

COUNTY REDISTRICTING OBLIGATIONS

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The 2020 federal census data will be released to the states and local governments by April 1, 2021 and will trigger redistricting obligations. It is not too early for Texas counties to start planning for this project. Once the data is released, counties will have a narrow window of time to determine if commissioner precincts are out of balance and to redistrict, if necessary. Commissioner precinct redistricting and election precinct realignment must be completed by October 1, 2021. This article explains how to prepare for redistricting and highlights important issues and tasks.

The census data

The Census will count the nation's population as of April 1, 2020. This data (the P.L. 94-171 file) is used by states and local governments to determine if existing electoral districts are out of balance and redistrict if necessary. The P.L. 94-171 file consists of total and voting-age population catalogued by sex, race, ethnicity, and age, reported at the census-block level.

Historically, counties have used the P.L. 94-171 file to redistrict but, during the past decade, suits were brought to compel jurisdictions to use citizen-voting-age population (CVAP) rather than total population for drawing districts. While the U.S. Supreme Court ruled that there was no constitutional requirement to use CVAP, it left open the question whether a county or state could choose to use CVAP rather than total population for drawing districts.

To provide CVAP data as part of the census, the administration, over the strong objection of Census Bureau professionals, attempted to include a citizenship question on the 2020 census. This move was challenged by various states and counties, and the Supreme Court invalidated the administration's order adding the citizenship question to the census. Although 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 P.L. 94-171 release. While this CVAP data may be available, it is not clear at this time how complete and accurate this data will be. Also, it is not clear whether the agency will continue on its current course to produce and release this data if there is a change in administrations.

Release of the census data is important to Texas counties because the county commissioner precincts are single-member districts that are subject to the one person – one vote requirements. The population of each county commissioner precinct must be equal. When the P. L. 94-171 data is released, the commissioners court must assess whether the population of the four commissioner precincts remains in balance and, if necessary, redistrict to bring the population back into balance.

Timing the county's redistricting effort

Several critical deadlines and events compel Texas counties to initiate and complete the redistricting process during the summer of 2021. First, two of the commissioners and other officials will be facing primary candidate filing deadlines in early December of 2021. In addition, Texas law also requires commissioners courts to revise county election precincts by October 1, 2020 to reflect redistricting changes.

Since the county conducts elections for most political subdivisions in the county, this means that election precincts will be impacted by redistricting efforts of these other entities. Also, in most counties there are probably a few political subdivisions with November 2, 2021 general elections. These entities have a particularly small window to redistrict and these entities may drive some of the county's election precinct realignment schedule. As a practical matter, an entity with a November 2021 general election has about a 100-day window (April 1 – mid-July) to complete its redistricting. To assist entities in this tough situation, county election administrators will want to try to realign county election precincts on an accelerated basis.

Advance preparation is crucial

Redistricting, at its heart, is a mapping and mathematical exercise tempered with some serious legal considerations. To insure the county's initial redistricting assessment is compiled as soon as the census data is released, the county's census geography, jurisdictional boundary lines as well as road miles and other data must be verified **before** the census data is released. The commissioners should be assured the county and its team have all of this information in hand so when the new population data is made available it can be processed without any problems. While this does not appear difficult to confirm, it can in fact be complicated because there are lots of moving parts to be sorted.

Organizing a timely and comprehensive redistricting process

With this limited redistricting window, an efficient process and a well thought out legal strategy is critical. One example of this is voter discrimination. Texas counties remain subject to the nondiscrimination requirements of Section 2 of the Voting Rights Act (VRA) and the U.S. Constitution. To address the Section 2 obligation, counties should make sure any plan considered does not adversely impact the voting rights of protected voter groups while avoiding a potential challenge from other voters. This is essentially a balancing act. The county wants to avoid adversely impacting voting rights of any protected minority voting group while at the same time ensuring that any accommodations it makes for the protected group are only to the limited extent necessary to address the issues of these voters. Otherwise the county risks a finding of a prohibited race-based redistricting under the principles of *Shaw v. Reno*.

Fortunately, well-defined and recognized set of districting criteria has been developed. These criteria, developed by the courts in litigation under the Voting Rights Act cases, are the guiding

elements for properly drawn redistricting plans. Adherence to traditional districting criteria should be the foundation for the county's process.

Preparation insures success

It goes without saying that the county needs to get out in front of the redistricting effort and work with staff and an experienced redistricting team to insure a successful project. A commissioner court work session this summer would not be too early to start.

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