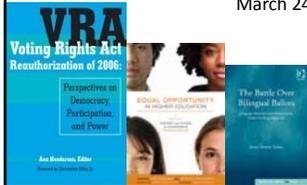


Statewide Redistricting in California:
Voting Rights Act & Community of Interest
Considerations
Presentation to the Citizens Redistricting Committee
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Ana Henderson,

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- Senior Trial Attorney, US DOJ Civil Rights Division, Voting Section.
 - Section 5 litigation and administrative review
- Director of Opportunity & Inclusion, focusing on Voting Rights Act and civic participation.
- Currently three funded projects about redistricting, focus on voting rights.
- Since June 2010, numerous presentations across state.

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Roadmap

- CA Statewide Redistricting Criteria
- Voting Rights Act provisions involved in redistricting
- Consideration of race in redistricting
- Communities of Interest

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CA Statewide Redistricting Criteria

In rank order:

1. Comply with US Constitution & Reasonably equal population
 2. Comply with Voting Rights Act
 3. Contiguity
 4. Political subdivisions, local communities of interest, and local neighborhoods intact
 5. Compactness
 6. Nesting
- PLUS: No regard for incumbents or parties

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Redistricting Criteria Subject to VRA

- Provisions specifically subject to the VRA caveat:
 - Population Calculus (for state districts)
 - Following political boundaries, neighborhoods and communities of interest
 - Compactness
 - Nesting
- Possibly: politics
Officially: contiguity (but non-contiguous districts are highly problematic)

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Voting Rights Act

- Section 5: requires covered jurisdiction to obtain federal preclearance before implementing voting changes, including redistricting
- Section 2: prohibits discrimination on the basis of race, color, or certain language minority statuses in voting.

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Section 5: California

- Four counties in California are covered:
 - King, Merced, Monterey, Yuba
- All voting changes for these counties or any jurisdiction within them, must be submitted. This includes redistricting plans.
- State-wide plans must be submitted for review of impact on the four covered counties.

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Section 5: Standard of Review

- DOJ/Court reviews changes for:
 - “retrogression”: does new procedure make minority voters worse off than under the status quo?
 - discriminatory purpose: was the change made for discriminatory reasons?
- Submitting jurisdiction has burden of proving new practice is not discriminatory and non-retrogressive.

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Voting Rights Act, Section 2

- Section 2: prohibits the denial or abridgement of voting rights on the basis of *race or language minority status*. (42 USC § 1973)
 - VRA defines “language minority” as Asian, Native American, Alaska Native or Spanish heritage. Does not apply to other language groups.

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Section 2, 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 1973b(f)(2) of this title, as provided in subsection (b)...”

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Section 2, part (b)

- “A violation...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) [race or language minority]...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*... nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.”

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Section 2 & Redistricting

- Section 2 applies to redistricting:
 - It is a “voting qualification or prerequisite to voting or standard, practice, or procedure”
 - It can result in a protected class of voters having “less opportunity than other members of the electorate...to elect representatives of their choice”

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Section 2: Vote Dilution

- Electoral systems can limit ability to elect by making it impossible for a protected class of voters to elect a candidate of their choice.
 - Example: at-large elections can make it impossible for even a large minority group to elect a candidate of choice, when the majority votes against them.
 - Example: single-member districts can be drawn in ways that minimize voters' ability to elect.
- Systems that limit ability to elect in this way are said to "dilute" minority voting strength.

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Section 2 and Districting: Methods of Vote Dilution

- A districting plan can dilute minority voting strength through two main ways:
 - "Cracking"
 - Dividing up a population concentration so it doesn't constitute a majority in any district.
 - "Packing"
 - Drawing minority population into a district with very high proportion minority when it could be distributed into more than one.

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Vote Dilution, Standards

- Much of vote dilution standard developed through case law.
- Burden is on plaintiff, often voters of color challenging a plan or at-large electoral system, to prove vote dilution and discrimination.
- First of all, must prove that current plan dilutes voting strength.

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Proving Vote Dilution, “Gingles test”

- 1. Minority population large and compact enough to be majority in single member dist
- 2. Minority group politically cohesive (tend to vote the same)
- 3. Majority vote as a block (usually to defeat min. candidate of choice)
- Then, prove that redistricting had discriminatory purpose or effect.

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Section 2 & Redistricting

- Prop 11 criteria require compliance with the VRA. It’s placement in the list indicates this is one of the most important goals, second only to equal population and complying w/ Constitution.
- Goal is to avoid violating Section 2 by ensuring that redistricting plan does not dilute the voting strength of a racial or protected language minority group.

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Gingles Factor 1: Drawing Districts

- Minority population large and compact enough to be majority in single member dist
 - Draw a district
 - As close to ideal population as possible in total population.
 - Gauge VRA implications by measuring proportion of voting age citizens that can be drawn in district.

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Drawing Section 2 Districts

- Baseline goal: equal population (“POP”)
- Also check: voting age population (“VAP”)

Hypo: New City

	Total POP	BPOP	% BPOP	BVAP	%BVAP
District 1	1000	200	20%	150	15%
District 2	1000	500	50%	400	40%
District 3	1000	600	60%	550	55%
District 4	1000	100	10%	90	9%
District 5	1000	700	70%	650	65%

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Drawing Section 2 Districts, cont’d

- Population of interest is eligible voters, because test is “ability to elect”
- Some courts interpret this to be citizens of voting age population (“CVAP”).

Hypo 2: New Town

	Total POP	LPOP	%LPOP	LVAP	%LVAP	LCVAP	%LCVAP
District 1	1000	200	20%	150	15%	100	10%
District 2	1000	500	50%	400	40%	300	30%
District 3	1000	600	60%	500	50%	400	40%
District 4	1000	100	10%	90	9%	50	5%
District 5	1000	700	70%	650	65%	550	55%

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Population Measures for VRA Districts

- Several courts have required citizenship data for districts for VRA districts. In California, VRA districts must consider citizen voting age population (CVAP)
- This cycle, CVAP data come from American Community Survey, for first time.
- Note: Warren Institute working on methods to use these data most efficiently and reliably

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Gingles Factors 2 & 3

- Deal with voting/political behavior:
 - # 2 Minority group politically cohesive (tend to vote the same)
 - #3 Majority vote as a block (usually to defeat min. candidate of choice)
- That is, is voting racially polarized?
- Plaintiffs present a Racially Polarized Voting analysis (“RPV”)

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Section 2 Districts, Terminology

- VRA district (sometimes majority-minority or Section 2 district): one minority group forms a majority of a district and can elect a candidate of its choice.
- Coalition district: two (or more) racial minority groups together form a majority of the district and can elect a candidate of choice.
- Cross-over district: a district where a minority group less than 50% of the CVAP population, with support from some white voters, can elect a candidate of choice.

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Race and Redistricting: Constitutional Concerns

- Supreme Court opinions have limited role race can play in redistricting w/o violating 14th Amendment.
- Mostly in 1990s, Court heard 14th Amendment challenges to majority-minority districts and in some cases invalidated plans.
 - Shaw v Reno, Bush v Vera, Miller v Johnson, etc.
 - “Shaw and its progeny”

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Race: Still a Permissible Consideration

- Main points from *Shaw* and its progeny:
 - Race should not play the sole or predominant role in how lines are drawn in non-remedial settings.
 - State must have compelling interest to consider race and narrowly tailor its consideration of race.
 - VRA compliance is a compelling state interest

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Sole or Predominant Role?

- Race should not subjugate “traditional redistricting principles”
 - In CA, compliance with redistricting criteria should satisfy this.
- District appearance has been important in some cases.
 - Districts “so bizarre” they were unexplainable on grounds other than race

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Race & Redistricting in CA

- Avoid VRA liability, e.g., vote dilution, retrogression, or discriminatory purpose
 - Be conscious of race to avoid cracking, packing, retrogressing, and purposefully harming
- Avoid 14th Amendment violation by conforming with redistricting principles
 - Don’t base decisions solely on race
 - Adhere to redistricting criteria in the CA Constitution

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Criterion 4: Community of Interest

- Fact-intensive determinations
- Information not found in pre-packaged data source like Census
- Those who live in or work with communities are best situated to identify them
 - Note: also true for neighborhoods.
- Criterion where Commission will most need to hear from public

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Redistricting Criterion 4

- District lines should not divide political subdivisions and communities of interest:
- *“The geographic integrity of any city, county, city and county, local neighborhood, or local community of interest shall be respected in a manner that minimizes their division to the extent possible without violating the requirements of any of the preceding subdivisions.”*

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Community of Interest: Prop 20 Definition

- Prop 20 defined community of interest as:
 - *“a contiguous population which shares common social and economic interests that should be included within a single district for purposes of its effective and fair representation.”*
- In other words: a group of people in the same area that shares a common bond or interest.

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What Communities of Interest are NOT

- Prop 11 stated what Communities of Interest are not:
 - *‘Communities of interest shall not include relationships with political parties, incumbents, or political candidates.’*
- Commission should not consider COIs based on party affiliation or work for or support of an incumbent/candidate

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Prop 20 examples of “shared interests”

- Interests “common to an urban area, a rural area, an industrial area, or an agricultural area”
- Interests “common to areas in which the people share similar living standards, use the same transportation facilities, have similar work opportunities, or have access to the same media of communication relevant to the election process”

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COI: Defined by Those Familiar with the Community

- Examples are not exclusive list of COIs and do not limit the kinds of economic and social interests that may bind a community
- It is up to those who live in or work with communities to identify and establish the social and economic interests that unite it
- Interests need not be limited to current situation, but can also include common goals

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Common Interests, More Examples

- Economic interests:
 - Current situation -- common employment or economic opportunities.
 - Goals -- expanding opportunities, development, bringing in businesses and jobs, etc.
- Social interests:
 - Current -- schools, culture, transportation
 - Goals -- improving recreation opportunities or public safety, etc.

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How to Establish a COI

- Oral or written testimony about the community (aka qualitative data)
- Answer following questions:
 - What bonds the community?
 - Where is the community located?
 - Why should the community be kept together in a district?
- May or may not be supported by quantitative data, such as Census

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COI: Location

- For redistricting, COIs must be geographically located.
 - Ex., people who frequent an internet chat room about dancing cats share a common interest, but this group may not be geographically located.
- Testimony must show where COI is.
- Provide at least the location and exterior boundaries. Maps are helpful.
- Commission should ask for clarification if needed.

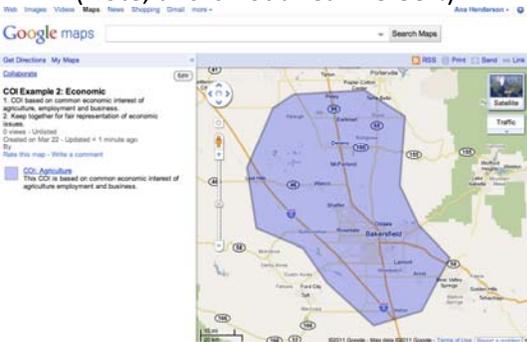
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COI/Neighborhood: Methods to Show Location

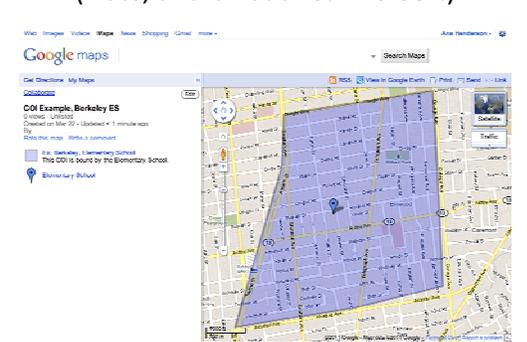
- Description
 - Location (where in state/county/city/area)
 - Physical or legal boundaries (rivers, streets, city limits, shopping centers, military bases)
- Maps
 - Free mapping software, such as Google Maps.
 - Fee-based mapping software, such as ARC GIS or Maptitude.
- Hard copies vs. Electronic Submissions

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Example COI on Google Maps (Note, this is not a real life COI!)



Example COI on Google Maps (Note, this is not a real life COI!)



Facilitating Public Comment

- CRC needs to hear from the public to gather information about COIs (and neighborhoods)
- Must establish user-friendly process for public to provide input
- Disseminate instructions and deadlines so community will know how and when to be involved

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Adopt COI Testimony Guidelines

- What information must be included and format it should take
 - Perhaps develop a form and/or web-based interface to standardize info presented
- Format & content requirements for maps
- Methods to submit testimony
 - In person, on line, by mail, etc.
- What will happen to testimony that does not meet minimum standards or is received late

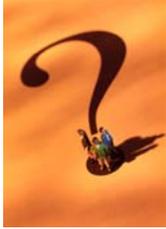
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Facilitating Public Input, Special Considerations

- Special considerations to facilitate participation:
 - For those who cannot attend a hearing
 - Written testimony guidelines must be clear since CRC will not be able to pose questions as in hearings
 - Disability access
 - Physical access to hearings, ASL translation, accessible written testimony protocols/web interface
 - Language access
 - Translation and interpretation

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Thank you and Questions



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