

Introduction to 2021 Redistricting Law San José-Evergreen Community College District

September 14, 2021

Why Are We Doing This?

- Every 10 years the federal government conducts the Census, and each community college district must update its trustee areas to reflect the latest population counts, so that they are equal in population.
- Requirement is both statutory, *see* Education Code § 5019.5(a), and constitutional, *see Reynolds v. Sims*, 377 U.S. 533 (1964).

Redistricting Process: Key Dates

- **August 12, 2021:** Census Bureau released PL94-171 redistricting data
 - Usually released in Feb/March of year following Census
- **September 20, 2021:** announced date of release of adjusted data by California Statewide Database
- **February 28, 2022:** deadline for completion of redistricting process. (Educ. Code § 5019.5)

Federal Criteria: Equal Population

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

Federal Criteria: Equal Population (cont.)

Total Population:	414,076		1	2	3	4	5
Ideal:	82,815	Pop.	84,682	82,167	83,661	80,538	82,997
Deviation Range:	4,115	Dev.	1,868	-648	846	-2,247	182
Total Deviation %:	4.97%	Dev. %	2.26%	-0.78%	1.02%	-2.71%	0.22%

1. Divide the **total population** by the **number of seats** to get the **ideal population**
2. Subtract the **smallest district's population** from the **largest** to get the **deviation range**
3. Divide #2 by #1 to get the **total plan deviation**

Federal Criteria: Voting Rights Act

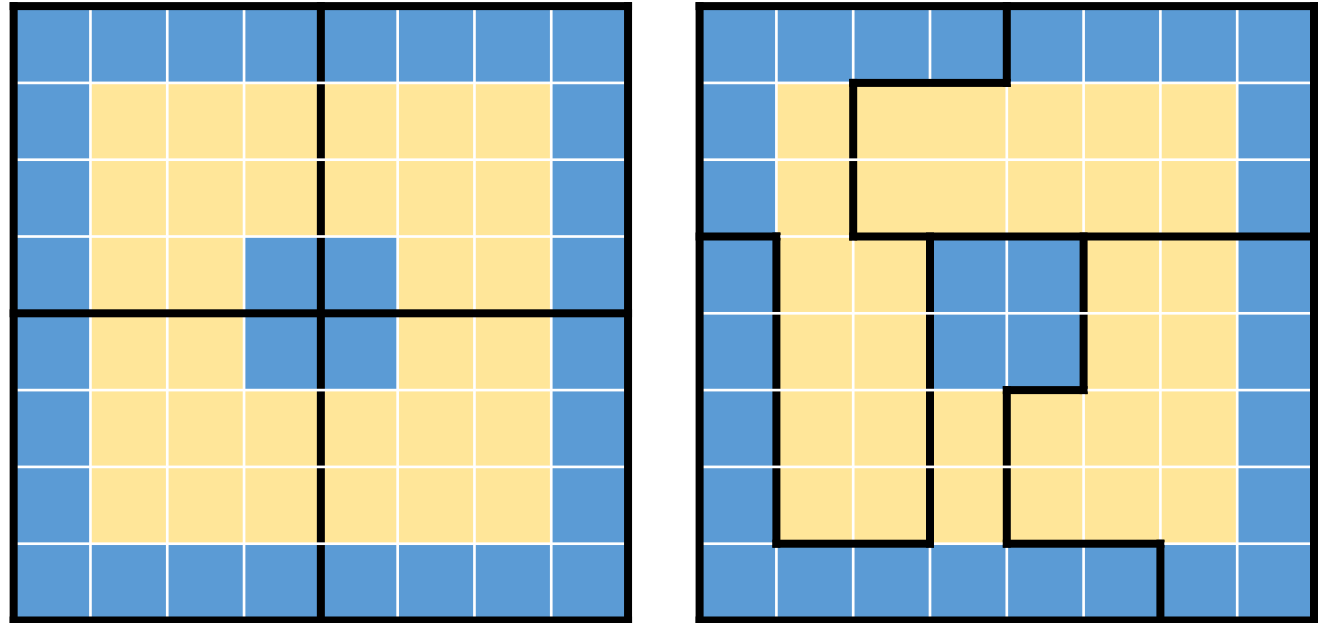
- Section 2 of the federal Voting Rights Act prohibits electoral systems (including district plans), which dilute racial and language minority voting rights by denying them an equal opportunity to nominate and elect candidates of their choice.
- “Language minorities” are specifically defined in federal law to mean persons of American Indian, Asian American, Alaskan Natives or Spanish heritage.

Federal Criteria: Voting Rights Act (cont.)

“Packing’ refers to the practice of filling a district with a supermajority of a given group or party. ‘Cracking’ involves the splitting of a group or party among several districts to deny that group or party a majority in any of those districts.”

-*Vieth v. Jubelirer*,
541 U.S. 267, 286 n.7 (2004)

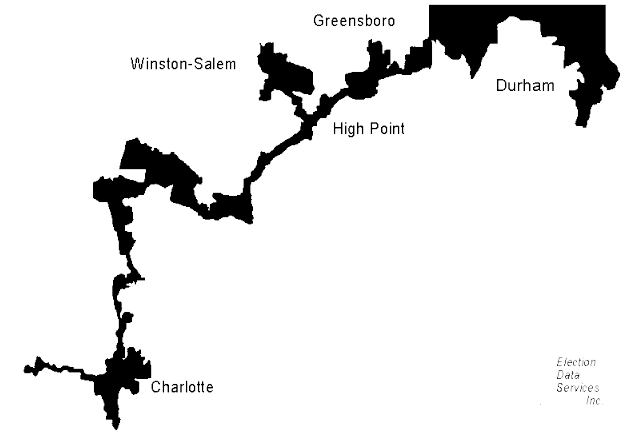
- Creation of minority districts required only if the minority group can form the majority in a single member district that otherwise complies with the law. *Bartlett v. Strickland*, 556 U.S. 1 (2009).



Four districts of even “Blue” and “Gold” party voters, OR one “packed” district of 14 Blue voters and two Gold voters with the remaining 18 Blue voters “cracked across the other three districts. The result is a 3-1 advantage for the Gold party

Federal Considerations: No Racial Gerrymandering

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



Other Permissible Criteria

- Topography.
- Geography.
- Cohesiveness, contiguity, compactness and integrity of territory.
- Communities of interest.

(See Elec. Code § 22000)

Process: Effect on Current Trustees

- No trustee's term cut short (*see* Educ. § 5021; Elec. Code § 22000(e)), but
- When his or her term ends, an incumbent can only run from the new trustee area in which he or she resides.

Questions?