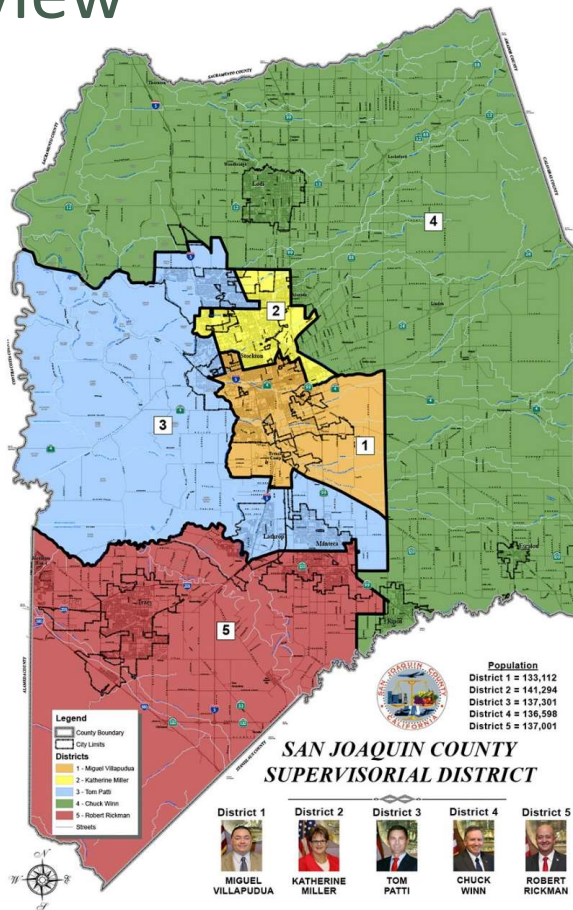# I. Redistricting Law & Criteria
II. Communities of Interest Strategies

San Joaquin County Redistricting Advisory Commission

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Overview

Sources of Law

FAIR MAPS Act and Redistricting Criteria

Strategies for Legal Compliance

Communities of Interest and Public Input Strategies

Q & A

Sources of Law

- Federal Constitution & Case Law
- Federal Voting Rights Act of 1965
- California FAIR MAPS Act and Election Code Amendments
  - Criteria (Cal. Elec. Code § 21500)
    - Federal and State Requirements
  - Timelines (Cal. Elec. Code § 21501)
  - Public Hearings (Cal. Elec. Code § 21507, 21507.1)
  - Outreach & Accessibility (Cal. Elec. Code § 21508)

Federal Requirements

- 14th Amendment – Equal Protection Clause
  - One Person-One Vote and Population Equality Requirements
  - Limitations on Race-Based Redistricting

- 15th Amendment
  - Prohibits Intentional Discrimination Based on Race

- Voting Rights Act of 1965
  - Section 2 and Minority Vote Dilution (Intentional and Non-Intentional)
  - Case Law: *Thornburg v. Gingles*

Population Equality

- Federal Case Law: Districts should be "substantially equal" in population
  - State and local districts, unlike congressional districts, do not need to be near "absolute equality"
- Population Basis: Total Population (Cal. Elec. Code § 21500(a)(1))
  - All Residents, Not Just Citizens, Voting-Age Citizens, or Voters
- Census Data Will Be Adjusted to Reallocate Prisoners (Cal. Elec. Code § 21500(a)(2))
  - Statewide Database Will Adjust 2020 Census Data to Exclude Incarcerated Persons and Reassign to Last Known Address

14th Amendment: Population Equality

- Federal Case Law: Total Plan Deviation Should Be <10%
  - Consultant and Redistricting Software Will Keep Running Calculations
  - Calculation:
    - (1) Calculate Ideal District Size: Divide Total Population by Number of Seats
    - (2) Calculate Deviation Range: Subtract Smallest District From Largest District
    - (3) Total Plan Deviation = Divide Deviation Range by Ideal District Size
- Redistricting Body Can Go Below 10%, but Must Have Strong Justifications for Exceeding 10%

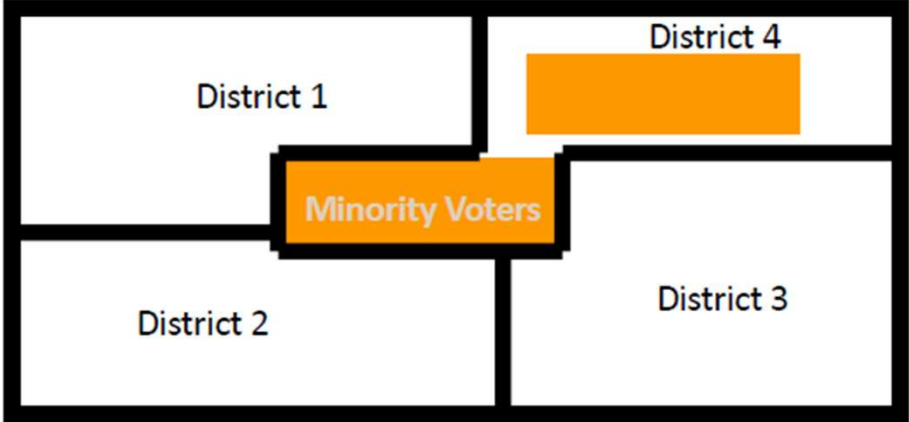# 14th Amendment: Prohibitions on Racial Gerrymandering

- Race and Ethnicity Can Be Considered as Factors and Can Be Used to Comply with the Federal Voting Rights Act, <u>But</u>
- If Race is the Predominant Factor, or As a Result of Considering Race, the Districts Are Very Oddly Shaped, then the Lines may be Unconstitutional
  - Voting Rights Act Compliance Can Justify Districts
  - Considering Multiple Factors in Addition to Race (Race Doesn't Predominate) Can Justify Districts

15th Amendment: Minority Vote Dilution and Intentional Discrimination Based on Race
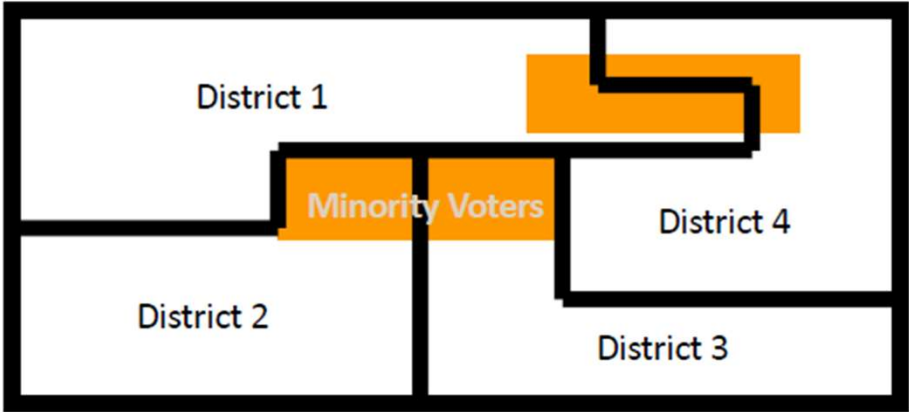
- **Typical Forms of <u>Minority Vote Dilution</u> in Redistricting:**

  - **Packing:** Overconcentrating minority voters in one district to prevent them from influencing elections in other districts

  - **Cracking:** Dividing a minority population into several districts to prevent them from exercising electoral influence or control within one or more districts

Packing

District 1

District 4

Minority Voters

District 2

District 3

Cracking

District 1

Minority Voters

District 4

District 2

District 3

Federal Voting Rights Act of 1965

- Section 2 Prohibits Minority Vote Dilution in Redistricting
  - Covers racial minorities and "language minorities" (Latinos, Asian Americans, Native Americans)
    - Populations not covered by VRA might still be kept together through neighborhoods or communities of interest
  - Typically Occurs Through Packing or Cracking Minority Populations That Could Be in Majority-Minority Districts
  - Extensive Case Law Beginning with *Thornburg v. Gingles* (1986)
  - Section 2 Compliance is Essentially Defensive
    - No Affirmative Requirements, but Anticipating Potential Lawsuits and Preventing Violations Under *Gingles*

Federal Voting Rights Act: *Thornburg v. Gingles*

- Three Preconditions ("Gingles Factors"):
  - (1) Minority Group is Sufficiently Large and Geographically Compact to Constitute a Majority in a Single-Member District
    - \>50% of Citizen Voting Age Population (CVAP)
  - (2) Minority Group is Politically Cohesive
  - (3) Non-Minority Voters Vote as a Bloc To Enable It . . . Usually to Defeat Minority-Preferred Candidates
    - Factors (2) + (3) often considered together as "Racially Polarized Voting" (RPV)
- Additional "Totality of Circumstances" Test (including past discrimination, electoral history)

Federal Voting Rights Act: Compliance Issues

- Resource Questions re Legal Counsel and Demographic/RPV Analyses
  - Demographic Analyses of ACS Data to Identify Large Minority Concentrations
- Adjusting >50% Upwards to Accommodate Immigrant Populations
  - E.g., 55-65% of CVAP
- Minority <u>Coalition</u> Districts Are Allowed in California
  - But Present Challenges for RPV Analyses and Large Number of Potential Options
- "Influence Districts" (Large minority populations < 50%) Are Not Available as Section 2 Claim, But Can Be Drawn by Redistricting Bodies
  - Challenges on whether to create a single majority-minority district or spread groups among two or more influence districts -- not necessarily cracking
  - Justifiable by Community of Interest Criterion, But Must Consider Non-Racial Factors as well

FAIR MAPS Act and Ranked Criteria

- Federal Criteria:
  - Population Equality
  - Federal/State Constitutional and Federal Voting Rights Act Requirements
    - Note: California Voting Rights Act Does Not Apply to Redistricting
- Ranked "Traditional Criteria"
  - Contiguity
  - Maintaining Integrity of Neighborhoods and Communities of Interest
  - Maintaining Integrity of Cities and Census Designated Places
  - Bounding by Natural/Artificial Barriers, Streets, and County Boundaries
  - Compactness
  - Prohibition on Favoring or Discriminating Against Political Parties

Ranked Criteria: Contiguity

- "To the extent practicable, supervisorial districts shall be geographically contiguous. Areas that meet only at the points of adjoining corners are not contiguous. Areas that are separated by water and not connected by a bridge, tunnel, or regular ferry service are not contiguous." (Cal. Elec. Code § 21500(c)(1))

- Areas of district need to be connected
- Prohibits "point" contiguity

Ranked Criteria: Contiguity

Ranked Criteria: Neighborhoods and COIs

- "To the extent practicable, the geographic integrity of any local neighborhood or local community of interest shall be respected in a manner that minimizes its division. A 'community of interest' is a population that shares common social or economic interests that should be included within a single district for purposes of its effective and fair representation. Communities of interest do not include relationships with political parties, incumbents, or political candidates." (Cal. Elec. Code § 21500(c)(2))

Ranked Criteria: Local Neighborhoods

- Neighborhoods may already be defined by well-known boundaries:
  - Official city neighborhoods
  - Real estate designations
  - Historical or commonly known boundaries
- Neighborhood boundaries can also be obtained through Census data and through public input in tandem with communities of interest

Ranked Criteria: Local Communities of Interest (COIs)

- "[A] population that shares common social or economic interests that should be included within a single district for purposes of its effective and fair representation."
- Common examples include:
  - Urban vs. rural communities
  - Populations with similar economic interests and income-levels
  - Populations with common interests around:
    - Natural geographies (e.g., lakes, mountains)
    - Transportation hubs (e.g., airports)
  - Racial or ethnic communities

Ranked Criteria: Cities and CDPs

- "To the extent practicable, the geographic integrity of a city or census designated place shall be respected in a manner that minimizes its division." (Cal. Elec. Code § 21500(c)(3))

- Larger cities (e.g., Stockton) will need to be split because of federal population equality requirements

- Census Designated Places (CDPs): Defined by federal Census regulations (86 Federal Register 56290 (2018))
  - "[S]tatistical geographic entities representing closely settled, unincorporated communities that are locally recognized and identified by name."
  - Examples in San Joaquin County: Country Club, French Camp, Garden Acres

Ranked Criteria: Geographic Integrity Rankings

- Unlike State-Level Criteria, where
  - Counties = Cities = Neighborhoods = Communities of Interest

- County-Level Criteria:
  - Neighborhoods = COIs, but are higher ranked than
  - Cities = CDPs

Ranked Criteria: Identifiable Boundaries

- "Supervisorial district boundaries should be easily identifiable and understandable by residents. To the extent practicable, supervisorial districts shall be bounded by natural and artificial barriers, by streets, or by the boundaries of the county." (Cal. Elec. Code § 21500(c)(4))

- Examples:
  - Natural Barriers: Rivers, canyons, mountains
  - Artificial Barriers: Freeways/highways, railroad tracks, canals

Ranked Criteria: Compactness

- "To the extent practicable, and where it does not conflict with the preceding criteria in this subdivision, supervisorial districts shall be drawn to encourage geographical compactness in a manner that nearby areas of population are not bypassed in favor of more distant populations." (Cal. Elec. Code § 21500(c)(5))

- "Eyeball" Testing vs. Mathematical or Algorithmic Testing

Prohibited Criteria: Political Parties

- "The board shall not adopt supervisorial district boundaries for the purpose of favoring or discriminating against a political party." (Cal. Elec. Code § 21500(d))

General Strategies for Legal Compliance

- Remain Attentive to Criteria Rankings and Articulate Them in Educational Materials and Documentation
  - Public May Try to Prioritize Criteria Differently, Particularly Around District Shape and Compactness
- Determine VRA Compliance Strategies Early in Process
- Develop Principles for Reconciling Potential Conflicts Among Criteria
  - Neighborhoods, COIs
  - Cities, CDPs
- Use Smaller Units, such as Neighborhoods, Communities of Interest, CDPs as Potential Building Blocks

Why are Communities of Interest Important?

- Tied to Public Participation in Redistricting Process
- Requires Consideration of Level of Government and Effective Representation
- Can Obtain Information Prior To 2020 Census Data Availability
- Can Serve as Building Blocks for Districts
- Can Provide a Basis for Distinctions and District Boundaries
- One of Multiple Redistricting Criteria
  - May Intersect with Other Criteria, such as Voting Rights Act Compliance
  - May Be in Tension with Other Criteria, such as Population Equality or Compactness

Defining Communities of Interest

- "To the extent practicable, the geographic integrity of any <u>local</u> neighborhood or <u>local</u> community of interest shall be respected in a manner that minimizes its division. **A 'community of interest' is a population that shares common social or economic interests that should be included within a single district for purposes of its effective and fair representation.** Communities of interest <u>do not</u> include relationships with political parties, incumbents, or political candidates." (Cal. Elec. Code § 21500(c)(2) (emphasis added))

Elements of COIs: Locality

- Communities of Interest Must be <u>Local</u>
  - COI Should Not Be Too Expansive
  - Contiguity or Compactness of COI Not Required By Law, But Limits May Be Helpful in Setting COI Boundaries and Fitting Within Potential Districts
  - Can Recognize COI That Crosses County Boundaries, But Can Only Maintain COI Within Your Own County

Elements: Sharing Common Social or Economic Interests

- Example of Articulated Listings (Source: Colorado Law – State Level):

"(II) Such interests include but are not limited to matters reflecting:
(A) Shared public policy concerns of urban, rural, agricultural, industrial, or trade areas; and
(B) Shared public policy concerns such as education, employment, environment, public health, transportation, water needs and supplies, and issues of demonstrable regional significance.
(III) Groups that may comprise a community of interest include racial, ethnic, and language minority groups . . . ."

Elements: Effective and Fair Representation

- Relationships Between Interests, Representation, and Level of Government
- County Government and Board of Supervisors' Responsibilities, including:
  - Administration of Justice
  - Agriculture
  - Property Assessment and Taxation
  - Health Care Administration
  - Human Services
  - Land Use
  - Environmental Health
  - Waste Management

COI Example

- Local Government – Residential Areas Near a Local Airport
  - Geographic Proximity
  - Common Policy Issues:
    - Noise Abatement
    - Traffic
    - Zoning
  - Additional Commonalities:
    - Income Levels
    - Property Values; Renter vs. Homeowner
  - Representational Interests Because of Board of Supervisors' Oversight or Policy-Setting Powers

Special Consideration: Racial or Ethnic COIs

- Special Consideration: <u>Race or Ethnicity</u>
  - Close Relationship to Federal Voting Rights Act
  - Federal Constitutional Issues When Using Race as a "Predominant Factor"
  - Should Look at Multiple Factors That Overlap With Race
    - E.g., Neighborhood Proximity, Socioeconomic Status
  - Be Attentive to Geography and Population Concentrations, As Well As Dispersion
    - Be Careful With Non-Compact Populations

Challenges in Implementation

- Definitions and Expectations
  - Open-Ended vs. Enumerated Lists of COIs
  - Local COIs and Sizes of Districts
- Relative Rankings and Conflicts
  - COIs vs. Cities/CDPs
  - Neighborhoods vs. COIs
  - COIs vs COIs
- Subjective vs. Objective Information
  - Public Comments, Testimony, Maps
  - Demographic Information, Including Census Data (ACS & 2020) and State/County Data
    - Electoral Data (e.g., Ballot Initiative Voting) But Be Careful About Prohibited COIs

Common Problems

- Gaps in Information
- Inconsistent Information
- Potential Manipulation
  - Mass Mobilization
  - Partisan or Incumbent-Based Interests vs. Community Interests

Public Input and Processing Strategies

- Education and Outreach (See Cal. Elec. Code § 21508)
  - Accessibility Issues: Disability, Language Groups
- Multiple Channels for Input – Recommend But Do Not Require Specific Formats
  - Public Hearings and Testimony
    - FAIR MAPS Act Minimums (Cal. Elec. Code § 21507.1)
    - Attention to Expanding Participation, Community Locations, Hours
  - Submissions
    - Commission-Generated Forms (e.g.: https://drawmycacommunity.org)
    - Low-Tech Can Be Just as Effective
  - Online Tools:
    - DistrictR

Public Input and Processing Strategies

- Cataloguing
- Mapping Decisions
  - Weighting
    - Individual vs. Mobilized Testimony
    - Advocacy Group Submissions
  - Problem of Cherry Picking COI Information
  - Optional: Develop Pre-Draft COI and Neighborhood Maps
- Iterative Mapping
  - Drafts and Comments

Questions & Answers

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