

Local Government Redistricting

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WITH PRACTICAL LAW GOVERNMENT PRACTICE

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A Practice Note advising local governments forced to consider redistricting their single-member districts after the federal census. This Note explains when redistricting is required, describes the population and demographic data typically used, outlines applicable federal constitutional principles and voting rights laws, and provides guidance on organizing a successful redistricting process.

Each federal census affects political subdivisions that elect their governing boards from single-member districts. Legal counsel for these local entities end up guiding them through the redistricting process. This Note provides an overview of redistricting obligations imposed by federal constitutional law for local counsel to consider after a release of the census.

This Note focuses on local political subdivisions that have voters elect the governing board from single-member districts. The release of the census at the beginning of each decade requires these entities to determine if, based on the new population figures, the single-member districts continue to conform to the US Constitution's one-person, one-vote requirements. Out-of-balance electoral districts may require the entity to rebalance the population among the districts.

This Note specifically discusses:

- **Covered entities.** The one-person, one-vote principle applies to the governing boards of local governmental bodies such as county commissioners courts, city or town councils, school district or college district boards, and similar entities whose governing boards are elected from districts. The discussion also distinguishes judicial bodies and governing boards of certain types of special districts to which the concept is not applicable.
- **When redistricting is required.** Statutes, charter provisions or other state and local provisions may require periodic districting review and also explains how the one-person, one-vote principle

comes into play before a general election, even if redistricting is not otherwise required by state legislation or local ordinance or policy.

- **Coordination of efforts.** In most states, local government entities typically hold their general elections jointly with other entities. Changes in single-member districts made by one entity may affect the configuration of voting or election precincts that may be used jointly by other entities in the area. As a practical matter, the configuration of election precincts and the timing of any redistricting changes may need to be coordinated with other entities to ensure orderly elections after redistricting.
- **Census data.** The federal Census Bureau Public Law 94-171 population data files provided for redistricting, as well as census geography, and this may or may not match what is on the ground.
- **One Person, One Vote.** The one-person, one-vote principle applies to local governmental entities, along with the concept of "Maximum Total Deviation."
- **Section 2 of The Voting Rights Act.** Section 2 of the Voting Rights Act prohibits discrimination against protected minority groups as those prohibitions apply to all state and local governmental entities. Legal standards supplied by the courts apply to a protected voter challenge of a redistricting plan adopted by the governmental entity.
- **Improper race-based decision-making.** A delicate balance exists between complying with Section 2 of the Voting Rights Act to protect minority voters and complying with the Fourteenth Amendment's restrictions on race-based decision-making. A political subdivision can identify appropriate districting criteria for its particular circumstances and incorporate these elements into its redistricting process to provide a defense to potential legal challenges.
- **Potential legal challenges to a redistricting process.** There are typical types of federal suits initiated to challenge a governmental entity's redistricting process. A potential residual implication of Section 5 of the Voting Rights Act can also exist.
- **Practical tips and suggestions for a successful process.**

State laws also affect redistricting obligations, as do home rule charters, ordinances, regulations, and local policies. This Note does

not examine these provisions, and counsel should determine how they may apply to their entity's particular situation.

COVERED ENTITIES

The US Constitution's one-person, one-vote principle mandates that members of an elected body be drawn from districts of substantially equal population (U.S. Const. amend. XIV). In particular, the courts have recognized that a citizen's right to vote for the candidate of their choice is central to a democratic system of government. Likewise, that citizen's right to vote freely for his or her candidate of choice can just as effectively be thwarted by diluting the person's vote as if the voter was simply prevented from voting.

LOCAL GOVERNMENTS COVERED

The apportionment of congressional seats and the election of representatives within the various states under the federal constitution are premised on voting districts of relatively equal population size. The courts have extended the one-person, one-vote principle to elections of the state legislative bodies and election of local governing boards having general and significant governmental functions. This requirement has therefore been extended to the single-member districts of legislative bodies such as county commissioners courts or the governing boards or councils of municipalities, public school districts, special districts, and other entities in which the governing boards of the entity are elected from single-member districts (*Reynolds v. Sims*, 377 U.S. 533 (1964)).

The governing boards of these types of local governmental entities are legislative in nature as they make general policy for the administration of the political subdivision that allow it to carry out its governmental functions. These functions may include:

- Building and maintaining public works.
- Providing governmental services.
- Levying and collecting taxes.
- Conducting elections.

An important characteristic of these entities is that they are imbued with general governmental powers over a defined geographic area. The courts have held that election of members to the governing boards of these type of entities cannot be apportioned among single-member districts of substantially unequal population.

LOCAL GOVERNMENTS NOT COVERED

Courts have recognized that not all local governmental entities or functionaries have such broad powers of general applicability. In these instances, the courts have held that the one-person, one-vote requirement does not apply. Examples of these types of offices include judges or constables. Likewise, examples of political subdivisions with limited governmental powers, or where the ability to vote or participate is limited to certain groups of citizens, such as landowners or other users of the entity's services, include certain types of agricultural utility, or resource conservation districts. In these instances the duties of these functionaries and entities are more limited than normal governmental activities, or affect only a specific sub-group of persons, so that compliance with the one-person, one-vote principles is not appropriate or necessary.

STATE LAW RELEVANT

State constitutions have incorporated some aspects of these apportionment principles into the structure and selection of representatives of state legislatures. For example, statutes may not only dictate that representatives to a governing board be elected from single-member districts, but they may expressly provide for the use of the federal census population data as the basis for the apportionment of the districts and may even call for the review and rebalancing of the districts each decade on the release of the federal census.

These constitutional and legislative provisions are likely to contain unique requirements, timing, and terminology whose usage may have evolved over time through court rulings. Notwithstanding the federal principles concerning redistricting outlined above, it is important to determine the existence and applicability of any state-imposed requirements or local policy that may also affect local redistricting processes.

WHEN REDISTRICTING IS REQUIRED

The release of data by the Census Bureau before April 1, 2021, triggers redistricting review by political subdivisions with single-member district structures (PL 94-171, HR 1753, December 23, 1975, 89 Stat 1023). The enumeration process is initiated by the federal Census Bureau in 2020. Census day is April 1, 2020. By January 1, 2021, population data will be provided to the administration to apportion the congressional seats. During February and March of 2021, the Public Law 94-171 data will be released to the individual states so that the states can draw their congressional districts.

The enabling legislation for political subdivisions created by general or special legislation, as well as those subdivisions created under state constitutional mechanisms, may contain specific provisions requiring review of the population of the respective electoral districts on the release of this census data. These statutes or provisions typically prescribe that political subdivisions must use the federal census data to redistrict and provide specific timelines for reviewing and implementing redistricting plans to ensure elections from balanced districts at the entity's next election.

CENSUS MAY TRIGGER REDISTRICTING REQUIREMENT

Whether or not the enabling legislation expressly provides for recognition of the census and periodic review of the population to ensure compliance with one-person, one-vote principles, a political subdivision still needs to be familiar with the release of the census data. Any general elections held by the entity after new census data is available are potentially subject to a legal challenge under the one-person, one-vote principle if the new census data reflects impermissible population imbalances among the districts.

A voter or candidate may be able to successfully challenge and stop the entity's election if the plaintiff can demonstrate to the court that the census data shows that the existing single-member districts are out of balance based on the new census data and that the entity could have redistricted to bring the population of the respective single-member districts back into balance before holding the election but failed to do so.

COORDINATING THE REDISTRICTING PROCESS

Whether a local government holds elections on its own or jointly with other entities, it is important for any adjustments to the territorial boundaries of single-member districts to be incorporated in the election precincts used to conduct elections. Changes in single-member districts made by each entity typically require some redrawing of voting precincts used by the governmental entity as well as by other entities with which it may jointly conduct elections. The political subdivision needs to coordinate the timing of these adjustments to ensure orderly elections after redistricting.

A county, city, or other local entity may be legislatively assigned responsibility for:

- Conducting general elections for local governmental entities within its territory.
- Maintaining a list of registered voters.

The entity administering elections typically uses election precincts as basic units to conduct elections as well as to maintain a current voter registration list. An election precinct usually is drawn wholly located within territory of:

- Congressional districts.
- State legislative districts.
- County commissioner precincts.
- Municipal or school districts.

In other words, the election precinct is customarily drawn so that all of the voters vote in the same type of district, such as congressional or legislative. All of the voters residing in the election precinct are coded to that precinct number and can therefore be presented with an appropriate ballot containing all of the relevant races in the territory for which they are eligible to vote when they present themselves at the polls on election day. A change in the territorial boundary of any single-member district that caused an election precinct to contain territory from more than one congressional district, legislative district, or city council district would likely mean that voters in the precinct would have to be assigned different ballots depending on where they resided in the precinct.

POLLING LOCATIONS AND SERVICE CENTERS

Depending on a particular state's structure and requirements, voters typically vote at a polling location in the election precinct in which they reside. Voters at such an election precinct vote, for example, on a city council race for territory within the election precinct, and they may also vote on a county commissioner race or a school district race in the same territory. In some jurisdictions, voters may vote at voting centers serving voters in multiple election precincts and in this case, a voter is provided with a ballot containing only those races for the voter's unique election precinct.

Whether voting in a precinct polling place or a service center serving multiple election precincts, the voter presents credentials that indicate the person's registered voter address that is reviewed and confirmed by election officials at the polling place or center. The voter is then presented with a ballot. At a precinct polling location, since every registered voter must reside within the election precinct to be qualified to vote there, every voter gets the same ballot that includes all the races for political subdivisions whose

territory coincides with the election precinct's territory. At a service center serving multiple election precincts, the voter's election precinct is identified when the voter is qualified, and the voter is provided a ballot for only those races in the election precinct in which the voter resides.

If the boundary of the single-member districts of any one of these state or local entities changes to include less than all of the territory of the election precinct, then the election precinct generally must be modified. The entity responsible for creating and maintaining election precincts must either:

- Adjust the election precinct boundaries to reflect the redistricting changes.
- Create new election precincts to accommodate the changes.

Since general elections recur as often as annually, the window to adjust election precincts in a redistricting year can be fairly small. From the time that the census data is released, the various governmental entities may have just a few months to complete their redistricting and still allow the entity responsible for the administration of the election precincts sufficient time to update the election precincts and registered voter lists.

CENSUS DATA

Public Law 94-171 files are the initial type of census data the federal Census Bureau provides specifically for redistricting. This data, when correlated to federal census geography, has historically provided the underlying population and demographics on which redistricting is conducted by state and local governmental entities.

Important issues to be aware of concerning the census data this cycle include

- Whether citizenship information will be released and whether it will be usable for redistricting purposes.
- How the census demographic information is tied to the bureau's census block and other geographic data.
- How the ethnic and racial categories are structured within the census and determining how best to use this data in the redistricting analysis.
- What other types of data that may be available to augment the redistricting process and analysis and the appropriateness of using these alternative types of data.

CITIZENSHIP INFORMATION DISPUTES

Most state legislatures and local governmental entities in the various states historically used the Public Law 94-171 file to redistrict, but during the past decade, suits have been brought to attempt to compel jurisdictions to use citizen-voting-age population (CVAP) rather than total population for drawing districts. This would exclude children and non-citizens from the apportionment base. However, the Supreme Court has ruled that there is no constitutional requirement to use CVAP. It left open the question whether a political subdivision could choose to use CVAP rather than total population for drawing districts.

To provide CVAP data as part of the census, the current administration, over the strong objection of the Census Bureau professionals, attempted to include a citizenship question on the

2020 census. Various states and other governmental entities challenged this move, and the Supreme Court invalidated the administration's order adding the citizenship question to the census.

Because the Court did not allow the administration to include the question on the census, the administration now plans to report CVAP in a separate file released contemporaneously with the Public Law 94-171 release. This file will be created by supplementing census responses with administrative records that reflect individuals' citizenship status. While this CVAP data may be available, it is not clear at this time how complete and accurate this data will be. Depending on the results of the 2020 presidential election, it is also not clear whether the Census Bureau will continue on its current course to produce and release this data.

CENSUS GEOGRAPHY

The Public Law 94-171 population data is correlated to census geography by the Census Bureau. This allows a user to place the information on digital or hard-copy maps and to cumulate the data to determine the population of an electoral district or other discrete territory. The specific demographic characteristics of the data can also be accessed to allow a user to determine the racial or ethnic composition of a geographical area.

The Census Bureau has created its own set of census geography. The Census Bureau's geography is based to some extent on information solicited from and submitted by state and local governmental entities and corresponds closely to actual geographical features on the ground. The geography includes:

- Streets.
- Roads.
- Streams.
- Jurisdictional boundaries such as city limit lines, county lines, or state lines.

The Census Bureau's geographical units are of various size, with the smallest units called census blocks. In urban areas, these census blocks correspond roughly to city blocks. In less densely populated areas, census blocks may be quite large and indeed may encompass several miles of territory. Census blocks are also aggregated into larger units including block groups, tracts, and voting tabulation districts (VTDs), which often correspond to county election precincts (see Geographic Areas Reference Manual, in particular, Chapter 11).

There are many forms of geographic, population, election, economic, military, engineering, and satellite data available. In addition, computer-aided mapping or Geographical Information Systems (GIS) allow users to:

- Create their own unique geographic units.
- Modify existing units.
- Geocode unique information to specific places on any map.

While there are a multitude of geographic and population data options available, governmental entities have historically used federal census geography as well as the Public Law 94-171 data for redistricting purposes. Courts reviewing redistricting plans have generally recognized federal census data (both geographic and population) as an appropriate basis for redistricting. Using data

other than federal census data as an alternative for redistricting purposes typically faces many challenges, primarily to reliability.

Redistricting can be accomplished using the smallest units of census geography, census blocks, to reduce the potential for liability as a result of improper race-based decision-making. However, VTDs, or election precincts, should be used as the redistricting building blocks when possible and to the extent feasible. In smaller jurisdictions, this may not be feasible because the precincts are too large to be aggregated into equally populated districts.

CENSUS RACIAL AND ETHNIC CATEGORIES

For the 2020 Census, only six racial categories are expected to be listed. Individuals will be able to choose a single race or any combination of races that might apply. Therefore, there are potentially 63 different racial combinations that might occur. Additionally, the Census asks persons to designate whether they are or are not Hispanic. When the Hispanic status response is overlaid on the different possible racial responses, there are 126 possible different combinations. The Census tabulates each one separately.

The governmental entity's methodology will also need to consider data called voting age population (VAP) data. It is classified in eight racial and ethnic categories. This information is provided for the limited purpose of addressing some of the specific legal inquiries under the Voting Rights Act. Voting age population is the Census Bureau's count of persons who identified themselves as being eighteen years of age or older at the time of the census (as of April 1, 2020).

In addition to this population and demographic data, the entity will have access to additional information that may bear on the redistricting process, such as:

- County road miles.
- Facility locations.
- Registered voter information.
- Incumbent residence addresses.

See Decennial Census Redistricting Data, in particular, the 2020 Discussion section.

ONE-PERSON, ONE-VOTE PRINCIPLE

The constitutional principle of one person, one vote is crucial to redistricting. To comply with this standard, each of the single-member districts must be more or less similar in size in terms of population. Unless expressly required by state or local policy, local political subdivisions historically have not required exact equality of population. For example, some courts have historically required that governmental entities create districts that have a total population deviation of no more than ten percent between their most populated district and least populated district. Likewise, some state statutes may specify ten percent as a permissible percentage of deviation of the population numbers among the districts. This ten percent deviation is usually referred to as the Maximum Total Deviation. It is measured against the "ideal" or target population for the governmental entity based on the most recent census. The ten percent standard is a rebuttable presumption of compliance with the one-person, one-vote requirement.

This twenty percent approach used for state and local governmental entities is different than the approach that courts have applied to congressional districts. In the apportionment of population among congressional districts, the courts have typically required virtually exact population among the districts.

STAYING WITHIN THE ALLOWABLE DEVIATION

In a typical redistricting situation, a governing body calculates the ideal district size by dividing the total population of the entity by the number of single-member districts on its governing board. In determining whether the population of the respective single-member districts is within this ten-percent balance based on census population data, the percentage by which the population of the most populous single member district exceeds the ideal district size is added to the percentage by which the ideal district size exceeds the population of the least populous single-member district. If this cumulative percentage exceeds the permissible ten-percent total maximum deviation, the entity should redistrict, that is, redraw the boundaries of the individual districts so that the total populations of all the new districts are within the permissible ten-percent limit.

CENSUS DATA USUALLY REQUIRED

In handling voting rights cases and reviewing redistricting plans, courts have typically required the use of official census data unless the governmental entity or other parties can demonstrate that some other better alternate data exists. The court cases that have dealt with the question have made it clear that the showing required to justify using data other than census data is a very high one. The burden of demonstrating that some alternate data should be used may be particularly difficult with redistricting projects occurring so close to the release of new census data. As a practical matter, entities should therefore use the Public Law 94-171 data in their redistricting processes.

In the redistricting process, each governmental entity will use a broad spectrum of demographic and administrative information to accomplish the rebalancing of population required by the one-person, one-vote principle.

SECTION 2 OF THE VOTING RIGHTS ACT

Section 2 of the Voting Rights Act of 1965, 52 U.S.C. § 10301 (VRA) prohibits discrimination against minority groups in the voting practices of state and local governmental entities, including redistricting. Counsel for these entities must be familiar with legal standards applied by the courts should a protected voter challenge a redistricting plan adopted by the entity.

Before delving into a more detailed discussion of Section 2 standards, it is important to point out these standards as applied by the courts differ from the retrogression standards formerly applied by the US Department of Justice (DOJ) under Section 5. While the Note does not attempt to distinguish the Section 2 standards from the retrogression standards formerly applied by DOJ under Section 5 to covered jurisdictions, it may still be important for practitioners to understand and be able to explain the differences in legal analysis for their clients. Many officials and constituent groups participating in the 2020 redistricting process will be familiar with the prior standards and analysis and may have expectations stemming from

those prior policies. In addition, although Section 5 preclearance has been eliminated by a Supreme Court decision for most jurisdictions, a court may, in certain cases, impose preclearance requirements as a remedy on the political subdivision involved in a discrimination suit brought under Section 2.

SECTION 2 CAUSES OF ACTION

Section 2 of the VRA forbids a voting standard, practice, or procedure from having the effect of reducing the opportunity of members of a covered minority to participate in the political process and to elect representatives of their choice. In practical terms, this non-discrimination provision prohibits districting practices that, among other things, result in packing minorities into a single district in an effort to limit their voting strength to that one district when, if the minority population had not been so concentrated in that one district, the group could have electoral strength in a second district as well.

Fracturing or cracking minority populations into small groups in multiple districts so that their overall voting strength is diminished can be discrimination under Section 2. No magic number exists that designates the threshold of packing or cracking. Each plan must be judged on a case-by-case basis.

LEGAL TEST

The Supreme Court has defined the minimum requirements for a minority plaintiff to bring a Section 2 lawsuit. This three-pronged legal test requires the minority plaintiff to prove that:

- The minority group's voting age population is sufficiently large and geographically compact so that a district with a numerical voting age majority of the minority group can be drawn (a majority-minority district).
- The minority group is politically cohesive, that is, it usually votes and acts politically in concert on major issue.
- There is polarized voting, with the Anglo majority usually voting to defeat candidates of the minority group's preference.

(*Thornburg v. Gingles*, 478 U.S. 30 (1986).)

Where there is a disparity in the percentage of the various racial or ethnic groups in a jurisdiction, courts have typically held that the minority population to be considered when determining if the minority group constituted a majority in a putative single-member district under the *Gingles* threshold analysis is citizen VAP. In certain cases, a minority group may assert that Section 2 requires that the governmental body draw a new majority-minority district. The governing body must be sensitive to these Section 2 standards as it redistricts.

In considering changes to existing boundaries, a governmental entity must be aware of the location of protected minority populations within its single-member districts to ensure that changes are not made that a plaintiff may claim have resulted in packing, fracturing, or cracking the minority population.

In conducting its redistricting analysis and, if out of balance, in redrawing electoral districts, a governmental entity should be aware of the location of significant minority population and the effect of any modifications in district boundaries to this population of voters. The redistricting consultant may typically develop thematic maps

depicting the location of protected minority populations within the territory of an electoral district as part of any analysis. This type of data can be useful in identifying and addressing potential packing and cracking issues.

VAP data is useful in measuring potential electoral strength of minority groups in individual districts. In addition, if districts are sufficiently large that they encompass whole voting precincts, historical electoral performance within an area may be examined. Information concerning voter turnout and voter registration levels relative to voting-age population or citizenship percentages (eligible voter information) may also be helpful in analyzing whether a redistricting change may adversely affect a protected minority group in a particular electoral district.

IMPROPER RACE-BASED DECISION-MAKING

The political subdivision must navigate a fine line between complying with Section 2 of the VRA to protect minority voters and avoiding unlawful race-based decision-making under the Fourteenth Amendment of the US Constitution. A political subdivision can identify appropriate districting criteria for their particular circumstances and incorporate these into their process to avoid problems in this area.

In *Shaw v. Reno*, 509 U.S. 630 (1993), the Supreme Court ruled that where racial considerations predominate in the redistricting process to the subordination of traditional (non-race-based) factors, the use of race-based factors is subject to the strict scrutiny test under the Fourteenth Amendment's Equal Protection Clause. To pass this test requires a showing that:

- The race-based factors were used in furtherance of a compelling state interest.
- Their application was narrowly tailored, that is, they must be used only to the minimum extent necessary to accomplish the compelling state interest.

For further details on defending equal protection claims, see Practice Note, Section 1983: Equal Protection Claims ([W-002-6708](#)).

REDISTRICTING PRINCIPLES

Complying with Section 2 is a compelling state interest. The following principles therefore emerge in the post-*Shaw* environment to guide the redistricting process:

- Race may be considered.
- Race may not be the predominant factor in the redistricting process to the subordination of traditional redistricting principles.
- Bizarrely shaped districts are not unconstitutional per se, but the bizarre shape may be evidence that race was the predominant consideration in the redistricting process.
- If race is the predominant consideration, the plan may still be constitutional if it is narrowly tailored to address compelling governmental interest such as compliance with the VRA.
- If a plan is narrowly tailored, it must use race no more than is necessary to address the compelling governmental interest.

The better course, if possible under the circumstances, is that racial considerations not predominate to the subordination of traditional redistricting criteria, so that a difficult strict scrutiny test is avoided.

Adherence to the *Shaw* standards remains an important consideration during the redistricting process. One way to minimize the potential for *Shaw* liability is to adopt redistricting criteria that include traditional redistricting principles and that do not elevate race-based factors to predominance.

ADOPTING REDISTRICTING CRITERIA

Adopting appropriate redistricting criteria, and adhering to them during the redistricting process, is critical to the ultimate defensibility of an adopted redistricting plan. Traditional redistricting criteria that the governing body might want to consider adopting include, for example:

- Using identifiable boundaries.
- Using whole voting precincts, where possible and feasible.
- Where not feasible to use whole precincts, being sure that the plan lends itself to the creation of reasonable and efficient voting precincts.
- Maintaining communities of interest (such as traditional neighborhoods).
- Basing the new plan on existing districts.
- Adopting districts of approximately equal size.
- Drawing districts that are compact and contiguous.
- Keeping existing representatives in their districts.
- Narrow tailoring to comply with the VRA.

There may be other criteria that are appropriate for an individual entity's situation, but all criteria adopted should be carefully considered and then followed to the greatest degree possible.

REQUIREMENTS FOR PLANS SUBMITTED BY PUBLIC

In implementing a redistricting process, a governmental entity should also consider requiring any plans proposed by the public for the local entity's consideration to:

- Be a complete plan, that is, a plan that includes configurations for all single-member districts. This is important because, although it may be possible to draw a particular district in a particular way if it is considered only by itself, that configuration may have unacceptable consequences on other districts and make it difficult or impossible for an overall plan to comply with the applicable legal standards.
- Follow the adopted redistricting criteria.

LITIGATION EXPOSURE

INJUNCTION RISK FOR IMBALANCE

A political subdivision whose single-member districts are shown to be out of balance based on the most recent census has the potential of having its general elections enjoined. Specifically, a voter of the political subdivision may be able to petition a court to enjoin the holding of a general election of single-member-district positions for the governing board of the entity if the voter can demonstrate that the districts are out of balance based on the most recent federal census.

The complaint is essentially that the voter's participation in the election and vote for a particular candidate for a single member

district office has been diluted. The vote of a voter residing in an over-populated single-member district and participating in an election for a position from that district is harmed because their vote is worth less than the vote of a voter in an under-populated district. Courts may enjoin the city's ability to hold the elections in this situation until the political subdivision rebalances the population.

PACKING AND CRACKING CAUSES OF ACTION

A political subdivision that undertakes to redistrict its single-member districts to bring them into balance for one-person, one-vote purposes may be challenged under Section 2 of the VRA for discriminating against a protected minority group. In this situation, a member of the protected class may bring a complaint against the political subdivision alleging that the plan impermissibly dilutes the voter's ability to elect the candidate of their choice. Cases of this type can arise from actions by the political subdivision that are alleged to pack or crack the protected minority voters to reduce their ability to elect a candidate of their choice in one or more single-member districts.

Packing results when members of a protected minority group are drawn into a single-member district in numbers that restrict or diminish the group's ability to effectively elect candidates in multiple districts. While there is no specific guarantee that a protected minority group be able to elect representatives to the governing board of a political subdivision in proportion to their percentage in the total population of the political subdivision, an attempt to diminish the group's electoral impact may be treated as a discriminatory act by the political subdivision.

Similarly, cracking or splitting up territory in which members of a protected minority group reside for the purpose or with the effect of diluting the group's voting strength and their ability to elect a candidate of their choice within a single-member district may give rise to a legal challenge. This type of challenge is typically brought in federal court under Section 2 of the VRA.

Both packing and cracking issues can be addressed during the redistricting process by compiling and properly analyzing demographic information. Redistricting experts use various data sets to assess the electoral strength and historical participation in elections of the affected groups. There are several prophylactic steps that can be taken in establishing redistricting policies and in plan development that serve to provide the political subdivision with some defense to these types of claims. For example, some political subdivisions adopt policies that require all redistricting plans to follow traditional districting criteria, such as using whole voting precincts or following easily identifiable geographic boundaries or other principles found by the courts to constitute race-neutral districting criteria (see Adopting Redistricting Criteria).

Section 2 litigation can be protracted and expensive as:

- Both sides will typically require expert witnesses to assess and prove up the demographic and electoral evidence.
- Witnesses will be used to develop a record of electoral history or the history of discrimination in the political subdivision.
- Elections can be delayed for significant periods of time while the litigation is resolved.

Federal courts can impose a broad range of remedies in Section 2 cases, which can include ordering a specific plan to be implemented by the political subdivision. If a court-ordered plan must be implemented, the court may also prescribe when and how elections will be conducted under that plan. A plaintiff prevailing on a Section 2 claim usually results in an award for recovery of the plaintiff's attorneys fees and court costs from the political subdivision, which can be significant. In addition to exposure to these costs, the court may also place the political subdivision under continuing oversight by the Court or the Department of Justice for any future election changes.

SHAW CLAIMS

Equal protection claims can also arise under *Shaw v. Reno* from majority voters. This type of suit typically alleges that a redistricting process and a plan developed under that process placed an impermissible level of focus on race or ethnicity. These racial gerrymandering claims can often be countered through a well-thought-out redistricting process in which the political subdivision articulates and adheres to traditional districting principles and restricts the use and examination of race or ethnicity to the extent necessary to ensure protection of protected minority voters, but no more.

For more detail on equal protection and section 1983 claims, see Section 1983 Toolkit ([W-007-9780](#)).

PRACTICAL TIPS FOR A SUCCESSFUL PROCESS

A successful redistricting process is initiated early and recognizes the time constraints that will come into play for the political subdivision. The political subdivision should secure legal, GIS, and demographic expertise and resources to accomplish the project in a timely fashion. All political subdivisions with single-member districts will essentially be conducting their redistricting processes at the same time and will be facing similar time constraints. This specialized redistricting assistance should be secured well before the release of the census data and a timeline developed that assures completion on the entity's required schedule.

A work session with the governing board and the staff to iron out the resources and schedule is recommended before the start of the process. The following steps are important to consider in relation to the work session:

- Before the release of the census data, the GIS and demographic consultants for the political subdivision should collect base data, such as:
 - GIS;
 - boundaries; and
 - geocoding data.
- On release of the census, the entity should schedule a meeting to receive a report or assessment regarding whether the districts are out of balance.
- If redistricting is required, the entity should:
 - adopt guidelines and criteria;
 - consider traditional districting criteria; and
 - decide whether and how plans from the public will be considered.

- Develop a redistricting plan that illustrates adherence to the entity's redistricting guidelines and criteria.
- Review and modify plans as necessary.
- Depending on the level of interest, conduct one or more public hearings and have staff or the consultants describe the plan and explain how they comply with the policies and legal principles.
- Have the redistricting consultants or staff prepare a formal analysis and report on all plans submitted to the political subdivision for consideration.
- At a public meeting, or as appropriate for the political subdivision, consider and adopt a plan based on the criteria and guidelines.

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