Legal Requirements for Redistricting in Louisiana

Table of Contents

I. Introduction[1]

This paper will familiarize the members of the Governmental Affairs committees with the federal and state law and major federal cases that will govern the manner in which the committee approaches the drawing of election districts in Louisiana following the 2010 census.

II. Why Redraw District Boundary Lines

A. Reapportionment of Congressional Seats

Population shifts that cause changes in the allocation of congressional seats, state to state, are the first reason why Louisiana must redraw election district boundary lines. Federal law enacted in 1967[2] requires congressional districts in the various states be drawn as single member districts. Based upon current Census Bureau population projections, Louisiana will have its delegation of Members in Congress reduced from 7 to 6 after the reapportionment of Congressional seats following the 2010 census.[3] To state the obvious, to allocate 100% of Louisiana's geography and population from 7 districts into 6 will require the drawing of new district boundary lines for the election districts for Members in Congress. Even if Louisiana would not lose a congressional seat the population shifts within the state's borders will cause the boundary lines of the congressional districts to be redrawn.

B. Louisiana Legislative Districts and Louisiana Constitution

LA const. art. III, § 6(A) provides: "By the end of the year following the year in which the population of this state is reported to the president of the United States for each decennial federal census, the legislature shall reapportion [*sic*] the representation in each house as equally as practicable on the basis of population shown by the census."

This constitutional mandate on the legislature requires the redrawing of all 105[4] representative district boundary lines and the 39 senatorial district boundary lines in 2011.[5]

---

[1] This paper is a collaboration among Alfred Speer, Glenn Koepp & Mark Mahaffey; each contributing substantial effort to its completion. Some of the research and case citations for parts of this paper were developed by Peter Wattson, Senate Counsel, MN and the Redistricting and Election Committee members of the National Conference of State Legislatures over the past 25+ years. A more thorough presentation of many of the issues presented herein may be found in the soon to be published "Redistricting Law – 2010", National Conference of State Legislatures, Denver, CO, 2009.

[2] 2 U.S.C. § 2c.

[3] *See*, "New Population Estimates Show Slight Changes For 2008 Congressional Apportionment, But Point to Major Changes for 2010," [Table D]; (http://www.electiondataservices.com/images/File/NR_Appor08wTables.pdf) Election Data Services, Dec., 2008.

[4] LA const. art. III, § 3 caps the number of representatives at 105 and senators at 39.

[5] Even though art. III, § 6 provides a Dec. 2011 deadline, the exigencies of our election schedule and the Voting Rights Act shrink the available time. *See*, page 3, *infra*.

C. Population Shifts within Louisiana

The third reason to redraw election district boundary lines is that population shifts occur within the state's borders.

Even with the number of Legislative, Supreme Court, P.S.C., B.E.S.E., and other election districts not changing in 2011,[6] Louisiana's population changes over the past decade have not been uniform, parish to parish and because of these disparate population changes election district populations shift out of balance.[7] There are exceptions. After the 1990 and the 2000 censuses Avoyelles Parish's population changes were sufficiently in line with the state's population changes that its population nestled within the acceptable range of a House district's population. Hence, Avoyelles Parish has remained a single representative district since 1981.

Other parishes have seen changes in legislative district boundaries within their borders in each of the redistricting rounds since 1970. By way of example, in 1971 Winn Parish was one of 3 parishes making up the geography of House District 22. In 1981, Winn Parish was split between districts 13 and 20. In 1991, Winn Parish was split between districts 13 and 23. In 2001, Winn Parish was split among districts 13, 22, & 23. Winn Parish's population changes over the past four decades were: 1970 = 16,369; 1980 = 17,253; 1990 = 16,269; and 2000 = 16,894. One can readily see that population shifts/changes in Winn Parish did not drive the decade by decade realignment of its geography among House districts. The realignment of Senate district boundaries have been driven by these same pressures.

Since Winn Parish's population changes did not mandate the geographic realignment, what did? One may think that parishes that have constant population counts have nothing to worry about, since their populations change little from decade to decade. But if the adjacent legislative districts to the ones into which Winn Parish's geography is assigned must grow in area due to population losses or shrink due to population gains, where will those districts pick up, or shed, their new population? The districts immediately adjacent to them, which will then need to replace that lost population or shed that excess population by taking from or giving to their adjacent districts. Thus is created a ripple effect that is contained only by the borders of Louisiana, not by those of individual parishes.

[6] The constitution places an upper limit on the number of House & Senate members. Amendments to the statutes, precleared by Justice, is the vehicle to decrease the membership in the House of Representatives and the Senate.
[7] *See*, page 7, *infra* for a discussion of ideal election district populations.

III. Who Will Draw Election Districts

A. Legislative districts

LA cons. art. III, § 6 mandates the legislature redraw the election districts for each legislative (House & Senate) district. Current districts are described in R.S. 24:35.5 for the House of Representatives and R.S. 24:35.1 for the Senate.

B. Congress, P.S.C., B.E.S.E. Supreme Court, and other courts' election districts:

The election districts for the offices of Members in Congress, P.S.C., B.E.S.E., the Supreme Court, and judicial election districts are provided for by law. Changes to these districts must be made by Acts of the Legislature.

Congress	- R.S. 18:1276
P.S.C.	- R.S. 45:161.4
B.E.S.E.	- R.S. 17:2.2
Supreme Court	- R.S. 13:101
Courts of Appeal	- R.S. 13:312
District Courts	- R.S. 13:477
Justices of the Peace	-R.S. 13:2601 - 2641

C. When will the election districts be redrawn?

1. Legislative districts

Even though the Louisiana constitution allows the Legislature the entire year of 2011 to redraw their election districts, other legal mandates impose an earlier deadline on this line-drawing exercise. Equal protection of the laws[8] requires the first election after the census be conducted using election districts of nearly equal population.[9] Further, the Voting Rights Act [42 USC §1973] [hereinafter "VRA"] mandates that election districts utilized by each state not deny or abridge the right of any citizen to vote on account of race or color.

Failure to redraw election districts prior to the 2011 state election cycle could subject Louisiana to having a federal court substitute its judgment for that of the legislature as to what election district boundaries would meet the federal and state constitutional mandates.

Therefore, the actual, functional deadline for redrawing legislative district boundaries is August 29, 2011.[10] This deadline is not for legislative enactment but for notice of preclearance

[8] U.S. const., amendment XIV and LA const. art. I, § 3.
[9] *See*, discussion page 7, *infra*.
[10] R.S. 18:1942 requires notice of Justice Department pre-clearance be given the Secretary of State five business days before the opening of qualifying.

under Section 5 of the VRA[11] of the legislative enactments redrawing the election district boundaries.

2. B.E.S.E.

The same time table and deadline applies to the drawing of these election districts because the elections of the members of the B.E.S.E. board occur in 2011.

3. Congress, P.S.C., and all judicial election districts

The elections for these offices occur on the congressional election schedule [fall of even numbered years]. Because the legal mandates discussed above which are applicable to these elections do not arise until 2012, the functional deadlines for line drawing and preclearance, and any possibility of a court intervention, will fall one year later, *i.e.* 2012.

If the legislature postpones drawing these election districts until 2012, an intervening election for legislators will occur and the members of the joint committee and of the House and Senate will have changed.

IV. Population of the State of Louisiana

A. Use Official Census Bureau Population Counts

The first legal requirement for any redistricting plan is to draw districts of substantially equal population.[12] But how does the line-drawer know the state's population and what is the target population for substantially equal district populations? The straight-forward answer is: the official census bureau population counts from the 2010 census.

LA const. art. III, § 6 mandates the use of the federal census population counts to draw legislative districts: ". . . on the basis of population shown by the census." This mandate is effective ONLY for legislative districts; however, the Legislature has traditionally utilized the census population figures to draw election districts for Members in Congress, P.S.C., B.E.S.E., the Supreme Court, and election districts for the courts of appeal, district courts, and justices of the peace.

1. What is the census?

U.S. Public Law 94-171 directs the Census Bureau to send to the states the population data for those persons residing in the state at the time of the census [April 1, 2010] broken down into racial groups, language groups, and age groups and reported by geographic units.

[11] *See*, discussion page 14, *infra*.
[12] *See*, discussion page 7, *infra*.

2. Three issues have dominated census developments during this past decade.

First, the 2010 Census will be a short-form-only census, asking only 10 questions to produce the apportionment and redistricting data counts. Households will be asked to provide key demographic information, including: whether a housing unit is rented or owned; the address of the residence; and the names, genders, ages, races, and language groups of those persons living in the household.

Second, the detailed demographic, housing, and economic information previously collected by the Census Bureau will be collected by the American Community Survey (ACS). The ACS is conducted on an ongoing basis, with the sample spread across the decade. This means that for the first time a wealth of detailed ACS data will be available in time to complement the release of the 2010 Census redistricting data set. An added benefit of replacing the long form with the ACS is that it will simplify the 2010 Census.

The third major change for the 2010 Census is enhancement of the Master Address File/Topologically Integrated Geographic Encoding and Referencing System (MAF/TIGER). For Census 2000, the Census Bureau had integrated MAF with TIGER so that census addresses were associated with census geography. For the 2010 Census, a concerted effort has been made to enhance the quality of this data base.[13]

3. Who is Counted?

a) How is the census count reported?

When Congress convenes in 2011, the president must transmit to that body a statement of the apportionment of the 435 representative seats among the states. The number of representatives allocated to each state is based on the census results and determined by the "method of equal proportions."[14] Each state is guaranteed at least one representative, and the remaining 385 seats are apportioned among the states by assigning priority values to each seat. Title 13, U.S.C., as amended by Public Law 94-171, requires the Secretary of Commerce to report census results no later than April 1, 2011[15], to the Governor and Legislative leaders. This report contains the population and demographic data for various geographical areas within the

[13] This does not mean 100% accuracy. New construction occurring after the address coding (2007-08); new occupancy in that period; and missed address ranges will occur. However, the 2010 census should be decidedly more accurate than any previous census.

[14] For an explanation of this apportionment formula visit: http://www.census.gov/population/www/censusdata/apportionment/history.html.

[15] The Census Bureau tracks the deadlines for each state's redistricting effort and targets the states with early deadlines – Louisiana – for the earliest distribution of population figures.

state, including the smallest areas, the "census blocks." The initial report provides the population basis for Louisiana's decennial redistricting efforts.

The census figures critical to redistricting are: total population counts for each unit of geography, 256 separate racial/language group categories, and voting age population breakdowns for each population category. These 256 separate racial/language categories are distilled down to those that are required for interaction with the Justice Department. The Department wants to know how the state has handled the protected population classes in making redistricting decisions, so many of these categories will be combined into broader categories to more fully disclose how Louisiana has dealt with the protected population classes.

From the Secretary of State, the Legislature also collects the voter registration data most concurrent with the census date (April 1, 2010) and appends that data as demographic data in the redistricting data set.

The Legislature uploads the census population figures, by category, and the voter registration figures into our internal database/redistricting GIS software and conducts rigorous data verification procedures to insure the data matches the geography we use to draw districts. The verification process is labor intensive and will require one week or more to complete.

b). Exclusion of Undocumented Aliens

The census is **not** limited to citizens. It is not even limited to permanent residents. The U.S. Constitution mandates the census count "persons," Art. I, § 2 (as amended by the 14th Amendment). Therefore, documented aliens, undocumented aliens (who respond to the bureau's canvas), military personnel stationed within the state, and college students living in the state are counted as part of Louisiana's population. It goes without saying that to be counted each of these persons first must respond to the census bureau's mailings or personal visit to their place of residence. For each group, the response rate to the census will correlate to their long-term connection to Louisiana or to their fear of later government action.

Pennsylvania and other states have sought, without success, to require the Bureau to exclude undocumented aliens from the population counts used to apportion the members of Congress among the states.[16]

B. May Louisiana utilize an alternative population count?

LA const. art. III, § 6 mandates the use of the federal census population counts to draw

[16] *Ridge v. Verity*, 715 F. Supp. 1308 (W.D. Pa. 1989); *Federation for American Immigration Reform (FAIR) v. Klutznick*, 486 F. Supp. 564 (D.D.C. 1980).

legislative districts: ". . . on the basis of population shown by the census." Furthermore, R.S. 18:1906 mandates that the census population figures shall be those as tabulated under the provisions of Public Law 94-171.[17]

V. Measuring Population Equality

How will the Legislature, and possibly a court, measure the degree of population equality in a redistricting plan?

The process starts with establishing an "ideal district population" which is arrived at by dividing the total population of a jurisdiction by the number of districts to be drawn for that jurisdiction.

If a jurisdiction had a population of 4 million and was entitled to elect 10 office holders, the average or "ideal" district population would be 400,000. If the line drawers create a districting plan that has five districts with a population of 380,000 and five districts with a population of 420,000, the "deviations" of the districts would be -20,000 and +20,000, or minus 5 percent and plus 5 percent. The "average deviation" from the ideal would be 20,000 or 5 percent; and the "overall range" would be 40,000, or 10 percent.

Most courts have used what statisticians call the "overall range" to measure the population equality of a redistricting plan, though they have usually referred to it by other names, such as "maximum deviation," "total deviation," or "overall deviation."

A. Equal Population - 1 person, 1 Vote and the 14th Amendment:

The 14th amendment's equal protection clause,[18] as interpreted by the U. S. Supreme Court, requires that each voter's choice in exercising their franchise is weighted the same as each other voter's choice. This interpretation of the equal protection clause has acquired a short-hand name: "1 person, 1 vote." This phrase represents the legal mandate that in drawing election districts the population of each election district, relative to the others, AND the population variance of ALL the districts must be so numerically exact as to not violate the principle of counting each person's vote equally with all others votes. It is a truism of state election district line drawing that **absolute numbers** are less important than **relative numbers**. Getting the numbers right is important, that is drawing a district that closely approximates the "ideal"

[17] The federal statute that requires the Census Bureau to provide, by April 1 of each year following a decennial census, the population and race data necessary for redistricting. *See also*, discussion of this tabulation at **IV.A.3(a)**, page 5, *supra*.

[18] No state shall ". . . deny to any person within its jurisdiction the equal protection of the laws."

population, but once all districts are drawn, the concern must shift to how the districts **relate** to each other; what is the "overall range" of the districts' deviation from the "ideal".

Even if all areas of a state are growing, what is important for each region, or each district, is whether it has grown faster or slower than the state's overall population growth. Districts that have gained population at a slower pace than the state as a whole will have to gain geography, and the population living on that geography, to keep its population in pace with the growing "ideal" district number. Districts that have gained population at a faster pace than the state as a whole will have to lose geography, and its resident population, to shrink its population to remain in pace with the ideal district number.[19] These losses and gains of population by moving geography are necessary to keep the "overall range" of all districts' deviation from the "ideal" district number within constitutional limits.

How equal in population do election districts have to be? The federal courts use two different standards for judging the equality of population in redistricting plans - one for congressional plans and a different one for legislative plans.

B. Congressional Plans – as nearly equal as practicable

1. "As Nearly Equal in Population as Practicable"

The population deviation standard for congressional plans is based on Article I, § 2, of the U.S. Constitution, which says: "Representatives . . . shall be apportioned among the several States . . . according to their respective numbers . . . ."

The population deviation standard for congressional plans is strict equality as articulated in a 1964 case, wherein the Supreme Court stated that the population variance of congressional districts must be "as nearly equal in population as practicable."[20] This is a critically important choice of words since the Court did not mandate that the populations be as nearly equal as practical. "Practicable" is defined as "capable of being done."[21] Note that something "practical" is not only capable of being done, but also sensible and worthwhile.[22] The difference between the two terms is critical and may be illustrated thus: it might be practicable to cast votes over the internet, but it would not be practical. The distinction to be drawn is that the legal requirement is not what is convenient, sensible, or straight-forward, but mandates states minimize the

[19] *See*, example of Winn parish page 2, *supra*.
[20] *Wesberry v. Sanders*, 376 U.S. 1 (1964).
[21] Random House Webster's Unabridged Dictionary, 2nd ed. (New York: Random House, 2001).
[22] *Id.*

congressional district population differences to the greatest degree as is capable of being achieved.

In 1983 the Supreme Court struck down a congressional redistricting plan drawn by the New Jersey legislature that had an "overall range" of **.6984%**, or **3,674 people**.[23] The plaintiffs showed that at least one other plan before the legislature had an overall range less than the plan enacted by the legislature, thus carrying their burden of proving that the population differences could have been reduced or eliminated by a good-faith effort to draw districts of equal population. That is to say, the population differences among the districts were not as nearly equal as practicable. This showing by the plaintiffs shifted the burden of proof to the state to show the reasons for the deviations.[24]

With the advances in the census population reports and in computer technology used to draw districting plans which have occurred since the 1990 census, the degree of population equality that is "practicable" grows every decade. In the 2000s, 19 states drew congressional plans with an overall range of either zero or one person, and ten more drew plans with an overall range of two to ten persons.[25] Louisiana's 2001 congressional districts had an overall deviation of 0.04% or 240 persons.

If a state finds it difficult to draw congressional districts that are mathematically equal in population the line drawers in that state should not assume that third parties will find the same difficulties. When line drawers surrender to difficulties and fail to reach the lowest point of deviation as "practicable," their surrender places the congressional plan at risk of challenge and replacement by another plan with a lower overall range drawn either by outside interests or by the courts.

2. Unless Necessary to Achieve "Some Legitimate State Objective"

Even if a challenger is able to draw a congressional plan with a lower overall range, the adopted plan may still be upheld by a reviewing court.

To overcome a challenge based upon 1 person, 1 vote, the state must carry the burden of proof; showing that each "significant" deviation from the ideal population was necessary to achieve "some legitimate state objective." As Justice Brennan wrote:

---

[23] *Karcher v. Daggett*, 462 U.S. 725 (1983).
[24] *See*, the discussion of Legitimate State Objective at **V.B.2.** this page.
[25] *See*, NATIONAL CONFERENCE OF STATE LEGISLATURES, "Redistricting 2000 Population Deviation Table" http://www.ncsl.org/programs/legismgt/redistrict/redistpopdev.htm.

> "Any number of **consistently** applied legislative policies might justify some variance, including, for instance, making districts compact, respecting municipal boundaries, preserving the cores of prior districts, and avoiding contests between incumbent Representatives . . . . The State must, however, **show with some specificity** that a particular objective required the **specific** deviations in its plan, rather than simply relying on general assertions . . . . By necessity, whether deviations are justified requires case-by-case attention to these factors." [**emphasis** added][26]

In order to rely on these "legitimate state objectives" to justify population inequality in a congressional plan the **RECORD** of each committee and each house **MUST** articulate those objectives in advance, follow them consistently, and be prepared to show the impossibility of achieving those objectives, district by district, with district boundaries that had a smaller deviation from the ideal. In the 1990s, Arkansas, Maryland, and West Virginia all were able to meet this heavy burden of proof when their congressional plans were challenged in court.

Near the end of the 1990s, the Supreme Court upheld a court-drawn congressional plan in Georgia with an overall range of 0.35 percent (about 2,000 people).[27] The burden was carried by showing that the plan represented the lowest range of all the plans that met constitutional requirements, Georgia was able to show it had a consistent historical practice of not splitting counties outside the Atlanta area, and likely shifts in population since 1990 had made any further effort to achieve population equality illusory.

In the 2000s, Georgia and Kansas met their *Karcher* burden, while 22 states drew congressional plans with a deviation of more than one person that were not challenged.[28]

A line drawer should be mindful that IF the state has ignored one of these articulated principles to accomplish some political goal, to draw some convenient district, the task of convincing a reviewing court that, in drawing the contested plan, the line drawer was compelled by these principles will be very difficult. Once these principles have been ignored, the state faces an impossibly steep burden to convincingly argue the necessity of adhering to the principles in the current, contested plan. Consistent application of the districting principles within an adopted plan also is scrutinized by the courts when assessing whether a state meets its *Karcher* burden of proof.

---

[26] *Karcher v. Daggett*, 462 U.S. at 740-41.
[27] *Abrams v. Johnson*, 521 U.S. 74 (1997)
[28] *See*, NATIONAL CONFERENCE OF STATE LEGISLATURES, "Redistricting 2000 Population Deviation Table" note 25, *supra*.

C. Legislative Plans

1. An Overall Range of Less than Ten Percent

The U. S. Supreme Court has adopted a less exacting overall deviation standard for legislative districting plans than the one applied to congressional districting plans. This less stringent standard is not grounded in the "apportionment clause" of the U.S. constitution, which governs congressional plans. Rather, state legislative districting deviation is governed by the Equal Protection Clause of the 14th Amendment.

As Chief Justice Warren observed: "mathematical nicety is not a constitutional requisite" when drawing legislative plans.[29] All that is necessary is that they achieve "substantial equality of population among the various districts."[30]

"Substantial equality of population" has come to mean that a legislative plan with an "overall range" of less than ten percent **may** survive an equal protection attack, **unless** there is proof of intentional discrimination within that range.[31] Numerous district courts have relied upon the Supreme Court's language to find that legislative districting plans with a maximum population deviation under 10% fall within the category of minor deviations that are insufficient to establish a *prima facie* violation of the equal protection clause.

This "ten-percent rule" was first articulated in a dissenting opinion written by Justice Brennan in the cases of *Gaffney* and *Regester*. In later cases, the Court's majority has endorsed and followed the rule.[32] Compliance with an arbitrary "ten percent rule" does not end a court's inquiry as to whether a districting plan violates the 1 person, 1 vote principle.

In a 2004 New York district court opinion, the court stated:

> "[w]e think that *Brown, Mahan, Gaffney, and Abate* . . . lend support to the proposition that the "ten percent rule" is not meant to protect a state that is systematically disadvantaging groups of voters with no permissible rational justification for the disproportion."[33]

Thus, plans within the "ten percent rule" are not immune from attack. The attacking plaintiffs must present compelling evidence that the plan ignores the legitimate reasons for population disparities and creates the deviations solely to benefit certain persons at the expense of others to support an equal protection clause action.

---

[29] *Reynolds v. Sims*, 377 U.S. 533 (1964).
[30] *Id.* at 579.
[31] *Reynolds v. Sims*, *supra*, *Gaffney v. Cummings*, 412 U.S. 735 (1973), and *White v. Regester*, 412 U.S. 755 (1973).
[32] *See, e.g., Chapman v. Meier*, 420 U.S. 1 (1975); *Connor v. Finch*, 431 U.S. 407 (1977); *Brown v. Thomson*, 462 U.S. 835 (1983); and *Voinovich v. Quilter*, 507 U.S. 146 (1993).
[33] *Rodriguez v. Pataki*, 308 F. Supp. 2d 346 (S.D. NY 2004).

An overall range of less than ten percent is not a "safe harbor." In a 2004 Georgia district court opinion,[34] the court found that:

> 1) Georgia had systematically under-populated districts in rural south Georgia and inner-city Atlanta and overpopulated districts in the suburban areas north, east, and west of Atlanta in order to favor Democratic candidates and disfavor Republican candidates;
>
> 2) the plan systematically paired Republican incumbents while reducing the number of Democratic incumbents who were paired; and
>
> 3) the plan ignored the traditional districting principles used in previous decades, such as keeping districts compact, not allowing the use of point contiguity, keeping counties whole, and preserving the cores of prior districts,

and the court struck down the plan as a violation of the Equal Protection Clause. The "overall deviation" of this Georgia plan was **9.98%**.

2. Unless Necessary to Achieve Some "Rational State Policy"

These equal protection inquiries are not subject to strict scrutiny, *per se*.[35] Normally in 1 person, 1 vote cases, the court is faced with allegations that involve contests between regions of a state and **not** involving discrimination toward some protected class of citizens. Hence, without the need to protect the voting rights of historically disadvantaged citizens, the scrutiny the court brings to bear on these plans is of a much lesser degree: was the state following a "rational policy" in making the choices that resulted in the particular plan enacted by the legislature?

The Supreme Court in *Reynolds* had anticipated that some deviations from population equality in legislative plans might be justified if they were "based on legitimate considerations incident to the effectuation of a rational state policy . . . ."[36] To date, the **only** "rational state policy" that has served to justify an overall range of more than 10% in a legislative plan has been respecting the boundaries of political subdivisions. And that has happened in only three cases.[37]

D. Traditional Districting Principles

Federal courts have recognized policies states may pursue in drawing districting plans. These policies are not required by the federal constitution but they may justify a state's failure to reach population equality among districts. The policies include:

> "[a]ny number of consistently applied legislative policies [which] might justify some variance, including, for instance, **making districts compact**, **respecting**

[34] *Larios v. Cox*, 300 F. Supp. 2d 1320 (N.D. Ga. 2004).
[35] *See*, the explanation of this concept at page 29, *infra*.
[36] *Reynolds v. Sims*, 377 U.S. at 579.
[37] *Mahan v. Howell*, 410 U.S. 315 (1973); *Brown v. Thomson*, *supra*; and *Voinovich v. Quilter*, *supra*.

> **municipal boundaries**, **preserving the cores of prior districts**, and **avoiding contests between incumbent Representatives**." [**emphasis** added][38]

Another recognized policy is **preserving the voting strength of racial minority groups**. [**emphasis** added][39] As long as the policies are applied in nondiscriminatory manner, they may be utilized by the state to justify drawing districts with less than exact population deviations. The Supreme Court refers to these policies (including respecting the boundaries of political subdivisions) as "traditional districting principles."[40]

E. Safe Harbor

The end result of myriad federal cases is that as long as Louisiana adheres to its well articulated and consistently applied traditional districting principles, minor deviations, up to but not exceeding an overall range of 10%, such adherence will protect a plan from successful attack under 1 person, 1 vote. If however, an attacking Plaintiff can show discriminatory intent or an inconsistent or pretextual application of districting principles then overall deviations below 10% will not be upheld.

VI. Don't Discriminate Against Racial or Language Minorities

The 15th amendment to the U.S. constitution provides:

> "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color . . . .
>
> The Congress shall have power to enforce this article by appropriate legislation."

The Supreme Court has found that the VRA is an appropriate exercise of the amendment's grant of power to the Congress to enforce its mandates.[41]

A. Section 5 of the Voting Rights Act

In addition to meeting the 1 person, 1 vote equal protection mandate for drawing election districts additional issues arise and additional burdens are imposed on certain states in election district line drawing. Election districts in Louisiana which in their application discriminate against racial or language minorities may not be utilized to conduct elections. Judging whether or not a particular districting plan discriminates in this manner requires that the line drawers understand the requirements of the VRA. Because Louisiana is a "covered jurisdiction" under

---

[38] *Karcher v.Dagget* , 462 U.S. at 740.
[39] *United Jewish Organizations of Williamsburgh, Inc. v. Carey*, 430 U.S. 144, 159 (1977) quoting *Beer v. United States*, 425 U.S. 130, 141 (1976).
[40] *See*, e.g., *Shaw v. Reno*, 509 U.S. 630, 647 (1993); *Miller v. Johnson*, 515 U.S. 900, 919 (1995); *Shaw v. Hunt*, 517 U.S. 899 (1996); *Bush v. Vera*, 517 U.S. 952, 959 (1996); *Abrams v. Johnson*, 521 U.S. at 84 - 95.
[41] *See*, *South Carolina v. Katzenbach*, 383 U.S. 301 (1966); *City of Rome v. United States*, 446 U.S. 156 (1980); *Miller v. Johnson*, *supra*.

the VRA, the analysis of the VRA will begin with the requirements and obligations of Section 5.[42]

1. In "Covered Jurisdictions," Plans Must be Precleared

Section 5 of the VRA only applies to certain "covered jurisdictions": nine states and all of their political subdivisions and certain political subdivisions of seven additional states.[43] In Louisiana all election law changes enacted since 1965, not merely redistricting plans, have been subject to preclearance by either the U.S. Department of Justice or the U.S. District Court for the District of Columbia before taking effect.

The preclearance requirement has been challenged three times and upheld by the U.S. Supreme Court.[44] The Supreme Court in "NAMUDNO" expressed serious doubt that Section 5's "current burdens [were] justified by current needs,"[45] but delayed deciding this issue of the constitutionality of Section 5 by permitting the utility district to escape those burdens by "bailing out"[46] of the preclearance requirement.

Section 5 requires that any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting may not be administered or applied until after the federal government has reviewed the standard or practice and interposed no objection to its

---

[42] 42 USC § 1973c provides, in part: "Whenever a State or political subdivision . . . shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or . . . on November 1, 1968, or . . . on November 1, 1972, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b (f)(2) of this title [language minorities], and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: Provided, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission . . . .

(b) Any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting that has the purpose of or will have the effect of diminishing the ability of any citizens of the United States on account of race or color, or in contravention of the guarantees set forth in section 1973b (f)(2) of this title, to elect their preferred candidates of choice denies or abridges the right to vote within the meaning of subsection (a) of this section.

(c) The term "purpose" in subsections (a) and (b) of this section shall include any discriminatory purpose.

(d) The purpose of subsection (b) of this section is to protect the ability of such citizens to elect their preferred candidates of choice."

[43] 28 C.F.R. Part 51. *See*, the appendix to 28 C.F.R. 51: http://www.usdoj.gov/crt/voting/28cfr/51/28cfr51.php#anchor51_app

[44] *See*, *note* 41, *South Carolina v. Katzenbach*, *supra* and *City of Rome*, *supra* and *Northwest Austin Municipal Utility District Number One* (NAMUDNO) *v. Holder*, 557 U.S. ____, 129 S.Ct. 2504 (2009).

[45] *Id.*, 129 S.Ct. at 2512.

[46] An explanation of the "bail out" provisions is far beyond the scope of this paper.

implementation. The preclearance requirements of Section 5 were adopted to freeze election procedures in covered jurisdictions unless changes to those procedures could be shown to be nondiscriminatory thus shifting the burden of proof from the citizens to the government. This preclearance is routinely sought from the Department of Justice (administrative review). The Department has no more than 60 days from the receipt of a **complete** submission explaining the voting practice or procedure sought to be changed in which to interpose an objection. However, the Department may deem the submission **incomplete** and request additional information, which request restarts the counting period from the Department's receipt of the additional, complete information. The detailed requirements a covered jurisdiction must satisfy to submit a complete "submission" are found at 28 C.F.R. §§ 51.27 and 51.28.[47]

In the 2000 round of redistricting and preclearance, two states sought non-administrative preclearance through actions filed in the D.C. federal district court. Georgia received court preclearance on 2 of their 3 plans. Their Senate districting plan was rejected by the district court but precleared upon appeal to the Supreme Court.[48] The Louisiana House of Representatives sought court preclearance of its redistricting plan, eventually entering into a consent judgment with the Department of Justice. The consent judgment required the House to enact amendments to 24 of the 105 districts. This amended plan was submitted to the Department of Justice and administratively precleared.

2. Do Not Regress

a) No "Retrogression" Test

Section 5 preclearance will be denied if the Justice Department concludes that the plan under review fails to meet the no "retrogression" test first set forth by the Supreme Court in 1976.[49] The no retrogression test means that a districting plan will not be precleared unless the jurisdiction establishes that the election law changes would not lead to a "retrogression" in the position of racial or language minorities with respect to their effective exercise of the electoral franchise. One measure of whether there will be "retrogression" is whether the ability of minority voters to participate in the political process and to elect candidates of their choices is augmented, diminished, or not affected by the proposed change in the law.

Beer was a challenge to the 1971 redistricting of the five single-member city council seats in New Orleans. Since 1954, two of the seven council members have been elected from the

[47] See, http://www.usdoj.gov/crt/voting/28cfr/51/subpart_c.php
[48] *Georgia v. Ashcroft*, 539 U.S. 461 (2003).
[49] *Beer v. United States*, 425 U.S. 130 (1976); reaffirmed in *City of Lockhart v. United States*, 460 U.S. 125 (1985).

city at large, whereas the remaining five council members have been elected from single-member districts. In 1971, Blacks made up 45% of the population and 35% of the registered voters in the city as a whole. Blacks were not a majority of the registered voters in any of the single member districts and were a majority of the population in only one district. No district had ever elected a council member who was Black. Under the 1971 redistricting plan, one district was created where Blacks were a majority of both the population and of the registered voters, and one district was created where Blacks were a majority of the population but a minority of the registered voters. The Supreme Court held that the plan was entitled to preclearance since it enhanced, rather than diminished, Blacks' electoral power.

b) Establishing a Benchmark

Retrogression is assessed by first establishing a benchmark against which to judge the submitted plan. This benchmark, in election district line drawing, will always be the last precleared districting plan for the jurisdiction that remains valid and applicable to the conduct of elections. For the Louisiana House of Representatives, the benchmark plan is Act 3 of the 2001 second Extraordinary Session, as amended by Acts 2 and 174 of the 2003 regular session and Act 535 of the 2004 regular session; for the Senate, the benchmark plan is Act 1 of the 2001 second Extraordinary Session, as amended by Act 7 of the 2003 regular session.[50]

Whether or not a newly enacted districting plan causes a retrogression in the ability of minority voters to elect candidates of their choice is judged by comparing individual district populations, voting age populations, and registered voter populations in the new plan with that same data from the benchmark plan. If any of the data categories decreases from the benchmark plan to the new plan, the new plan will be open to questioning by the Department of Justice as to whether or not it is a retrogressive plan.

Additionally, the gross number of election districts contained in the new plan whose population figures support a supposition that minority voters will be able to elect candidates of their choice to office will be compared to the gross number in the benchmark. If the gross number of districts providing minority voters the opportunity to elect candidates of their choice decreases in the new plan, the new plan will be open to questioning by the Department of Justice as to whether or not it is a retrogressive plan.

Further, Louisiana is not free to substitute a newly created, effective minority district in one region and evaporate such a district in another region and claim that no retrogression has

[50] These Acts are codified as R.S. 24:35.5 and 24:35.1, respectively.

occurred. Dismantling an effective minority district will result in questioning by the Department of Justice as to whether the dismantling of the district does not lead to a retrogression in the ability of minority voters to elect candidates of their choice.

In 2003, the Supreme Court held that retrogression should be determined by evaluating the new plan as a whole, thus taking into consideration districts in which minorities were able to influence the election outcome and possibly thereby elect candidates of their choice, even though these candidates were not of the minority race.[51] This interpretation was rejected by Congress in the 2006 reauthorization of Section 5,[52] when it stated explicitly that the purpose of the section was "to protect the ability of [racial and language minorities] to elect their preferred candidates of choice."

c) To Defend Against a Suit

To defend against a charge that a districting plan will make members of a racial or language minority group worse off than they were in the benchmark plan, the staff collects election result data (for more than legislative races) for the preceding 10 years (at least) showing the success of minority voters at electing representatives. Historic election data is not dispositive of the question of effectiveness of a particular district. Such data can merely support the decisions of line drawers which lead to the creation of district boundaries and whether the line drawers were living up to their VRA responsibilities.

d) Effective Minority Election District

What is an effective minority election district? In the 1980s round of redistricting a rule of thumb utilized by many jurisdictions was that a minority election district had to be made up of 60% to 65% Black population to be effective. By 2001 that figure had fallen dramatically. In 2003, one of Louisiana's House districts with a Black population of 57.5% was precleared by Justice as an effective minority district and one district with a Black registration of 54.7% was also precleared. In the benchmark House districting plan to be used in 2011, the lowest minority population or registered voter population which ever elected a Black candidate was a district with a 57% Black registration (60% Black population).[53]

As with so many legal standards, "effectiveness" is difficult, if not impossible, to establish in advance. However, after creation of a districting plan, any number of "experts" will

[51] *Georgia v. Ashcroft*, *supra*.
[52] Act of July 27, 2006, Pub.L. No. 109-246, sec. 5(d), to be codified as amended at 42 U.S.C. § 1973c; *See,* H.R. Rep. no. 109-478 at 93-94.
[53] House district 40.

happily weigh in to judge the relative "effectiveness" of a particular district configuration.

3. What does "any discriminatory purpose" mean in Section 5 states?

a) The "Max-Black" Policy

In 1987, the Justice Department announced that, notwithstanding the retrogression test employed by the courts when considering preclearance under Section 5, the department would apply the stricter standards of Section 2[54] when evaluating whether to preclear a districting plan under Section 5. This policy was routinely referred to as the "max-Black" policy – where ever a jurisdiction could create a minority district it was instructed by the Department to do so – and directly lead to the 1 person, 1 vote, [55] *Shaw* line of decisions.

This Justice Department policy was rejected as beyond the scope of Section 5 by the Supreme Court in 1997.[56] The Court held that sections 2 and 5 were designed to combat two different evils and that Section 5 was only directed at election law changes whose effect would be retrogressive to the opportunities of minorities to elect candidates of their choice. The Court's interpretation of Section 5 was over turned by Congress in 2006 when it amended Section 5 to provide that a voting practice or procedure change motivated by **any** discriminatory purpose also cannot be precleared.[57]

b) VRA Places Greater Burdens on Line Drawers

Even though a covered jurisdiction will not be mandated by Justice to create election districts to maximize the electoral opportunities for minority voters, the newly reauthorized VRA places greater burdens on line drawers for 2011.

Under the newly reauthorized Section 5, line drawers are not required to maximize the number of majority-minority election districts. As the Senate Report clearly states: "'any discriminatory purpose' does not permit a finding of discriminatory purpose that is based, in whole or part, on a failure to adopt the optimal or maximum number of majority-minority districts or compact minority opportunity districts."

As memorialized in the two committee reports accompanying the reenactment of Section 5, the inclusion of the language "any discriminatory purpose" was to prevent jurisdictions enacting a voting standard, practice, or procedure which would violate the 14th and 15th

[54] *See*, discussion at pg 19, *infra*.
[55] *See*, discussion at page 7, *supra*.
[56] *Reno v. Bossier Parish School Bd.*, 520 U.S. 471 (1997).
[57] *See*, Act of July 27, 2006, Pub. L. No. 109-246, sec. 5, to be codified as amended at 42 U.S.C. § 1973d.

Amendments to the U.S. Constitution.[58] This language was included in Section 5 to grant the preclearance reviewer the power to analyze whether a submitted districting plan would have the purpose or the effect of denying or abridging a minority person's right to vote. Legislative districts drawn to realign the state's population following the 2010 census cannot be drawn with the purpose to or effect of denying or abridging the electoral franchise of a minority population. How will the "purpose or effect" of a plan be judged, for no group of line-drawers will create a public record replete with positive statements of their underlying discriminatory intent?[59]

The analysis of whether a districting plan has the purpose to deny or abridge minority voting rights will be the same analysis utilized by the courts when weighing whether a districting plan would violate Section 2.[60] Briefly, a plan denies or abridges minority voting rights if it dilutes the voting strength of a minority population. Dilution of voting strength is judged by comparing one districting plan (or district configuration) against another which is averred to afford minority voters greater voting opportunities. Any plan or configuration which affords minorities lesser voting opportunities dilutes minority voting strength and violates the 15th amendment and the VRA. Such a dilutive plan may be denied preclearance because the plan has a discriminatory purpose – failing to provide minority voting opportunities where their geographically compact, politically cohesive population supports those opportunities.

B. Section 2 of the Voting Rights Act

1. A National Standard

In democracies, political power is inextricably bound with the right to vote. Section 2[61] attempts to secure political power for racial and language minorities by prohibiting states and their political subdivisions from imposing or applying voting qualifications; prerequisites to

[58] H.R. Rep. 109-478, pg. 93; Sen. Rep. 109-295, pgs. 15-18.
[59] This paradox spurred the U.S. Supreme Court's *BossierII* decision, negated by the "any discriminatory purpose" language of the reauthorization of Section 5, *Reno v. Bossier Parish School Bd.*, 528 U.S. 320, 328 – 329 (2000).
[60] *See*, discussion at V(B) this page.
[61] "42 U.S.C. §1973:(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) of this section.
(b) A violation of subsection (a) of this section 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) of this section 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. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: Provided, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population."

voting; or standards, practices, or procedures denying or abridging the right to vote on account of race or color or because a person is a member of a language minority group. A "language minority group" is defined by law as American Indian, Asian American, Alaskan Natives or persons of Spanish heritage.

Section 2 was enacted to eradicate voting practices that "minimize or cancel out the voting strength and political effectiveness of minority groups . . ."[62] Section 2 bars **ALL** states and their political subdivisions from maintaining any voting "standard, practice, or procedure" that "results in a denial or abridgement of the right ... to vote on account of race or color."[63] Section 2 has been used to attack redistricting plans on the grounds that they discriminated against Blacks, Hispanics, or Native Americans and abridged their right to vote by "diluting"[64] their voting strength.

2. No Discriminatory Effect

As enacted in 1965, the VRA had prohibited conduct "to deny or abridge" the rights of racial and language minorities. The 1982 amendments changed the language of the VRA to prohibit conduct "which results in a denial or abridgement" of those rights.[65] In the 1982 amendments, Congress decided to codify the pre-existing case law by adding subsection "(b)":

> A violation of [§ 2] is established if, based on the **totality of the 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 [§ 2] 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. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: Provided, that nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population. [**emphasis** added].[66]

3. The Three Gingles Preconditions

The 1982 amendments to Section 2 were first reviewed by the Supreme Court in 1986[67] in a case where a legislative redistricting plan containing a mix of multimember and single-

---

[62] Sen. Rep. No. 97-417, at 28.
[63] 42 U.S.C. § 1973(a).
[64] "The phrase 'vote dilution,' in the legal sense, simply refers to the impermissible discriminatory effect that a multimember or other districting plan has when it operates 'to cancel out or minimize the voting strength of racial groups.'" *Thornburg v. Gingles*, 478 U.S. 30 (1986) (O'Connor, J., concurring in the judgment) (quoting *White v. Regester*, 412 U.S. at 765).
[65] Pub. L. No. 97-205, § 3, codified at 42 U.S.C. § 1973, *see*, note 61, *supra*.
[66] 42 U.S.C. § 1973(b).
[67] *Thornburg v. Gingles*, *supra*.

member districts was challenged. To assist lower courts in evaluating Section 2 challenges to redistricting plans, the Court imposed three preconditions that a plaintiff must prove before a court proceeds to a detailed analysis of a redistricting plan:

> 1) that the minority population is sufficiently large and geographically compact to constitute a majority in a single-member district;
>
> 2) that the minority population is politically cohesive; and
>
> 3) that, in the absence of special circumstances, bloc voting by the White majority usually defeats the minority's preferred candidate.[68]

The Court has since held that the three preconditions also apply to Section 2 challenges to single-member districts.[69] To establish a *prima facie* case in a Section 2 action, the plaintiffs must prove the *Gingles* preconditions exist.

The cases since *Gingles* have generally focused on the first precondition. Voting patterns of minority voters will normally show cohesiveness if the population is sufficiently large and compact enough to be a majority in a single-member district. Furthermore, in those circumstances, history shows that majority voters and minority voters both vote as a block, thus defeating any attempts by the opposing voting block to successfully win elections. So, for most purposes, if a plaintiff can establish the first precondition, the other two preconditions also will fall into place. The failure to establish ALL three preconditions is fatal to a Section 2 action.[70]

Upon sufficient proof of the existence of the preconditions, the Court will then shift its examination to whether the "totality of the circumstances" establishes that the process by which candidates are chosen and elected is equally open to all persons, majority and minority alike.

4. The Totality of the Circumstances

Once the three preconditions are established, a court must consider several additional "objective factors" in determining the "totality of the circumstances" surrounding an alleged violation of Section 2. They include the following:

> 1) the extent of the history of official discrimination touching on the class participation in the democratic process;
> 2) racially polarized voting;
> 3) the extent to which the State or political subdivision has used unusually large election districts, majority vote requirements, antisingle-shot provisions, or other voting practices that enhance the opportunity for discrimination;
> 4) denial of access to the candidate slating process for members of the class;

---

[68] *Id.*, at 50-51.
[69] *Growe v. Emison*, 507 U.S. 25 (1993).
[70] *Growe, supra*; *Bartlett v. Strickland*, 129 S.Ct. 1231, 1244 (2009).

> 5) the extent to which the members of the minority group bear the effects of discrimination in areas like education, employment, and health, which hinder effective participation;
> 6) whether political campaigns have been characterized by racial appeals;
> 7) the extent to which members of the protected class have been elected;
> 8) whether there is a significant lack of responsiveness by elected officials to the particularized needs of the group; and
> 9) whether the policy underlying the use of the voting qualification, standard, practice, or procedure is tenuous.[71]

A plaintiff who claims vote dilution under Section 2 must demonstrate that the "totality of the circumstances" will support a court's finding that the contested voting scheme is dilutive of the minority's electoral power. Thus, to carry the burden, a plaintiff must show, by the preponderance of the evidence, the existence and pervasiveness of the "objective factors" listed in the Senate Report from 1982 and subsequently adopted by the U.S. Supreme Court in *Gingles*.

The purpose of examining the "totality of the circumstances" is for the court to ascertain whether the current voting qualifications, prerequisites, or standards are not equally open to minority voters. If the preconditions exist AND if the totality of the circumstances support a court's finding that the current law or practice is not equally open to minorities, then the court will find the law or scheme is dilutive of minority voting power.

The inquiry does not end there, however. Because the very concept of vote dilution implies, if not necessitates, the existence of a non-dilutive standard, practice, or procedure against which the "fact of dilution" may be measured, a Section 2 plaintiff must also postulate a reasonable alternative voting standard, practice, or procedure to serve as the benchmark of a non-dilutive voting practice.[72] This postulated "benchmark" must itself be less dilutive of minority voting power for the Section 2 plaintiff to succeed. If no possible law or practice can be proposed that will be less dilutive of minority voting power than the current law or practice, then the court will uphold the current law or practice as not violative of Section 2.

5. Draw Districts the Minority Has a Fair Chance to Win

If a jurisdiction has a minority population that could elect a representative if given an ideal district, and the minority population has been politically cohesive and is geographically compact, but bloc voting by White voters has prevented the minority's preferred candidates from

[71] *Thornburg v. Gingles*, 478 U.S. at 36-37.
[72] *See*, *Holder v. Hall*, 512 U.S. 874, 881 (1994); *Johnson v. DeGrandy*, 512 U.S. 997, 1011 (1994); *Reno v. Bossier Parish School Bd.*, 520 U.S. at 480.

being elected in the past, the jurisdiction may[73] have to create a district in which a minority candidate has a fair chance to win. To be successful in forcing the creation of an effective minority district, the minority voters will need to constitute an effective voting majority in the district. How much of a majority is required by Supreme Court jurisprudence?

The Supreme Court has recently held that Section 2 does not require the creation of a district in which minority voters have a fair chance to win elections unless the minority population will constitute a majority of the voting age population in such a proposed district.[74] In 1977, the Supreme Court had upheld a determination by the Justice Department that a 65% non-White population was required to achieve a non-White majority of eligible voters in certain legislative districts in New York City.[75] In 1984, the Court of Appeals for the Seventh Circuit endorsed the use of a 65% Black population majority to achieve an effective voting majority, in the absence of empirical evidence that some other figure was more appropriate.[76] The court found that "minority groups generally have a younger population and, consequently, a larger proportion of individuals who are ineligible to vote," and therefore, voting age population was a more appropriate measure of voting strength than was total population. Further, because Blacks usually have lower rates of voter registration and voter turnout, the court considered the use of a supermajority, such as 65% of total population or 60% of voting age population as necessary to draw districts in which Black voters could have an equal opportunity to win elections. The court noted that:

> "[J]udicial experience can provide a reliable guide to action where empirical data is ambiguous or not determinative and that a guideline of 65% of total population (or its equivalent) has achieved general acceptance in redistricting jurisprudence. . . . This figure is derived by augmenting a simple majority with an additional 5% for young population, 5% for low voter registration and 5% for low voter turn-out . . . ."[77]

The court also noted that "[t]he 65% figure . . . should be reconsidered regularly to reflect new information and new statistical data."

In the 1990s round of redistricting several courts found that, in view of rising rates of voter registration and voter participation among minority groups, a minority voting age population of slightly more than 50% was sufficient to provide an effective voting majority.

---

[73] If the jurisdiction is a "covered jurisdiction" under Section 5, it presumably **shall** have to create a viable voting district.
[74] *Bartlett v. Strickland, supra*.
[75] *United Jewish Organizations of Williamsburgh, Inc. v. Carey, supra*.
[76] *Ketchum v. Byrne*, 740 F.2d 1398 (7th Cir. 1984).
[77] *Id.* at 1415.

With the *Bartlett* decision the 65% guideline has been completely abandoned in favor of one beginning at the 50% + 1 of voting minority age population and scaling upward based upon empirical and anecdotal evidence of voting behaviors.

Why is this historic examination relevant in light of the *Bartlett* decision? As courts have recognized, providing a majority exceeding 65% may result in packing of minority voters into too few districts, thus also leading to a violation of Section 2. In a case involving an examination of a redistricting plan for the city of Boston, there were two districts where Blacks were a majority, one with a Black population of 82.1%.[78] The court found that these numbers showed "packing" of Black voters. However, the court found the plan did not discriminate against Blacks because there was only a moderate degree of racial polarization in the voting patterns of Whites and Blacks. The court found: "[T]he less cohesive the bloc, the more "packing" needed to assure . . . a Black representative (though, of course, the less polarized the voting, the less the need to seek that assurance.)"[79] The Black population was so interspersed with the White population that even if fewer Blacks were put into the two contested districts there were not enough Blacks voters to meet the first *Gingles* criterion and thereby create a third district with an effective Black majority.

If Louisiana faces a charge of a Section 2 violation against a legislative districting plan, the Legislature must be prepared with empirical data to show what is "reasonable and fair" under "the totality of the circumstances," because the plan is subject to being invalidated under Section 2 if it assigns either too few or too many members of a minority group into a given district.

C. Racial Gerrymandering

When drawing a minority district to avoid a violation of Section 2 or Section 5 of the VRA, the line drawer must take care not to create a racial gerrymander that runs afoul of the Equal Protection Clause of the 14th Amendment.

1. A Jurisdiction May Consider Race in Drawing Districts

Race-based redistricting is not always unconstitutional. As the Supreme Court has stated:

> "[R]edistricting differs from other kinds of state decision-making in that the legislature is always 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. . . . [W]hen members of a racial group live together in one community, a reapportionment plan that concentrates members of

[78] *Latino Political Action Committee v. City of Boston*, 784 F.2d 409 (1st Cir. 1986).
[79] *Id.* at 414.

> the group in one district and excludes them from others may reflect wholly legitimate purposes. The district lines may be drawn, for example, to provide for compact districts of contiguous territory, or to maintain the integrity of political subdivisions."[80]

Liner drawers may even intentionally create majority-minority districts not otherwise mandated by the VRA without violating the Equal Protection Clause.[81]

2. Avoid Drawing a Racial Gerrymander

When a jurisdiction creates a majority-minority district without regard to "traditional districting principles," the district will be subject to "strict scrutiny" if contested in court and likely struck down.[82] If a line drawer intends the majority-minority districts to be upheld, the line drawer will be well advised to avoid drawing a district which can be adjudged a racial gerrymander.

A racial gerrymander is a district (or plan) that is so irrational on its face, whether based upon its bizarre geometrical boundaries or its inclusion of disparate pockets of voters, that its boundaries can only be understood as an effort to segregate voters into separate voting districts because of their race.[83] The shape of the district, its convoluted borders, is not an element of constitutional violation but merely evidence of the racial motives underlying the line drawing decisions.[84] The critical issues in ascertaining whether a district is a racial gerrymander are: the shape of the district, regard had by the line drawers to traditional districting principles, and the motivations driving the line drawing decisions.

To avoid the pit falls of "racial gerrymandering":

a) Beware of Bizarre Shapes

The 4th Congressional District in LA, as put into place for the 1992 election, was an egregious racial gerrymander.[85] The "Z" district[86] stretched across and down the state reaching out to pick up pockets of Black voters all along the way. It was successfully attacked in the federal district court as a racial gerrymander.

As Justice O'Connor wrote in *Shaw*:

> ". . . reapportionment is one area in which appearances do matter. A reapportionment plan that includes in one district individuals who belong to the

[80] *Shaw v. Reno*, 509 U.S. at 646.
[81] *Voinovich v. Quilter*, 507 U.S. at 155, and *Bush v. Vera*, 517 U.S. at 958.
[82] *Shaw v. Reno*, *supra*; *Miller v. Johnson*, *supra*; *Bush v. Vera*, *supra*.
[83] *Shaw v. Reno*, 509 U.S. at 658.
[84] *Miller v. Johnson*, 515 U.S. at 913.
[85] *Hays v. Louisiana*, 839 F.Supp 1188 (W.D. La. 1993).
[86] *Id.* at 1199.

> same race, but who are otherwise widely separated by geographical and political boundaries, and who may have little in common with one another but the color of their skin, bears an uncomfortable resemblance to political apartheid. It reinforces the perception that members of the same racial group - regardless of their age, education, economic status, or the community in which they live - think alike, share the same political interests, and will prefer the same candidates at the polls . . . . By perpetuating such notions, a racial gerrymander may exacerbate the very patterns of racial bloc voting that majority-minority districting is sometimes said to counteract." [87]

The Supreme Court held that a redistricting plan that is so bizarre on its face that it is unexplainable on grounds other than race demands the same "strict scrutiny" under the Equal Protection Clause given to other state laws that classify citizens by race.[88] In a later case, Justice O'Connor further observed that:

> "[B]izarre shape and noncompactness cause constitutional harm insofar as they convey the message that political identity is, or should be, predominantly racial. . . . [C]utting across pre-existing precinct lines and other natural or traditional divisions is not merely evidentially significant; it is part of the constitutional problem insofar as it disrupts nonracial bases of identity and thus intensifies the emphasis on race."[89]

A legislature creates a racial gerrymander when it intentionally draws a district along racial lines or otherwise intentionally segregates citizens into districts based upon their race.[90]

b) Draw Districts that are Reasonably Compact

To avoid districts with bizarre shapes, the line-drawer will want to draw districts that are compact. How compact must they be? Reasonably compact. As Justice O'Connor wrote in 1996:

> "A Section 2 district that is reasonably compact and regular, taking into account traditional districting principles such as maintaining communities of interest and traditional boundaries, may pass strict scrutiny without having to defeat rival compact districts designed by plaintiffs' experts in endless "beauty contests."[91]

Compactness is not just a geometrical concept; it is also a political concept. Where the Texas Legislature created a Latino-majority district that ran 300 miles from McAllen on the Rio Grande to Austin in Central Texas, the Court found that the Latinos in the Rio Grande Valley

[87] *Shaw v. Reno*, 509 U.S. at 647-648.
[88] *Id.* at 644.
[89] *Bush v. Vera*, 517 U.S. at 980-81.
[90] *Shaw v. Reno*, *supra*.
[91] *Bush v. Vera*, 517 U.S. at 977.

and those in Central Texas were "disparate communities of interest" and thus not a compact population, so the district that encompassed them was not compact.[92]

c) Beware of Making Race Your Dominant Motive

Even if the shapes of the districts in a plan are not bizarre (or are bizarre but defensible) and even if they are reasonably compact, the plan may nevertheless run afoul of the Equal Protection Clause if race was the dominant motive for drawing the district boundary lines.

Louisiana's 4th Congressional District, as enacted by Act 42 of 1992 regular session, "like the fictional swordsman Zorro . . ."[93] it began north of Shreveport ran east to the Mississippi River, down the river, as it neared Baton Rouge it jutted east, northwest to Alexandria, and west to above Lafayette, to include Black voters while "periodically extending pseudopods to engulf small pockets of [B]lack voters," thus extending greater than 600 miles from end to end, splitting 24 parishes.[94] The 1981 congressional plan (8 districts) had been precleared by the Justice Department. The 1990 census of Louisiana resulted in the apportioning of only 7 congressional seats to Louisiana. Section 5's non-retrogression burden would have been satisfied by a congressional districting plan including 1 majority-minority district.[95] However, the Justice Department informed Louisiana "that preclearance would not be forthcoming for any plan that did not include at least 2 'safe' [B]lack districts out of 7."[96] All parties and the federal district court agreed that the Justice Department pushed Louisiana to draw the 4th Congressional District to maximize the number of majority-minority congressional districts.

In reviewing Louisiana's Act 42 iteration of the 4th Congressional District, the district court found that even though a jurisdiction is not constitutionally bound to follow traditional districting principles, the jurisdiction's adherence to these principles may defeat a racial gerrymander allegation.[97] On the other hand, a jurisdiction's disregard of its principles is evidence of constitutionally-suspect racial gerrymandering.

In 1995, the Supreme Court shifted its focus away from the shape of the district, saying that plaintiffs challenging a racial gerrymander need not prove that a district has a bizarre shape.[98] The shape of the district is relevant, not because bizarreness is a necessary element of

---

[92] *League of United Latin American Citizens* [LULAC] *v. Perry*, 548 U.S. 399, 432 (2006).
[93] *Hays v. Louisiana*, 839 F.Supp. at 1199-1200.
[94] *Id.* at 1200-1201
[95] *See*, *Beer v. United States*, 425 U.S. at 141.
[96] *Hays v. Louisiana*, 839 F.Supp. at 1196, note 21.
[97] *Id.*, at 1200.
[98] *Miller v. Johnson*, *supra*.

the constitutional wrong, but because it may be persuasive circumstantial evidence that race was the Legislature's dominant motive in drawing district lines. Where district lines are not so bizarre, plaintiffs may rely on other evidence to establish race-based redistricting.[99]

d) Beware of Using Other Demographics as a Proxy for Race

In *Hays*, Louisiana argued that factors other than race influenced the boundary drawing decisions creating the 4th district. To support the argument, Louisiana called expert witnesses to opine that the 4th district possessed socioeconomic commonality and coherence, in that its residents were poor, under educated and possessed fewer home amenities than other districts' residents. The court summarily rejected this testimony as "post *hoc* rationalization."[100] The *Hays* decision instructs line drawers[101] to avoid making decisions based upon race and then to analyze socioeconomic factors that correlate strongly with race as justification for the race-based initial decisions. In *Hays*, the court cited testimony that "no socioeconomic data was submitted with various districting plans" as those plans were debated.[102]

e) Follow Traditional Districting Principles

As the preceding discussion points out, the safest method of avoiding a racial gerrymander is for the line drawer to adhere to traditional districting principles. What are "traditional districting principles" and where do they come from?

The Supreme Court first used the term "traditional districting principles" in a 1993 North Carolina decision, mentioning "compactness, contiguity, and respect for political subdivisions" as examples.[103] Later, in a 1995 Georgia case, it added "respect for . . . communities defined by actual shared interests."[104] In a 1996 Texas case, it added "maintaining . . . traditional boundaries."[105] And in a 1997 Georgia case, it added "maintaining . . . district cores" and "[p]rotecting incumbents from contests with each other."[106] In these cases, the Supreme Court has now mentioned all of the most common districting principles used by the states.

"Traditional districting principles" are not enumerated in the U.S. Constitution but may be found in the constitutions, laws, resolutions, and committee rules of the several states. These

---

[99] *Id.* at 912-13.
[100] *Hays v. Louisiana*, 839 F.Supp. at 1201.
[101] *See, Vera v. Richards*, 861 F.Supp. 1304 (S.D. Tex. 1994) and *Bush v. Vera*, *supra* for later, similar decisions.
[102] *Hays v. Louisiana*, 839 F.Supp. at 1203.
[103] *Shaw v. Reno*, 509 U.S. at 647.
[104] *Miller v. Johnson*, 515 U.S. at 919-20.
[105] *Bush v. Vera*, 517 U.S. at 977.
[106] *Abrams v. Johnson*, 521 U.S. at 84.

principles are **not** constitutionally mandated.[107] As pointed out above, adherence to or disregard for these principles will be evidence considered by a court in judging the racial motivation of district line drawing decisions.

For each redistricting round, each Governmental Affairs committee has adopted a set of "principles" to regulate the plans drawn by the staff or submitted to the committee. In 1981, the committees' rules required equality of population in so far as practicable, limiting the overall deviation for any submitted plan to 10%, limiting the population data to the 1980 census, single member districts,[108] and rejecting the concept of dilution of minority voting strength. In 1991, the committees' rules required respect for traditional political geography and the natural geography of the state, compact and contiguous districts, limiting the overall deviation for any submitted plan to 10%, limiting the population data to the 1990 census, single member districts, and rejecting the concept of dilution of minority voting strength or partisan gerrymandering. In 2001, the committees' rules required single member districts, an absolute deviation within plus or minus 5% of the ideal district population, use of whole election precincts as the building blocks for line drawing (House rules only), compact and contiguous districts, respect for traditional political geography and the natural geography of the state, compliance with state and federal statutory and constitutional law and jurisprudence, and due consideration for traditional district alignments.

3. Strict Scrutiny is Almost Always Fatal

A racial gerrymander is subject to strict scrutiny under the Equal Protection Clause of the 14th Amendment.[109] Alleged equal protection violations are reviewed by courts on two different levels of scrutiny: rational basis and strict scrutiny. Classifications created by law, either in the words of the law or in its application, that divide people based upon their race or ethnicity are subject to the most exacting scrutiny a court may apply strict scrutiny. Laws subject to strict scrutiny are presumptively unconstitutional,[110] but may survive scrutiny, as discussed below. To survive strict scrutiny, a racial classification must be narrowly tailored to serve a compelling governmental interest.[111]

---

[107] *See*, *Shaw v. Reno*, 509 U.S. at 647.
[108] *See*, LA const. art. III, § 1 requiring single member districts.
[109] *Shaw v. Reno*, *supra*.
[110] *See*, *Hays v. Louisiana*, 839 F.Supp. at 1194, note 16.
[111] *Shaw v. Reno*, *supra*.

a) A Compelling Governmental Interest

What is a compelling governmental interest? The Supreme Court has considered remedying past discrimination,[112] avoiding retrogression in violation of Section 5, and/or avoiding a violation of Section 2 to be possible compelling governmental interests.[113] On the other hand, the Court does not find compelling a jurisdiction's argument that it exercised race-based decision making to comply with the Justice Department's inappropriate pressures to maximize the number of minority-majority districts.[114]

The Supreme Court has emphasized that the compelling interest must be supported by a strong basis in evidence; that a jurisdiction may not merely posit an interest, say complying with Section 5, as a pretext for drawing race-based districts.[115] The evidentiary basis must support the threshold conditions of the stated compelling interest.

b) Narrowly Tailored to Achieve that Interest

For a districting plan to survive strict scrutiny the jurisdiction must prove that the plan (or individual districts therein) were drawn as a narrowly tailored response to satisfy the compelling governmental interest sought to be furthered. In other words, once a compelling interest is established, the solution can not be blunt or over broad or all encompassing. The tailored solution must be one limited in scope to addressing the specific governmental interest posited as the reason or necessity for the law which affects different racial classes in a divergent manner; that is the racially motivated line drawing.

Any race-based district must substantially address the compelling governmental interest, and no other or no more, to survive strict scrutiny. In the way of examples; a race-based district created to satisfy an alleged Section 2 deficiency can not suborn traditional districting principles to race-based decisions more than is reasonably necessary to avoid the alleged Section 2 liability; a race-based district drawn to avoid retrogression must be strictly limited to reasonably avoiding retrogression; and to remedy the effects of past discrimination, the district configurations must reasonably relate to the past discriminatory practice or procedure the jurisdiction seeks to ameliorate.

Narrow tailoring (or the argument that a solution was narrowly tailored) is a fact intensive process which must build upon strong evidence provided concurrent with the line

---

[112] *See*, *Shaw v. Hunt*, *supra*.
[113] *Growe v. Emison*, *supra*, *Shaw v. Hunt supra*, *Miller v. Johnson*, *supra*, and *Bush v. Vera*, *supra*.
[114] *Miller v. Johnson*, 515 U.S. at 922.
[115] *Bush v. Vera*, 517 U.S. at 977.

drawing decisions and each decision must be weighed to discern how "reasonably" it will address the compelling state interest.

1) Remedying Past Discrimination

Remedying past discrimination has traditionally been a justification for a jurisdiction to adopt a racial classification. In the context of redistricting, this justification has yet to be proven as a sufficiently narrow tailoring to survive strict scrutiny. The Supreme Court has warned jurisdictions that they must have a strong basis in evidence for concluding that remedial action is necessary and that race-based districting, as a response to racially polarized voting, is constitutionally permissible only when the state employs sound districting principles, and only when the affected racial group's residential patterns afford the opportunity of creating districts in which they will be in the majority.

2) Avoiding Retrogression Under Section 5

The Supreme Court has assumed, without directly deciding the question, that avoiding retrogression in violation of Section 5 would be a compelling governmental interest.

In the *Shaw* decision, the Court anticipated that the state might assert that complying with Section 5 was a compelling governmental interest that justified the creation of the contested district. The Court warned the state that "[a] reapportionment plan would not be narrowly tailored to the goal of avoiding retrogression if the State went beyond what was reasonably necessary to avoid retrogression."[116] In the second *Shaw* decision,[117] the Court noted that before the 1990 census there existed no Black-majority districts and that the first plan drawn by the state after the 1990 census had included one Black-majority district. The Court found that adding the contested district as a second Black-majority district was not necessary in order to avoid retrogression.[118] Since the contested district was not narrowly tailored to serve the state's interest in complying with Section 5 the Court struck it down.

In the *Miller* decision, the Court found that it was not necessary for the state to draw a third Black-majority district in order to comply with Section 5. The plan for the 1980s had included one Black-majority district. The first two previous plans enacted by the state (and rejected by the Justice Department) after the 1990 census had included two Black-majority districts, thus improving on the *status quo*. Adding a third Black-majority district was not

[116] *Shaw v. Reno*, 509 U. S. at 655.
[117] *Shaw v. Hunt*, *supra*.
[118] *Id.*, 517 U.S. at 912-913.

necessary and thus not narrowly tailored to achieve the state's interest in complying with Section 5.[119]

3) Avoiding a Violation of Section 2

In the second *Shaw* decision, the Supreme Court said that to make out a violation of Section 2, a plaintiff must show that a minority population is "sufficiently large and geographically compact to constitute a majority in a single member district." The Court noted that the district at issue had been referred to as "the least geographically compact district in the Nation." There may have been a place in the state where a geographically compact minority population existed but the shape of the district at issue showed that the plan's district was not that place. Since the district did not encompass any "geographically compact" minority population, there was no legal wrong under Section 2 for which it could be said to provide the remedy.[120]

In the *Bush* case, the Supreme Court again assumed, without directly deciding the question, that complying with Section 2 was a compelling state interest but found that the districts were not narrowly tailored to comply with Section 2 because all three districts were bizarrely shaped and far from compact as a result of racial manipulation. The court pointed out that, if the minority population is not sufficiently compact to draw a compact district, there is no violation of Section 2; if the minority population is sufficiently compact to draw a compact district, nothing in Section 2 requires the creation of a race-based district that is far from compact.[121] The court reached a similar result in the LULAC case from Texas ten years later.[122]

During the 1990s, one racial gerrymander did survive strict scrutiny. The Fourth Congressional District of Illinois, the "ear muff" district in Chicago. It was found necessary in order to achieve the compelling state interest of remedying a potential violation of or achieving compliance with Section 2 of the Voting Rights Act.[123] The district court found that the district at issue had been narrowly tailored to achieve the compelling state interest of remedying a potential violation of or achieving compliance with Section 2 and, therefore, did not violate the Equal Protection Clause. The Supreme Court summarily affirmed the three judge panel's decision.[124]

---

[119] *Miller v. Johnson*, 515 U.S. at 920-27.
[120] *Shaw v. Hunt*, 517 U.S. at 916.
[121] *Bush v. Vera*, *supra*.
[122] *League of United Latin American Citizens v. Perry*, *supra*.
[123] *King v. State Board of Elections*, 979 F. Supp. 619 (N.D. Ill. 1997).
[124] *King v. State Board of Elections*, 522 U.S. 1087 (1998).

GLOSSARY of TERMS

Apportionment: *See,* definition of *reapportionment*.

Reapportionment: The allocation of seats in a legislative body (such as Congress) among established jurisdictions (such as states), where the jurisdiction's boundaries do not change but the number of members per jurisdiction does change.

Redistricting: The process of redefining the geographic boundaries of individual election units such as legislative or congressional districts.

Registration (Reg Total): The total number of persons registered to vote within a geographic unit of the state of Louisiana.

P. L. (Public Law) 94-171: The federal statute that requires the Census Bureau to provide, by April 1 of each year following a decennial census, the population and race data necessary for redistricting.

TOT AMERICAN INDIAN: The total population of the state of Louisiana who reported themselves as being, even partially, of American Indian ancestry, excluding any such persons who reported themselves as being, even partially, of Black ancestry.

TOT ASIAN: The total population of the state of Louisiana who reported themselves as being, even partially, of Asian ancestry, excluding any such persons who reported themselves as being, even partially, of either Black or American Indian ancestry.

TOT BLACK: The total population of the state of Louisiana who reported themselves as being, even partially, of Black ancestry.

TOT HISPANIC: The total population of the state of Louisiana who reported themselves as being, even partially, of the Hispanic language group.

TOT OTHER: The total population of the state of Louisiana who reported themselves as being of any ancestry excluding any such persons who reported themselves as being, even partially, of Asian, Black, or White ancestry.

TOT POP: The total population of the state of Louisiana as determined by the decennial census of 2010.

TOT WHITE: The total population of the state of Louisiana who reported themselves as being solely of White ancestry.

VAP TOT: (Voting age population): The number of persons in a geographic unit who are at least 18 years of age.

Ideal district population: A population measure calculated by dividing the total population of the state or other jurisdiction being redistricted by the number of districts in the type of redistricting plan being considered. For example, in 2001 the ideal district population for house districts was 42,561, which was the 2000 state population (4,468,976) divided by 105 House districts; for Senate districts was 114,589, which was the 2000 state population (4,468,976) divided by 39 Senate districts.

Deviation: The amount by which a district's population differs from the ideal district population for the particular plan type. Deviation may be stated in terms of:

Absolute deviation: A plus (+) or minus (-) number, showing the difference between the district's population and the ideal district's population.

Relative deviation: is attained by dividing the district's absolute deviation by the ideal district's population and is expressed as a plus (+) or minus (-) percentage.

Total Range of Deviation: The range over which the populations of all districts in a redistricting plan deviate from the ideal district population, normally expressed as a percentage.

Overall Range or Overall Deviation: For a redistricting plan, the difference in population between the smallest and largest district, normally expressed as a percentage.

Topologically Integrated Geographic Encoding and Referencing System (TIGER): The cartographic map database, prepared by the Census Bureau, that the states use as the geographic database for redistricting.

Visible Boundaries: District boundaries that follow visible geographic features, whether natural or man-made.

Gerrymander: Intentionally drawing a district in such a way as to favor one or more interest groups (including political parties) over others.

Packing: drawing district boundary lines so that the members of a minority are concentrated, or "packed," into as few districts as possible. The minority becomes a supermajority in the packed districts – 60, 70, 80, or 90 percent. They easily can elect representatives from those districts, but their votes in

excess of a controlling majority are "wasted." Those "wasted" votes are not available to help elect representatives in other districts, so the minority cannot elect representatives in number approaching proportion to their numbers in the state as a whole.

Fracturing: drawing district lines so that a minority population is broken up. Members of a minority are divided among as many districts as possible, keeping them a minority in every district, rather than permitting them to concentrate their strength enough to elect representatives in one or more districts.

Racial gerrymander: when a state intentionally draws a majority-minority district without regard to "traditional districting principles," (*See,* later) the district will be subject to attack as violating the 14th amendment equal protection clause and be subjected to "strict scrutiny" by the reviewing court.

Equal Protection Clause: *See* "Fourteenth Amendment to the U.S. Constitution."

Fourteenth Amendment to the U.S. Constitution: The U.S. Constitution provision that includes the "Equal Protection Clause", which prohibits the states from denying persons equal protection of the law. The "Equal Protection Clause" is the primary basis of the One-Person, One-Vote principle (*See* next). Also, this is principle that Supreme Court has used to strike down districts as "racial gerrymanders".

One person, one vote: The principle derived from the Equal Protection Clause of the Fourteenth Amendment that each person's vote should count the same as every other person's vote which is achieved by requiring that all legislative districts be drawn approximately equal in population.

Strict scrutiny: a standard of review by a court which subjects a law to assessment as to whether the law is "narrowly tailored" to serve a compelling governmental interest. The Supreme Court has defined "narrowly tailored" as a law that "targets and eliminates no more than exact source of evil it seeks to remedy."

Traditional districting principles: a term for criteria, such as compactness and contiguity, which have historically been considered by a particular jurisdiction in drawing election districts.

Community of interest: A grouping of people that has common political, social, or economic interests.

Compactness: The degree to which the geography assigned to a district is close together Courts have held that "reasonably compact districts" is a traditional districting principle.

Contiguity: Adjacency. For redistricting purposes, a district is considered to be contiguous if each part of the district touches another part of the district at more than a point, so that the entire district is within a continuous boundary. In Louisiana, intervening water bodies may provide contiguity.

Core of prior districts: the portion of a previously enacted district which is identified by the incumbent office holder as representing the electoral base upon which elections within the district are won or lost. This "core" geography should be relatively consistent from districting plan to districting plan.

Respect for political subdivision boundaries: considering whether to cross a political subdivision boundary line when assigning geography to a district or whether to keep the political subdivision wholly within one election district.

Fifteenth Amendment to the U.S. Constitution: The U.S. Constitution provision providing that the right to vote may not be denied or abridged on account of race. Foundation upon which Congress rests the Voting Rights Act (*See*, below).

Minority Districts: Term used for districts where a racial or ethnic minority group constitutes an effective majority of the population, sufficient to provide to members of that minority group a reasonable opportunity to elect candidates of its choice. Also referred to as "majority-minority" districts.

Voting Rights Act: The federal law prohibiting discrimination in voting practices on the basis of race or language group, codified as 42 U.S.C. Section 1973 *et seq.* The official title of the Act is the Voting Rights Act of 1965. Sections 2 and 5 of the Act are important for redistricting:

Section 2: Prohibits the adoption of voting standards or practices that abridge the right to vote on the basis of race or language group. This section applies to all states and other governmental units and may be used to challenge a redistricting plan that discriminates against a racial or language minority group by diluting their voting strength.

Vote dilution: the result of a voting standard or practice that abridges a minority population's right to fully participate in the election process and to elect representatives of their choice.

Single-Member District: District that elects only one representative.

Gingles preconditions:

1) that the minority is sufficiently large and geographically compact to constitute a majority in a single-member district;

2) that it is politically cohesive; and

3) that, in the absence of special circumstances, bloc voting by the White majority usually defeats the minority's preferred candidate.

Section 5: Requires that changes in election procedures and practices (including changes in district lines) be precleared by the U.S. Department of Justice or by a three-judge federal district court in the District of Columbia prior to implementation.

Preclearance: A determination by a three-judge federal court in Washington D.C. or the U. S. Attorney General that the submitting jurisdiction has met its burden of demonstrating that a particular voting change (including a districting plan) does not violate Section 5 of the Voting Rights Act, *i.e.*, does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color.

Retrogression: A voting change that leaves minority voters "worse off" than they had been before the change with respect to their opportunity to exercise their right to vote.

Submissions: For states, such as Louisiana, covered by Section 5 of the federal Voting Rights Act, changes in voting practices or procedures cannot be implemented until Section 5 preclearance has been obtained. A state may submit the voting change to the U. S. Attorney General. Once the plan is submitted for preclearance, the Department of Justice has 60 days within which to review a "complete" submission. If the U.S. Attorney General interposes an objection to all or part of the redistricting plan, the legislature may (1) attempt to cure the objection by making changes to the districting plan; (2) request administrative reconsideration from the Attorney General; or (3) seek a declaratory judgment in the District Court of the District of Columbia that the districting plan does not violate Section 5.

TABLE OF AUTHORITIES

Federal Cases:

Other Authorities: