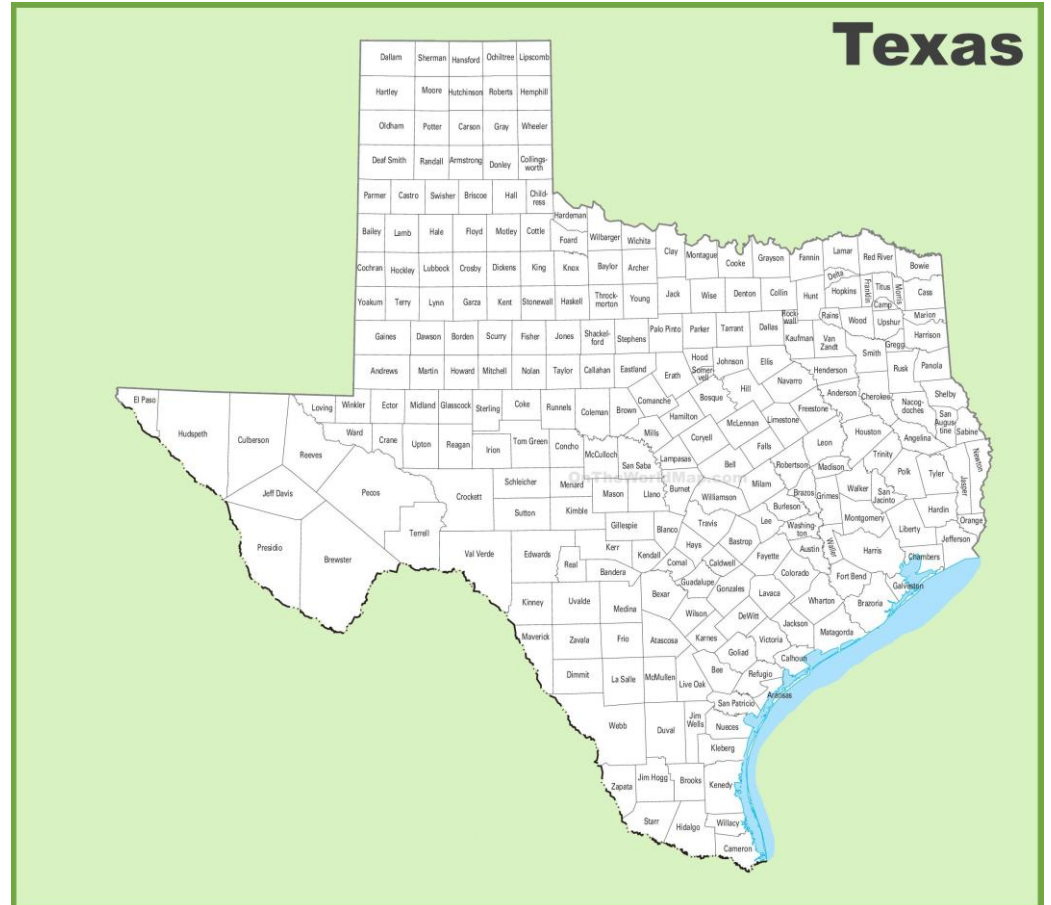


LEGISLATIVE REDISTRICTING

A PRIMER



DUTY TO REDISTRICT

“The Legislature shall, at its first regular session after the publication of each United States decennial census, apportion the state into senatorial and representative districts”

Tex. Const. art. III § 28.

IMPORTANT CONSIDERATIONS

1. Texas Constitution
2. One Person, One Vote
3. Voting Rights

TEXAS CONSTITUTION

“The State shall be divided into Senatorial Districts of contiguous territory, and each district shall be entitled to elect one Senator.”

Tex. Const. art. III, § 25.

ONE PERSON, ONE VOTE

“The conception of political equality from the Declaration of Independence, to Lincoln’s Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments can mean only one thing—one person, one vote.”

***Gray v. Sanders*, 372 U.S. 368, 381 (1963).**

U.S. CONGRESSIONAL DISTRICTS

“States must draw congressional districts with populations as close to perfect equality as possible.”

***Evenwel v. Abbott*, 136 S. Ct. 1120, 1124 (2016).**

TEXAS LEGISLATURE

“[W]hen drawing state and local legislative districts, jurisdictions are permitted to deviate somewhat from perfect population equality to accommodate traditional districting objectives, among them, preserving the integrity of political subdivisions, maintaining communities of interest, and creating geographic compactness.”

***Evenwel v. Abbott*, 136 S. Ct. at 1124.**

TEXAS LEGISLATURE (CONT.)

“Where the maximum population deviation between the largest and the smallest district is less than 10%, the Court has held, a state or local legislative map presumptively complies with the one-person, one-vote rule. Maximum deviations above 10% are presumptively impermissible.”

Evenwel, 136 S. Ct. at 1126-27, 1124.

VOTING RIGHTS: TWO SOURCES OF CLAIMS

Voting Rights Act § 2

- Vote-Dilution—Discriminatory Effect
- Intentional Vote-Dilution

U.S. Constitution

- Intentional Discrimination/Vote-Dilution
- Racial Gerrymandering

VOTING RIGHTS ACT § 2

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 a contravention of the guarantees set forth in section 10303(f)(2) of this title, as provided in subsection (b).

52 U.S.C. § 10301(a)

VOTING RIGHTS ACT § 2

“A State violates § 2 if its districting plan provides less opportunity for racial minorities to elect representatives of their choice.”

***Abbott v. Perez*, 138 S. Ct. at 2315.**

Thornburg v. Gingles

To make a prima facie case of vote-dilution under Section 2, the plaintiff must prove **three elements**:

1. The minority group in question is **sufficiently large and geographically compact** to constitute a majority in a single-member district;
2. The minority group is **politically cohesive**; and
3. In the absence of special circumstances, **bloc voting by the White majority** usually defeats the minority's preferred candidate.

TOTALITY OF CIRCUMSTANCES (“THE SENATE FACTORS”)

- History of official voting-related discrimination;
- Extent of racially polarized voting;
- Extent to which minority group members bear the effects of discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process;
- Use of overt or subtle racial appeals in political campaigns; and
- Extent to which members of the minority group have been elected to public office in the jurisdiction

RACIAL GERRYMANDERING

“The Equal Protection Clause of the Fourteenth Amendment forbids “racial gerrymandering,” that is, intentionally assigning citizens to a district on the basis of race without sufficient justification.”

***Abbott v. Perez*, 138 S. Ct. 2305, 2309 (2018).**

RACIAL GERRYMANDERING

- Evidence: “The plaintiff may make the required showing through ‘direct evidence’ of legislative intent, ‘circumstantial evidence of a district’s shape and demographics,’ or a mix of both.” *Cooper v. Harris*, 137 S. Ct. 1455, 1464 (2017).
- The *Cooper* record reflected that in drawing NC-1:
 - The legislature “purposefully established a racial target: African-Americans should make up no less than a majority of the voting age population”
 - Members “repeatedly told their colleagues that District 1 had to be majority-minority, so as to comply with the VRA”
 - Drawer “moved the district’s borders to encompass the heavily black parts of Durham...to ensure that the district’s racial composition would ‘add up correctly,’” and “sometimes could not respect county or precinct lines as he wished because ‘the more important thing’ was to create a majority-minority district.” 137 S. Ct. 1468-69.

PARTISAN GERRYMANDERING

In *Rucho v. Common Cause*, the Supreme Court held that “partisan gerrymandering claims present political questions beyond the reach of the federal courts.” 139 S.Ct. 2484, 2506-07 (2019).

However, this does not “condemn complaints about districting to echo into a void.” *Id.* at 2507.

- State Courts may apply state law standards.
- State legislatures may address via legislation.
- Congress may address via the Elections Clause.

CONFIDENTIALITY AND PRIVILEGE

