const. art. IV, § 9. Reapportionment Commission. Nine members: Two selected by president of the Senate; two selected by speaker; 2 by the minority party of each house; one member selected by the other 8 members. Haw. Const. art. IV, § 2.	Reapportionment Commission. Nine members: Two selected by president of the Senate; two selected by speaker; 2 by the minority party of each house; one member selected by the other 8 members. Haw. Const. art. IV, § 2.
May Governor veto?	No	No
Covered under § 5 of the Voting Rights Act?	Yes (<i>See</i> Appendix 1)	
Self-imposed state deadlines and enforcement	150 days form the date the members of the commission are certified.	150 days form the date the members of the commission are certified.

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	Congressional Districts	Legislative Districts
Selected state constitutional & statutory restrictions	Districts must be equal in population and comply with federal laws. Idaho Const. art. III, § 5. In addition, districts must comply with specific criteria. Idaho Code Ann. § 72-1506 (2009).	Districts must be equal in population and comply with federal laws. Idaho Const. art. III, § 5. In addition, districts must comply with specific criteria. Idaho Code Ann. § 72-1506 (2009).
Description of current districts	Idaho Code Ann. § 34-1902 - 34-1903 (2009).	Idaho Code Ann. § 67-202 (2008). repealed by S.L. 2009, ch. 52, § 1.
Number of districts	Present: 2 2010 (est.): 2	Senate: 35 House: 70 Multimember Districts: Yes House districts nested within Senate districts? Yes
Districting responsibility	A 6-member commission for reapportionment. The leaders of the two largest political parties in the House and in the Senate shall appoint one member each. State chairmen of the two largest political parties, determined by the vote cast for governor in the last gubernatorial election, shall each designate one member. Members may not be elected or appointed officials. Idaho Const. art. III, § 2(2).	A 6-member commission for reapportionment. The leaders of the two largest political parties in the House and in the Senate shall appoint one member each. State chairmen of the two largest political parties, determined by the vote cast for governor in the last gubernatorial election, shall each designate one member. Members may not be elected or appointed officials. Idaho Const. art. III, § 2(2).
May Governor veto?	No	No
Covered under § 5 of the Voting Rights Act?	No	
Self-imposed state deadlines and enforcement	Committee must file a proposed plan within 90 days of the commission being formed or the census data becomes available that details apportioning the senate and house of representatives of the legislature and congressional districts. Must be approved by 2/3 of the commission. Idaho Const. art. III, § 2 (4).	Committee must file a proposed plan within 90 days of the commission being formed or the census data becomes available that details apportioning the senate and house of representatives of the legislature and congressional districts. Must be approved by 2/3 of the commission. Idaho Const. art. III, § 2 (4).

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	Congressional Districts	Legislative Districts
Selected state constitutional & statutory restrictions	None	Legislative Districts shall be compact, contiguous, and substantially equal in population. Ill. Const. art. 4, § 3.
Description of current districts	Board of Elections, Congressional Maps and Descriptions, http://www.elections.il.gov/VotingInformation	Board of Elections, Congressional Maps and Descriptions, http://www.elections.il.gov/VotingInformation
Number of districts	Present: 19 2010 (est.): 18	Senate: 59 House: 118 Multimember districts? No House districts nested within Senate districts? Yes.
Districting responsibility	The General Assembly	The General Assembly
May Governor veto?	Yes	Yes
Covered under § 5 of the Voting Rights Act?	No	
Self-imposed state deadlines and enforcement	None	If the Legislature fails to redistrict by June 30 th of the year following the decennial census, an eight-member Legislative Redistricting Commission shall be constituted by July 10 th . If the Commission has not filed a plan by August 10 th , the Secretary of State shall appoint a ninth member to the Commission and a plan shall be filed by October 5 th . Ill. Const. art. 4, § 3(b).

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	Congressional Districts	State Legislative Districts
Selected state Constitutional & Statutory Restrictions	None	Ind. Const. art. 4, § 5. Each territory should be contiguous.
Description of Current Districts	Since the General Assembly failed to establish Congressional Districts at the end of its First Regular Session following the 2000 decennial census, a Redistricting Commission was formed. The Commission submitted a Congressional Redistricting Plan to the governor. Executive Order 01-11, signed by Governor Frank O'Bannon on May 16, 2001, established the Congressional Districts for Indiana's members in the U.S. House of Representatives.	Senate – Ind. Code Ann. §§ 2-1-11-1 to 2-1-11-50 (2010). House - Ind. Code Ann. §§ 2-1-10-1 to 2-1-10-100 (2010). Any area not described therein or any area described as belonging to more than one district shall be governed by Ind. Code Ann. § 2-1-9-7.
Number of Districts	Present: 10 2010 (est.): 10	Senate: 50 House: 100 Multimember districts? No.
Districing Responsibility	Legislature. If legislature adjourns without establishing congressional districts or if any part of the plan is declared unconstitutional, redistricting commission is established. Commission consists of five members: House speaker, Senate president pro tem, redistricting committee chairpersons from each chamber. Governor appoints final member (legislator). Ind. Code Ann. §§ 3-3-2-2 and 3-3-3-4 (2010).	Legislature.
May Governor Veto?	Yes	Yes
Covered under § 5 of the Voting Rights Act?	No	
Self-imposed State Deadlines and Enforcement	The congressional deadline is April 29, 2011 (end of first regular session following the decennial census). If that date is not met, the Redistricting Commission adopts redistricting plan. Ind. Code Ann. §§ 3-3-2-1 (2010).	The Legislative plan must be adopted by April 29, 2011. Failure to meet that date can result in a special session of the General Assembly if called by the governor.

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	Congressional Districts	Legislative Districts
Selected state constitutional & statutory restrictions	None	Each district should be reapportioned as equally as practicable based on the population count from the decennial census. La. Const. art. III, § 6(A).
Description of current districts	La. Rev. Stat. 18 § 1276 (2010).	Senate Districts - La. Rev. Stat. 24 § 35.1 (2010). House Districts - La. Rev. Stat. 24 § 35.5 (2010).
Number of districts	Present: 7 2010 (est.): 6	Senate: 39 House: 105 Multimember districts: No House districts nested within Senate districts? No
Districting responsibility	Legislature	Legislature
May Governor veto?	Yes	Yes
Covered under § 5 of the Voting Rights Act?	Yes (<i>See Appendix 1</i>)	
Self-imposed state deadlines and enforcement	April 29, 2011. <i>See</i> La. Rev. Stat. 18 § 1942 (2010).	Legislature must reapportion by the end of the year following the year in which the census report is given to the U.S. President (December 31, 2011). If the Legislature fails to meet the deadline, the state supreme court reapportions. La. Const. art. III, § 6(A)-(B).

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	Congressional Districts	State Legislative Districts
Selected state constitutional & statutory restrictions	Md. Ann. Code art. EL, § 8-701 (2010).	“Each legislative district shall consist of adjoining territory, be compact in form, and of substantially equal population. Due regard shall be given to natural boundaries and the boundaries of political subdivisions.” Md. Const. art. III, §4; <i>see also</i> Md. Const. art. II, §§ 3 & 5.
Description of Current Districts	Md. Ann. Code art. EL, § 8-702-709 (2010).	Md. Code Ann., State Gov’t § 2-202 (2010).
Number of Districts	Present: 8 2010 (est.): 8	Senate: 47 House of Delegates: 141 Multimember districts? Yes House districts nested within Senate districts? Yes
Districting Responsibility	Constitution and statutes are silent for congressional plans. Congressional plan is usually introduced as regular bill in General Assembly to be passed by both houses and signed by governor who has veto power.	Governor is responsible for creating legislative plan. The legislature must adopt or amend the governor’s plan, or adopt their own plan. Md. Const. art. III, §5.
May Governor Veto?	Yes	Yes
Covered under § 5 of the Voting Rights Act?	No	
Self-imposed State Deadlines and Enforcement	None	Governor submits plan to legislature on first day of regular session in second year following census. Legislature has 45 days to amend and adopt plan or adopt one of their own. Md. Const. art. III, § 5.

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	Congressional Districts	State Legislative Districts
Selected state constitutional & statutory restrictions	None	Legislative ditricks shall be of contiguous territory and formed “without uniting two counties or parts of two or more counties... into one district. Such districts shall also be so formed that no town containing less than twenty-five hundred inhabitants...shall be divided.” Mass. Const. art. 101, §§ 1 & 2.
Description of Current Districts	Mass. Gen. Laws ch. 57, § 1 (2010).	Mass. Gen. Laws ch. 57, §§ 3-4 (2010).
Number of Districts	Present: 10 2010 (est.): 9	Senate: 40 House: 160 Multimember districts? No House districts nested within Senate districts? No
Districting Responsibility	State legislature	State legislature
May Governor Veto?	Yes	Yes
Covered under § 5 of the Voting Rights Act?	No	
Self-imposed State Deadlines and Enforcement	None	First regular session after the year in which the census is taken. Mass. Const. art. 101.

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	Congressional Districts	State Legislative Districts
State Constitutional & Statutory Restrictions	Mich. Comp. Laws §§3.54, 3.63 (2010).	Mich. Const. art. IV, §§ 2-5. House and Senate districts shall be “areas of convenient territory contiguous by land” and “shall not violate section 2...of the voting rights act of 1965...” Mich. Comp. Laws §§ 4.261, 4.261a.
Description of Current Districts	Mich. Comp. Laws § 3.51 (2010),	House Districts - Mich. Comp. Laws § 4.2001 (2010). Senate Districts - Mich. Comp. Laws § 4.2002 (2010).
Number of Districts	Present: 15 2010 (est.): 14	Senate: 38 House: 110 Multimember districts? No.
Districting Responsibility	Legislature	Legislature
May Governor Veto?	Yes	Yes
Covered under § 5 of the Voting Rights Act?	Yes (<i>See Appendix 1</i>)	
Self-imposed State Deadlines and Enforcement	November 1, 2011. Mich. Comp. Laws §3.62 (2010).	November 1, 2011. Mich. Comp. Laws §4.261 (2010).

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	Congressional Districts	State Legislative Districts
Selected state constitutional & statutory restrictions	Redistricting plan must encompass all the territory of the state; no territory must be omitted or duplicated; all districts must consist of convenient contiguous territory substantially equal in population; and political subdivisions must not be divided more than necessary to meet constitutional requirements. Minn. Stat. § 2.91 (2009).	Members of both houses shall be apportioned equally throughout the different sections of the state in proportion to the population; senators are chosen by single districts of convenient contiguous territory; no representative district shall be divided to form a senate district. Minn. Const. art. IV, §§ 2, 3. Redistricting plan must encompass all the territory of the state; no territory must be omitted or duplicated; all districts must consist of convenient contiguous territory substantially equal in population; and political subdivisions must not be divided more than necessary to meet constitutional requirements. Minn. Stat. § 2.91 (2009).
Description of Current Districts	<i>Zachman v. Kiffmeyer</i> , No. CO-01-160 (Minn. Spec. Redis. Panel Mar. 19, 2002) (final order adopting a Legislative Redistricting Plan).	<i>Zachman v. Kiffmeyer</i> , No. CO-01-160 (Minn. Spec. Redis. Panel Mar. 19, 2002) (final order adopting a Legislative Redistricting Plan); Minn. Stat. §§ 2.444, 2.484 (2009).
Number of Districts	Present: 8 2010 (est.): 7	Senate: 67 House: 134 Multimember districts? No House districts nested within Senate districts? Yes
Districing Responsibility	Legislature	Legislature
May Governor Veto?	Yes	Yes
Covered under § 5 of the Voting Rights Act?	No	
Self-imposed State Deadlines and Enforcement	25 weeks before the state primary election in the year ending in two (March 20, 2012).	25 weeks before the state primary election in the year ending in two (March 20, 2012).

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	Congressional Districts	State Legislative Districts
Selected state constitutional & statutory restrictions	None	The legislature divides the state into senatorial and representative districts of contiguous territory. Miss. Const. art. 13, § 254.
Description of Current Districts	Miss. Code Ann. § 23-15-1037 (2010).	Miss. Code Ann. § 5-1-1 (2010); 2002 Miss. Laws 761 (House districts); Miss. Code Ann. § 5-1-3 (2010); 2002 Miss. Laws 762 (Senate districts).
Number of Districts	Present: 5 2010 (est.): 5	Senate: 52 House: 122 Multimember districts? No House districts nested within Senate districts? No
Districting Responsibility	State legislature: Standing Joint Congressional Redistricting Committee. Miss. Code Ann. § 5-3-121 (2010).	State legislature: Standing Joint Legislative Committee on Reapportionment. Miss. Code Ann. § 5-3-91 (2010). If legislature fails to adopt a joint resolution of reapportionment, 5-member Commission composed of the Chief Justice of State Supreme Court (Chair), the State Attorney General, the Secretary of State, the Speaker of the House, and the President <i>pro tempore</i> of the Senate shall apportion the Legislature. Miss. Const. art. 13, § 254.
May Governor Veto?	No	No
Covered under § 5 of the Voting Rights Act?	Yes (See Appendix 1)	
Self-imposed State Deadlines and Enforcement	30 days before 1 st regular legislature after census. Miss. Code Ann. § 5-3-123 (2010).	Must redistrict at regular session the second year following the 2010 census. If not, a five-member commission consisting of the Chief Justice of the Supreme Court as Chairman, the Attorney General, the Secretary of State, the Speaker of the House of Representatives and the President <i>pro tempore</i> of the Senate must draw plan. Miss. Const. art. 13, § 254.

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	Congressional Districts	State Legislative Districts
State Constitutional & Statutory Restrictions	Congressional districts “shall be composed of contiguous territory as compact and as nearly equal in population as may be.” Mo. Const. art. 3, § 45.	Senate districts shall be “convenient districts of contiguous territory, as compact and nearly equal in population as may be,” Mo. Const. art. 3, § 5. House districts “shall be composed of contiguous territory as compact as may be.” Mo. Const. art. 3, § 2.
Description of Current Districts	Mo. Rev. Stat. §§128.400 to 125.440 (2010)	Senate Apportionment Plan, Missouri Appellate Apportionment Commission, <i>available at</i> http://www.sos.mo.gov/elections/maps/senate/pdf/Senate%20Apportionment%20Plan.pdf House Apportionment Plan, Missouri Appellate Apportionment Commission, <i>available at</i> http://www.sos.mo.gov/elections/maps/house/pdf/House%20Apportionment%20Plan.pdf
Number of Districts	Present: 9 2010 (est.): 8	Senate: 34 House: 163 Multimember districts? No
Districting Responsibility	Legislature. Mo. Const. art. 3, § 45.	Senate Redistricting Committee, composed of 10 members appointed by the Governor, 5 from each list submitted by the two political parties that cast the highest vote for governor in the last election - Mo. Const. art. 3, § 7. House Redistricting Committee appointed by the Governor from lists provided by the congressional district committee of each of the two political parties that cast the highest vote for governor in the last election - Mo. Const. art. 3, § 2. In the event no reapportionment plan is filed by the Senate or House Redistricting Committee, a commission composed of 6 Missouri appellate court judges appointed by the Missouri Supreme Court shall apportion the legislative districts. Mo. Const. art. 3, §§2, 7.
May Governor Veto?	Yes	No
Covered under § 5 of the Voting Rights Act?	No	
Self-imposed State Deadlines and Enforcement	None	Six months after the formation of the Senate or House Redistricting Committee. Mo. Const. art. 3, §§2, 7.

NEVADA

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	Congressional Districts	State Legislative Districts
Selected state constitutional & statutory restrictions	None	"Representation shall be apportioned according to population." Nev. Const. art. I, § 13.
Description of Current Districts	Nev. Rev. Stat. §§ 304.060, 304.100, 304.110, 304.120 (2009).	Nev. Rev. Stat. §§ 218.0571 - 218.05797, 218.058 - 218.0796 (2009).
Number of Districts	Present: 3 2010 (est.): 4	Senate: 19 House: 42 Multimember districts? Yes
Districting Responsibility	Legislature	Legislature
May Governor Veto?	Yes	Yes
Covered under § 5 of the Voting Rights Act?	No	
Self-imposed State Deadlines and Enforcement	None	Legislature must apportion itself at first legislative session following decennial census (June 6, 2011).

NEW JERSEY

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	Congressional Districts	State Legislative Districts
Selected state constitutional & statutory restrictions	Congressional districts must conform to the requirements of the Constitution and laws of the United States. N.J. Const. art. II, § 2.	”Each Senate district shall be composed, wherever practicable, of one single county, and, if not so practicable, of two or more contiguous whole counties.” N.J. Const. art. IV, § 2, para. 1. House districts shall be contiguous, compact, and equal in the number of inhabitants as possible. N.J. Const. art. IV, § 2, para. 3.
Description of Current Districts	None	None
Number of Districts	Present: 13 2010 (est.): 13	Senate: 40 Assembly: 80 Multimember districts? Yes House districts nested within Senate districts? Yes
Districing Responsibility	Redistricting Commission: 13 members with 2 appointed by the President of the Senate, 2 by the Speaker of the General Assembly, 2 by the Minority Leader of the Senate, 2 by the Minority Leader of the General Assembly, 2 by the chair of the party which received the most votes in the most recent gubernatorial election, 2 by the chair of the party with the next largest number of votes in the most recent gubernatorial election and 1 chosen by at least 7 of the previously appointed commission members.	Apportionment Commission: 10 members, with 5 each appointed by the 2 chairs of the parties with the most votes in the most recent gubernatorial election.
May Governor Veto?	No	No
Covered under § 5 of the Voting Rights Act?	No	
Self-imposed State Deadlines and Enforcement	On or before the third Tuesday of each year ending in two, or within three months after receipt of the official statement regarding the number of House of Representatives apportioned to the state by the Governor, whichever date is later.	One month after the Governor’s receipt of the official decennial census data, or on or before February 1 of the year following the year the census is taken, whichever date is later.

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	Congressional Districts	State Legislative Districts
Selected state constitutional & statutory restrictions	None	House districts must be “countiguous and...as compact as is practical and possible.” N.M. Stat. Ann. §§ 2-7C-3(2009). Senate districts must be “contiguous and...as compact as is practical.” N.M. Stat. Ann. § 2-8D-2 (2009).
Description of Current Districts	N.M. Stat. Ann. § 1-15-15.1 (2009).	N.M. Stat. Ann. §§ 2-7D-1, 2-8D-7– 2-8D-48 (2009).
Number of Districts	Present: 3 2010 (est.): 3	Senate: 42 House: 70 Multimember districts? No. House districts nested within Senate districts? No
Districting Responsibility	Legislature	Legislature
May Governor Veto?	Yes	Yes
Covered under § 5 of the Voting Rights Act?	No	
Self-imposed State Deadlines and Enforcement	None	None

NEW YORK

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	Congressional Districts	State Legislative Districts
Selected state constitutional & statutory restrictions	N.Y. Elec. § 12-300 (Consol. 2010); N.Y. Ge. Mun. § 716 (Consol. 2010); N.Y. Legis. § 83-m (Consol. 2010).	Senate districts must be in “as compact form as practical” and “consist of contiguous territory” and Assembly districts shall be formed from “convenient and contiguous territory in as compact form as practicable.” N.Y. Const. art. III, §§ 4, 5.
Description of Current Districts	N.Y. State Law § 111 (Consol. 2010).	N.Y. State Law §§ 121, 124 (Consol. 2010).
Number of Districts	Present: 29 2010 (est.): 28	Senate: 62 House: 150 Multimember districts? No House districts nested within Senate districts? No
Districting Responsibility	Legislature. Joint Legislative Task Force on Demographic Research and Reapportionment: 6 members appointed by the majority and minority leaders in the legislature.	Legislature. Joint Legislative Task Force on Demographic Research and Reapportionment: 6 members appointed by the majority and minority leaders in the legislature.
May Governor Veto?	Yes	Yes
Covered under § 5 of the Voting Rights Act?	Yes, selected counties (<i>See Appendix 1</i>)	
Self-imposed State Deadlines and Enforcement	Before next election cycle (2012).	Before next election cycle (2012).

NORTH CAROLINA

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	Congressional Districts	State Legislative Districts
Selected state constitutional & statutory restrictions	Precincts not divided unless plan rejected, then, only minimum number necessary. N.C. Gen. Stat. § 163-201.2 (2010).	Districts shall be contiguous; no county shall be divided in the formation of a district, N.C. Const. art II, §§ 3, 5. Dividing precincts in Senate and House apportionment acts restricted. N.C. Gen. Stat. § 120-2.2 (2010).
Description of Current Districts	N.C. Gen. Stat. § 163-201 (2010).	N.C. Gen. Stat. §§ 120-1, 120.2 (2010).
Number of Districts	Present: 13 2010 (est.): 13	Senate: 50 House: 120 Multimember districts? Yes House districts nested within Senate districts? No
Districting Responsibility	State legislature	State legislature
May Governor Veto?	No	No
Covered under § 5 of the Voting Rights Act?	Yes, selected counties (<i>See Appendix 1</i>)	
Self-imposed State Deadlines and Enforcement	First regular session after return of decennial census and in time for preclearance before filing opens first Monday in January 2012.	First regular session after return of decennial census and in time for preclearance before filing opens first Monday in January 2012.

OHIO

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	Congressional Districts	State Legislative Districts
Selected State Constitutional & Statutory Restrictions	None	House districts shall be “compact and composed of contiguous territory, and the boundary of each district shall be a single nonintersecting continuous line. To the extent [possible], the boundary lines of districts shall be so drawn as to delineate an area containing one or more whole counties.” Ohio Const., art. XI § 7. “Senate districts shall be composed of three contiguous house of representatives districts.” Ohio Const., art. XI, § 11.
Description of Current Districts	Ohio Rev. Code Ann. § 3521.01 (2010).	Final Reapportionment Plan Legal Description as Amended on October 4, 2001, <i>available at</i> http://www.sos.state.oh.us/SOS/upload/elections/maps/OEapportionment100401.pdf
Number of Districts	Present: 18 2010 (est.): 16	Senate: 99 House: 33 Multimember districts? No.
Districing Responsibility	Legislature.	5-member Apportionment Board: “The governor, auditor of state, secretary of state, one person chosen by the speaker of the house of representatives and the leader in the senate of the political party of which the speaker is a member, and one person chosen by the legislative leaders in the two houses of the major political party of which the speaker is not a member shall be the persons responsible for the apportionment of this state for members of the general assembly.” Ohio Const. art. XI
May Governor Veto?	Yes	No
Covered under § 5 of the Voting Rights Act?	No	
Self-imposed State Deadlines and Enforcement		Apportionment plan should be published no later than October 5, 2011. Ohio Const., art. XI § 1.

PENNSYLVANIA

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	Congressional Districts	State Legislative Districts
State Constitutional & Statutory Restrictions	25 Pa. Stat. §§ 2706 and 3595.303(2009).	Senate and representative districts shall be “composed of compact and contiguous territory as nearly equal in population as practicable...Unless absolutely necessary no county, city, incorporated town, borough, township or ward shall be divided in forming a...district.” Pa. Const. art. 2, § 16.
Description of Current Districts	25 Pa. § 3595.301 (2009).	<p><i>House of Representatives Legislative Districts, 2001 Final Reapportionment Plan</i>, The Pennsylvania Manual, <i>available at</i> http://www.portal.state.pa.us/portal/server.pt/gateway/PTARGS_0_71279_0_0_18/</p> <p><i>Senate Legislative Districts, 2001 Final Reapportionment Plan</i>, The Pennsylvania Manual, <i>available at</i> http://www.portal.state.pa.us/portal/server.pt/gateway/PTARGS_0_71187_0_0_18/</p> <p>Supreme Court of Pennsylvania found the Final Reapportionment Plan “in compliance with the mandates of the Pennsylvania Constitution and the United States Constitution” and ordered that it be “used in all [state legislative] elections.” <i>Albert v. 2001 Legislative Reapportionment Comm’n</i>, 567 Pa. 670, 688 (Pa. 2002).</p>
Number of Districts	Present: 19 2010 (est.): 18	Senate: 50 House: 203 Multimember districts? 0
Districting Responsibility	Legislature.	Legislative Reapportionment Commission. Pa. Const. art 2, § 17.
May Governor Veto?	Yes	No
Covered under § 5 of the Voting Rights Act?	No	
Self-imposed State Deadlines and Enforcement	None	30 days after the filing of the plan or after the last public exception filed, “the commission’s plan shall be final and have the force of law”. If the state Supreme Court finds the plan contrary to law, the commission must adopt another plan. Pa. Const. art 2, § 17.

SOUTH CAROLINA

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	Congressional Districts	State Legislative Districts
Selected state constitutional & statutory restrictions	“The General Assembly may at any time arrange the various Counties into ... Congressional Districts...as it may deem wise and proper...” S.C. Const. art. VII, § 13.	The state legislature apportions the districts among the counties according to the number of inhabitants contained in each, but each county must have at least one district. S.C. Const. art. III, §§ 3, 6.
Description of Current Districts	S.C. Code Ann. §7-19-40 (2009).	S.C. Code Ann. §§ 2-1-45, 2-1-75 (2009).
Number of Districts	Present: 6 2010 (est.): 7	Senate: 46 House: 124 Multimember districts? No House districts nested within Senate districts? No
Districting Responsibility	Legislature	Legislature
May Governor Veto?	Yes	Yes
Covered under § 5 of the Voting Rights Act?	Yes (<i>See Appendix 1</i>)	
Self-imposed State Deadlines and Enforcement	None	None

TENNESSEE

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	Congressional Districts	State Legislative Districts
Selected state constitutional & statutory restrictions	Congressional districts may not be changed between apportionments. Tenn. Code Ann. § 2-16-102 (2010).	The state legislature must apportion districts substantially according to population, each county must touch another in its district, and no county shall be divided in forming a district. Geography and political subdivisions may be used as factors. Tenn. Const. art. II, §§ 4, 5, 6.
Description of Current Districts	Tenn. Code Ann. § 2-16-103 (2010).	Tenn. Code Ann. §§ 3-1-101 - 103 (2010).
Number of Districts	Present: 9 2010 (est.): 9	Senate: 33 House: 99 Multimember districts? No House districts nested within Senate districts? No
Districting Responsibility	Legislature	Legislature
May Governor Veto?	Yes	Yes
Covered under § 5 of the Voting Rights Act?	No	
Self-imposed State Deadlines and Enforcement	None	None

TEXAS

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	Congressional Districts	State Legislative Districts
Selected state constitutional & statutory restrictions	None	Districts shall be contiguous. Tex. Const. art. III, § 25, 26.
Description of Current Districts	Partially court drawn plan. <i>See League of United Latin American Citizens v. Perry</i> , 457 F. Supp. 2d 716 (E.D. Tex. 2006).	Partially court drawn plan. <i>See Balderas v. Texas</i> , No. 6:01-CV-158, 2001 U.S. Dist. LEXIS 25006 (E.D. Tex. Nov. 28, 2001).
Number of Districts	Present: 32 2010 (est.): 35	Senate: 31 House: 150 Multimember districts? No House districts nested within Senate districts? No
Districting Responsibility	Legislature	Legislature. If the Legislature fails to apportion the senatorial and representative seats, the Legislative Redistricting Board of Texas will do so. The board has 5 members: the Lieutenant Governor, the Speaker of the House of Representatives, the Attorney General, the Comptroller of Public Accounts, and Commissioner of the General Land Office.
May Governor Veto?	Yes	Yes
Covered under § 5 of the Voting Rights Act?	Yes (<i>See Appendix 1</i>)	
Self-imposed State Deadlines and Enforcement	None	First regular session following release of census figures. If not, the Legislative Redistricting Board of Texas has 90 days to convene and must adopt a plan 60 days after its formation.

VIRGINIA

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	Congressional Districts	State Legislative Districts
Selected state constitutional & statutory restrictions	The state legislature must compose each district of contiguous and compact territory, constituted as to give, as nearly as is practicable, representation in proportion to the population of the district. Va. Const. art. II, § 6.	The state legislature must compose each district of contiguous and compact territory, constituted as to give, as nearly as is practicable, representation in proportion to the population of the district. Va. Const. art. II, § 6.
Description of Current Districts	Va. Code Ann. § 24.2-302.1 (2010).	Va. Code Ann. §§ 24.2-303.1 - 303.2, 24.2-304.01 - 304.02 (2010).
Number of Districts	Present: 11 2010 (est.): 11	Senate: 40 House: 100 Multimember districts? No. House districts nested within Senate districts? No
Districting Responsibility	Legislature's 8-member Joint Reapportionment Committee, consisting of five members of the Committee on Privileges and Elections of the House of Delegates and three members of the Committee on Privileges and Elections of the Senate, appointed by the respective chairmen of the two committees. Va. Code Ann. § 30-263 (2010).	Legislature's 8-member Joint Reapportionment Committee, consisting of five members of the Committee on Privileges and Elections of the House of Delegates and three members of the Committee on Privileges and Elections of the Senate, appointed by the respective chairmen of the two committees. Va. Code Ann. § 30-263 (2010).
May Governor Veto?	Yes	Yes
Covered under § 5 of the Voting Rights Act?	Yes (<i>See</i> Appendix 1)	
Self-imposed State Deadlines and Enforcement	Prior to House and Senate elections that are scheduled for November 2011.	Prior to House and Senate elections that are scheduled for November 2011.

WASHINGTON

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	Congressional Districts	State Legislative Districts
Selected state constitutional & statutory restrictions	Districts shall have nearly equal population; should be convenient, contiguous (share a common land border or transportation route), and compact. District lines should coincide with local political subdivisions (such as city and county lines) and “communities of interest.” District divisions should encourage electoral competition. Wash. Rev. Code § 44.05.090 (2009).	Districts shall have nearly equal population; should be convenient, contiguous (share a common land border or transportation route), and compact. District lines should coincide with local political subdivisions (such as city and county lines) and “communities of interest”. District divisions should encourage electoral competition. Wash. Rev. Code § 44.05.090 (2009).
Description of Current Districts	Wash. Rev. Code § 29A.76A (2009).	Wash. Rev. Code § 44.07D (2009).
Number of Districts	Present: 9 2010 (est.): 9	Senate: 49 House: 98 Multimember districts? Yes House districts nested within Senate districts? Yes
Districting Responsibility	Redistricting Commission: 5 members. The legislative leaders of the two largest parties in the House and Senate appoint one member each. The fifth member is the Chairperson, and does not vote. The plan must have the support of 3 of the 4 voting members in order to pass.	Redistricting Commission: 5 members. The legislative leaders of the two largest parties in the House and Senate appoint one member each. The fifth member is the Chairperson, and does not vote. The plan must have the support of 3 of the 4 voting members in order to pass.
May Governor Veto?	No	No
Covered under § 5 of the Voting Rights Act?	No	
Self-imposed State Deadlines and Enforcement	January 1, 2012	January 1, 2012



APPENDIX 3: Glossary of Redistricting Terms

Apportionment

Following each census, the 435 seats in the United States House of Representatives are apportioned to each state based on state population. The larger the state population, the more congressional representatives the state will be apportioned. Apportionment, unlike redistricting, does not involve map drawing.

At-large election system

An at-large election system is one in which all voters can vote for all candidates running for open seats in the jurisdiction. In an at-large election system candidates run in an entire jurisdiction rather than from districts or wards within the area. For example, a city with three open city council positions where all candidates for the three seats run against each other and the top three receiving the most votes citywide are elected is an at-large election system. In at-large election systems, 50% of the voters control 100% of the seats. At-large election systems can have discriminatory effects on minorities where minority and majority voters consistently prefer different candidates and the majority will regularly defeat the choices of minority voters because of their numerical superiority.

Census block

The smallest level of census geography used by the Census Bureau to collect census data. Census blocks are formed by streets, roads, bodies of water, other physical features and legal boundaries shown on Census Bureau maps. Redistricting is based on census block level data.

Census tract

A level of census geography larger than a census block or census block group that usually corresponds to neighborhood boundaries and is composed of census blocks.

Community of interest

A community of interest is a neighborhood or community that would benefit from being maintained in a single district because of shared interests, views or characteristics.

Compactness

A term used to describe the appearance of a district. Compactness refers to the overall shape of the district.

Contiguous

A term used to describe the appearance of a district. A geographically contiguous district is one in which all parts of the district are attached to each other.

Cracking

A form of dilution occurring when districts are drawn so as to divide a geographically compact minority community into two or more districts. If the minority community is politically cohesive and could elect a preferred candidate if placed in one district but, due to cracking, the minority population is divided into two or more districts where it no longer has any electoral control or influence, the voting strength of the minority population is diluted.

Crossover Districts

A crossover district is one in which minorities do not form a numerical majority but still reliably control the outcome of the election with some non-minority voters crossing over to vote with the minority group.

Deviation

The deviation is any amount of population that is less than or greater than the ideal population of a district. The law allows for some deviation in state and local redistricting plans. However, Congressional districts must not deviate too far from the ideal population. See below for definition of “ideal population.”

Gerrymandering

The drawing of electoral districts to give one group or party an unfair advantage over another.

Gingles Factors

The *Gingles* factors are three preconditions set forth by the U.S. Supreme Court in *Thornburg v. Gingles*, 478 U.S. 30 (1986), that a minority group must prove to establish a violation of Section 2 of the Voting Rights Act. These preconditions are the following: 1) a minority group must be sufficiently large and geographically compact to comprise a majority of the district; 2) the minority group must be politically cohesive (it must demonstrate a pattern of voting for the same candidates); and, 3) white voters vote sufficiently as a bloc usually to defeat the minority group’s preferred candidate.

Ideal population

The ideal population is the number of persons required for each district to have equal population. The ideal population for each district is obtained by taking the total population of the jurisdiction and dividing it by the total number of districts in the jurisdiction. For example, if a county’s population is 10,000 and there are five electoral districts, the ideal population for each district is 2,000.

Influence district

An influence district is one that includes a large number of minority voters but fewer than would allow the minority voters to control the election results when voting as a bloc. Minority voters are sufficient in number in “influence districts” to influence the outcome of the election.

Minority-coalition district

A minority-coalition district is a type of majority-minority district in which two or more minority groups combine to form a majority in a district. In most jurisdictions, minority-coalition districts are protected under Section 2 of the Voting Rights Act if the requirements set forth in *Thornburg v. Gingles* are satisfied.

Majority-minority district

A majority-minority district is one in which racial or ethnic minorities comprise a majority (50% plus 1 or more) of the population. A majority-minority district can contain more than one minority group. Thus, a district that is 40% Hispanic and 11% African American is a majority-minority district, but it is not a majority Hispanic district. This is also referred to as a minority coalition district. See definition of minority-coalition district.

Minority opportunity district

A minority opportunity district is one that provides minority voters with an equal opportunity to elect a candidate of their choice regardless of the racial composition of the district.

Minority vote dilution

Minority vote dilution occurs when minority voters are deprived of an equal opportunity to elect a candidate of choice. It is prohibited under the Voting Rights Act of 1965. Examples of minority vote dilution include cracking, packing and the discriminatory effects of at-large election systems.

Multimember district

A district that elects two or more members to office.

One-person, one-vote

A constitutional requirement that requires each district to be substantially equal in total population.

Packing

A form of vote dilution prohibited under the Voting Rights Act where a minority group is overconcentrated in a small number of districts. For example, packing can occur when the African American population is concentrated into one district where it makes up 90% of the district, instead of two districts where it could be 50% of each district.

PL 94-171

The federal law that requires the United States Census Bureau to provide states with data for use in redistricting and mandates that states define the census blocks to be used for collecting data.

Political subdivision

A division of a state, such as a county, city or town.

Precinct

An area created by election officials to group voters for assignment to a designated polling place so that an election can be conducted. Precinct boundaries may change several times over the course of a decade.

Preclearance

Preclearance applies to jurisdictions that are covered under Section 5 of the Voting Rights Act. Preclearance refers to the process of seeking review and approval from either the United States Department of

Justice or the federal court in the District of Columbia for any voting changes to a Section 5 covered jurisdiction. Redistricting plans in Section 5 covered jurisdictions must also receive preclearance. See Appendix 1 for a complete list of the Section 5 covered jurisdictions.

Racially polarized voting or racial bloc voting

Racially polarized voting is a pattern of voting along racial lines where voters of the same race support the same candidate who is different from the candidate supported by voters of a different race.

Reapportionment

Same as apportionment.

Redistricting

Redistricting refers to the process by which census data is used to redraw the lines and boundaries of electoral districts within a state to ensure that districts are substantially equal in population. This process affects districts at all levels of government – from local school boards, wards, and city councils to state legislatures and the U.S. House of Representatives.

Retrogression

A voting change to a Section 5 covered jurisdiction that puts minorities in a worse position under the new scheme than under the existing one.

Section 2 (of the Voting Rights Act)

A key provision of the Voting Rights Act that that protects minority voters from practices and procedures that deprive them of an effective vote because of their race, color or membership in a particular language minority group.

Section 5 (of the Voting Rights Act)

A key provision of the Voting Rights Act that prohibits jurisdictions covered by Section 5 from adopting voting changes, including redistricting plans, that worsen the position of minority voters or changes adopted with a discriminatory purpose. See preclearance.

Single-shot voting

Single-shot voting can be described as follows: “Consider a town of 600 whites and 400 blacks with an at-large election to choose four council members. Each voter is able to cast four votes. Suppose there are eight white candidates, with the votes of the whites split among them approximately equally, and one black candidate, with all the blacks voting for him and no one else. The result is that each white candidate receives about 300 votes and the black candidate receives 400 votes. The black has probably won a seat. This technique is called single-shot voting.” U.S. Commission on Civil Rights, *The Voting Rights Act: Ten Years After*, pp. 206-207 (1975).

Traditional redistricting principles

Traditional redistricting criteria applied by a state such as compactness, contiguity, respect for political subdivisions, respect for communities of interest, and protection of incumbents.

Undercount

The number of Americans missed in the census.

Partner Organization

NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.



LDF is America's legal counsel on issues of race and the nation's oldest non-profit civil rights firm. Founded in 1940 under the leadership of Thurgood Marshall, LDF focuses on issues of education, economic justice, criminal justice, and political participation.

From the early white primary cases to the present day, the quest for the unfettered political participation of African Americans has been an integral part of LDF's mission. LDF has been involved in nearly all of the precedent-setting litigation relating to minority voting rights over many decades, including litigating the cases that led to the abolition of white primaries, creating the first majority African-American congressional and state legislative districts in several states, and removing barriers to black voter participation and office-holding.

LDF has also been involved in every major legislative and administrative advocacy issue impacting minority political participation, including helping to craft the Voting Rights Act of 1965, the 1982 amendments to the Voting Rights Act, the National Voter Registration Act of 1993, and the Fannie Lou Hamer, Rosa Parks, Coretta Scott King, Cesar E. Chavez Voting Rights Act Reauthorization and Amendments Act of 2006.

Most recently, LDF has successfully litigated cases challenging discriminatory felon disenfranchisement laws and successfully defended the 2006 Voting Rights Act Reauthorization and Amendments before the United States Supreme Court.

In keeping with our commitment to political empowerment and equal opportunity for the disenfranchised, LDF also advocates for the full inclusion of people of color in the political process. In 2010 LDF launched *Count on Change*—an historic public education campaign about the civil and voting rights implications of the 2010 Census and encouraging Black participation. LDF also continues to advocate for the correction of the census miscount—the counting of prisoners at their place of incarceration—and prison-based gerrymandering. In 2008, LDF launched Prepared to Vote, a public education campaign designed to educate voters about the voter registration process and potential barriers before Election Day.

In addition, LDF recently produced several publications concerning minority voting rights and the role race continues to play in the political process. *“Post-Racial” America? Not Yet: Why the Fight for Voting Rights Continues After the Election of President Barack Obama*, examines the continued saliency of race in the political process; *Tearing Down Obstacles to Democracy and Protecting Minority Voters: Section 5 of the Voting Rights Act*, educates the public about the operation of the Voting Rights Act's Section 5 administrative enforcement process; and *Independent Redistricting Commissions: Reforming Redistricting Without Reversing Progress Toward Racial Equality*, educates the public of the need to carefully evaluate redistricting reform measures to guard against unraveling the rights of minority voters.

LDF's recent and historic work protecting and advocating for the right to vote demonstrates why LDF's commitment to this essential work remains undiminished. LDF is poised to enforce legal protections against racial discrimination and secure the constitutional and civil rights of African Americans. In 2011, LDF will help ensure that redistricting is fair and open to everyone.

LDF's national office is in New York, and its regional office is in Washington, D.C.

For more information, visit www.naacpldf.org.

Partner Organization

ASIAN AMERICAN JUSTICE CENTER



Founded in 1991, the Asian American Justice Center's (AAJC) mission is to advance civil and human rights for Asian Americans and to build and promote a fair and equitable society for all. AAJC is a national expert on issues of importance to the Asian American community including adult English language learning, affirmative action, anti-Asian violence prevention and race relations, census, health care, immigration and immigrant rights, media diversity and voting rights. AAJC works closely with its three affiliates, the Asian Pacific American Legal Center (APALC) in Los Angeles, the Asian Law Caucus (ALC) in San Francisco and the Asian American Institute (AAI) in Chicago, as well as its Community Partners Network, consisting of nearly 100 community-based organizations in 44 cities in 24 states and the District of Columbia.

Together with its affiliates, AAJC has worked to ensure compliance with voting rights laws by collecting data on voting participation and patterns, monitoring policies which affect the ability of Asian Americans to vote, providing community education on voting rights and political empowerment and participating in the redistricting process during the last redistricting cycle. AAJC and its affiliates have compiled reports on compliance with Section 203 of the Voting Rights Act, submitted amicus briefs on voting rights issues, including defending majority-minority districts drawn under the Voting Rights Act, fought against intimidation of Asian American voters, advocated against legislation that would prohibit campaign contributions by legal immigrants, and produced reports on exit polls conducted by the affiliates.

During the last redistricting cycle, AAJC provided support and national-level coordination for its affiliates' local redistricting processes through the AAJC Redistricting Project. In addition to the development and distribution of the previous Redistricting Handbook, used by the affiliates and Community Partners to conduct trainings and to participate in local redistricting efforts, AAJC provided both financial and technical support to the affiliates for local redistricting efforts. APALC spearheaded the organization of Asian American and Pacific Islander (AAPI) communities in nine California regions under a single network, the Coalition of Asian Pacific Americans for Fair Redistricting (CAPAFR). This was the first time AAPI communities organized statewide to actively engage in the Assembly redistricting process; the first time a

statewide redistricting map proposal was presented reflecting AAPI communities of interest; and—working in collaboration with groups such as MALDEF—the first time that cross racial cooperation resulted in the presentation of a unity map representing the shared interests of the African American, Asian American Pacific Islander and Latino communities' interests. In Chicago, AAI carried out an education and advocacy campaign around redistricting in Illinois, facilitating the opportunity for many first-of-its-kind activities to be carried out in the Asian American community in Chicago, including conducting an exit poll, and testifying before state and city committees on redistricting. As one of the fastest-growing populations in Illinois, it was critical that the Asian American voice be heard during the redistricting process.

AAJC has worked with the Department of Justice regarding policies and enforcement of the related provisions of the Voting Rights Act. AAJC and its affiliates are recognized as experts on Section 203 of the Voting Rights Act, which provides for language assistance and bilingual voting materials to communities which meet the specific threshold requirements. AAJC played a key role in pushing the Department of Justice and the Census Bureau to release the most recent Section 203 determinations in time for the 2002 elections and worked with local organizations to provide them with the tools and resources needed to work with their local election officials to ensure compliance with Section 203. AAJC also provided tools and resources to these organizations to conduct poll monitoring and connected the Department of Justice with the local groups to investigate noncompliance, such as in San Diego, where the first Section 203 case was brought on behalf of Filipino Americans. More broadly, AAJC has fought against policies that would intimidate voters or add unnecessary hurdles aimed at newly naturalized voters.

For more information visit www.advancingequality.org and www.aapiaction.org. Our affiliates will continue to work on redistricting efforts in California and Chicago.

Partner Organization

MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND



MALDEF has played a leadership role in local and statewide redistricting planning, mapping, advocacy and litigation efforts for four decades and will continue to do so in 2011 and 2012. MALDEF's active participation and oversight of the redistricting process in the states with significant Latino population is one of its most important policy and litigation roles. Through its redistricting work, MALDEF is able to increase the Latino community's influence over policy-making at the federal, state and local level. By creating districts where Latinos have the ability to elect candidates of their choice, MALDEF empowers Latinos and ensures effective representation.

MALDEF has been the leading advocate for Latinos in the redistricting process for forty years and was instrumental in creating fair redistricting plans for Latinos through litigation in the 1970, 1980, 1990 and 2000 rounds of redistricting in Texas, California, Arizona and Illinois. It remains a top priority to be the leading voice for Latinos in the redistricting process in this next redistricting cycle.

MALDEF has expertise in voting rights and redistricting and is uniquely positioned to defend and challenge redistricting maps in court. In the last round of redistricting, MALDEF participated in 14 lawsuits in Texas, California, Arizona and Illinois involving statewide and local redistricting plans to defend Latino majority districts and to challenge plans that diluted the Latino vote. In Texas, MALDEF challenged the statewide redistricting plans in federal and state court alleging that the plans diluted the Latino vote and won an order increasing the number of Latino-majority state representative districts. MALDEF challenged the Texas mid-decade congressional redistricting plan in 2003 after the legislature drastically revised its configuration of Latino majority districts. In this case- *League of United Latin American Citizens v. Perry*, --MALDEF won the first Supreme Court ruling on the merits of a Section 2 case in favor of Latino plaintiffs. The New York Times called it "the most important voting rights case of the decade" (June 28, 2006). In California, MALDEF challenged three districts in the statewide plan that failed to consolidate adjacent Latino neighborhoods in *Cano v. Davis*. In Arizona, MALDEF successfully intervened to defend a Latino majority

congressional district against litigants who sought to dismantle it in state court. In Illinois, MALDEF participated in seven redistricting lawsuits including challenges to local redistricting in Chicago and Aurora.

Over the last several years, MALDEF has actively advocated in support of minority voting rights. In 2005 and 2006, MALDEF testified before Congress in support of the reauthorization of the Voting Rights Act. MALDEF represents the lead plaintiffs in a 2006 challenge to Arizona's recent law requiring documentary proof of citizenship for voter registration. In the spring of 2008, MALDEF filed an amicus brief with the United States Supreme Court in *Bartlett v. Strickland*, a redistricting case where the high court's decision changed the standard to apply in creating minority districts in the upcoming redistricting. Recently, MALDEF played a lead role in California to oppose Proposition 11, a redistricting initiative that removes redistricting authority from the state legislature and places it in the hands of a citizen commission. MALDEF also represented Latino residents of a utility district in Texas in a Supreme Court case that refused to overturn Section 5 of the Voting Rights Act, *Northwest Austin Municipal Utility District Number One v. Holder*.

MALDEF has a history of collaborating in redistricting with other groups that are protected under the Voting Rights Act. It has existing relationships in all of its regional offices with organizations that represent African Americans and Asian American/Pacific Islanders. Through its census outreach work, MALDEF has established new relationships with organizations that can play a key role in collaborating in the redistricting process. Further, it is important to emphasize that MALDEF's policy in redistricting is to not draw a district at the expense of another group protected under the Voting Rights Act. This policy has allowed us to develop very strong relationships with the African American and Asian American/Pacific Islander communities during the redistricting cycle. MALDEF will continue to work with other community-based organizations and civil rights groups, both Latino and non-Latino, to ensure that previous gains are not undone and to bring about greater equality and access among communities of color.



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