

USING CITIZENSHIP DATA FOR REDISTRICTING

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In which areas of redistricting law might citizenship data be required?

- Section 2 of the Voting Rights Act.
- Also currently being litigated under the one-person, one-vote analysis based on the Equal Protection Clause of the 14th Amendment.

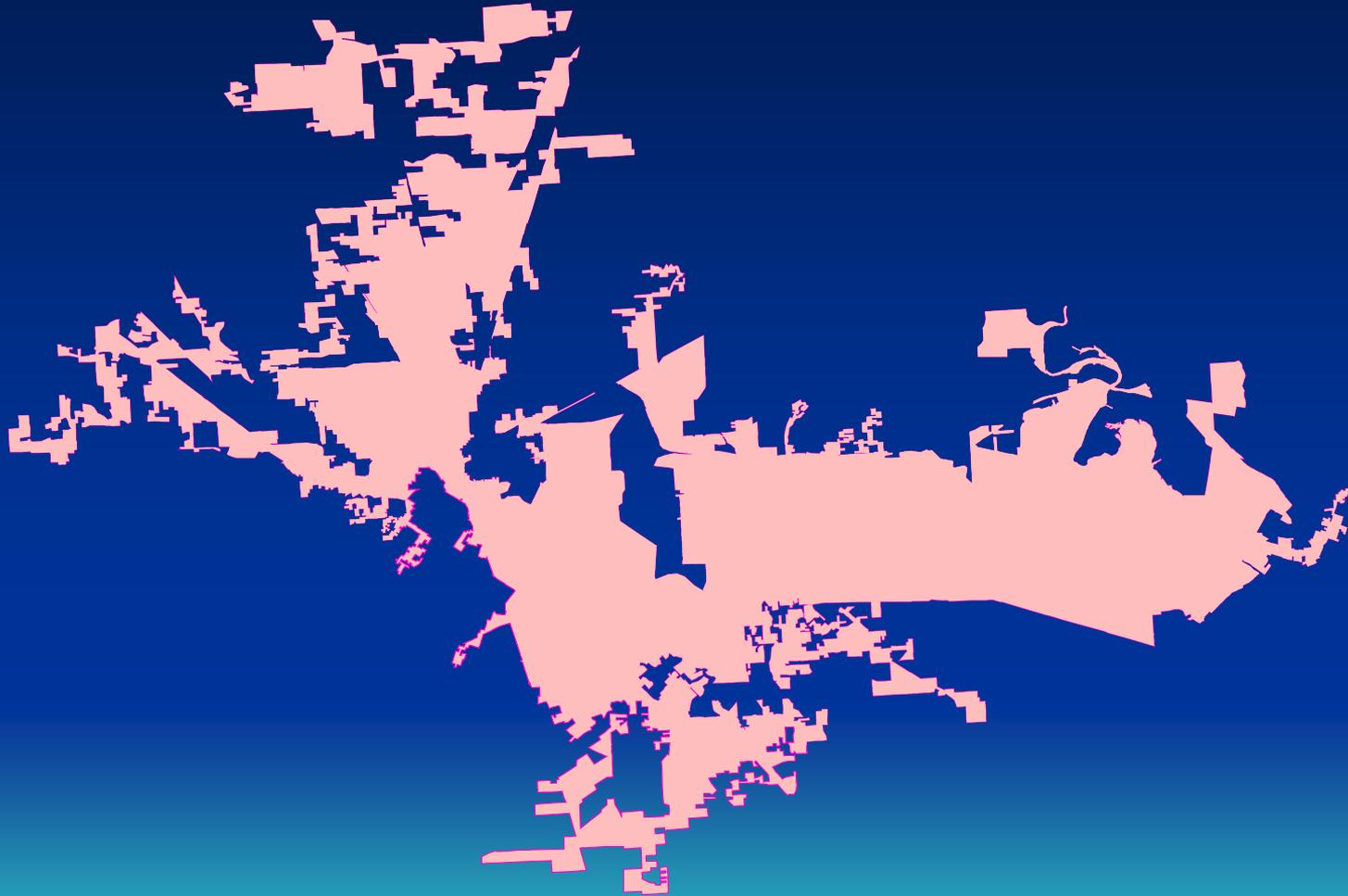


Thornburg v. Gingles, 478 U.S. 30 (1986)

- In evaluating claims under Section 2 of the Voting Rights Act, the Supreme Court creates a three-pronged test followed by the application of a “totality of circumstances” formula.
- The first prong requires a plaintiff to demonstrate that the minority group is sufficiently large and geographically compact to constitute a majority in a single-member district.



Texas CD 29, c. 1992



- Dist. 29
 - Hispanic VAP 55.4% (1990 census)
 - Hispanic Citizen VAP 42.4% (1990 long-form data)
 - Spanish Surname Voter Registration 33.5% (1992)
- 1992 runoff in district between Anglo and Hispanic candidates. Anglo won by 200 votes.
- Runoff invalidated by election contest, and new runoff held. Anglo prevailed in second runoff.
- Current version of district likely has Hispanic CVAP majority.



Emergence of the CVAP standard in Section 2 cases

- First discussed in *Romero v. City of Pomona*, 883 F.2d 1418 (9th Cir. 1989). While a federal procedural matter in this case has been overruled, the basic holding that a demonstration district under Section 2 must be composed of a majority of “eligible minority voter population” (CVAP) rather than total minority population appears to remain the rule in the 9th Circuit. See *Cano v. Davis*, 211 F. Supp. 2d 1208 (C.D. Cal. 2002).



- Other circuits have also adopted the CVAP rule
 - 5th Circuit: *Campos v. City of Houston*, 113 F.3d 544 (5th Cir. 1997); several other cases, most recently *Reyes v. City of Farmers Branch*, 586 F.3d 1019 (5th Cir. 2009).
 - 7th Circuit: *Barnett v. City of Chicago*, 141 F.3d 699 (7th Cir. 1998): used CVAP in calculating proportionality under the totality of the circumstance test.
 - 11th Circuit: *Negron v. City of Miami Beach*, 113 F.3d 1563 (11th Cir. 1997): applied citywide CVAP rate to districts.



- Though not a circuit court, a district court in the 1st Circuit also adopted the CVAP rule. See *Meza v. Galvin*, 322 F. Supp. 2d 52 (D. Mass. 2004). This case:
 - concluded that CVAP was the appropriate measure when available; and
 - discusses CVAP as a range rather than a single number and possibly refines the standard as requiring a “statistical majority” of minority voters.



- No United States Supreme Court case has directly dealt with the CVAP issue. However, in *LULAC v. Perry*, 548 U.S. 399 (2006), Justice Kennedy in discussing Section 2's majority requirement observed:
“Latinos, to be sure, are a bare majority of the voting-age population in new District 23, but only in a hollow sense, for the parties agree that the relevant numbers must include citizenship. This approach fits the language of §2 because only eligible voters affect a group's opportunity to elect candidates.”



- While this language is dicta since the issue was not in controversy in the case, it was in a portion of the opinion that the entire court agreed with. In its review of a Section 2 claim, the North Carolina Supreme Court cited this language to support its reasoning in requiring a CVAP majority in *Pender County v. Bartlett*, 361 N.C. 491, 649 S.E.2d 364 (2007).



- In the appeal of this case to the U.S. Supreme Court, the issue was not directly involved. In the fractured opinion, justices usually refer to a majority of “voting-age population” though occasional references are made to citizenship or CVAP. *Bartlett v. Strickland*, 556 U.S. ____ (2009).



One person, one vote

- Two circuit courts have considered the drawing of districts based on CVAP rather than total population.
 - In *Garza v. County of Los Angeles*, 918 F.2d 763 (9th Cir. 1990), the 9th Circuit found that to do so would discriminate against Hispanics. One dissenter found that CVAP was the proper basis.
 - In *Chen v. City of Houston*, 206 F.3d 502 (5th Cir. 2000), the 5th Circuit found that using CVAP to draw districts was not required but rather left to the discretion of the governmental body.



- Both cases have a *cert. denied* review by the U.S. Supreme Court. Another circuit has found that the decision of whether to use total population or voting-age population is in the discretion of the governmental body. *Daly v. Hunt*, 93 F.3d 1212 (4th Cir. 1996).
- Current litigation in federal court in the Northern District of Texas seeks to invalidate city council districts in Irving, Texas, on the theory that they were drawn on total population rather than CVAP. See *Lepak v. City of Irving*, No. 3-10-CV-277-P (N.D. Tex. Feb. 11, 2010) .



Form of citizenship data

- 2000 redistricting
 - derived from long-form census data
 - sampled data, covering approximately 1 in 6 housing units nationwide
 - available down to the block group level
 - released in fall 2002 and a special run of CVAP by race/ethnicity was available in late fall 2002



- 2010 redistricting
 - derived from American Community Survey data
 - sampled data, available in a one-year average or a three- or five-year average
 - One-year data is available only for geographic levels with a population of 65,000 or more, such as counties, cities, and MSAs.
 - Three-year data is available only for geographic levels with a population of 20,000 or more.
 - Five-year data is expected to be available for tracts and block groups at the lowest statistically valid level.
 - By December 2010 it is expected that one-year data for 2009 will be available as well as data containing the three-year average from 2007-2009 and the very first five-year average from 2005-2009. The five-year data release will be based on Census 2000 geography, not 2010 geography.



Which ACS data to use?

Estimates of Citizenship in Harris County

	Citizenship Estimate	Margin of Error (+/-) at 90% Confidence Level	Margin of Error (+/-) at 95% Confidence Level	Standard Error	Coefficient of Variation
Census 2000	2,867,639	4,192	4,995	2,548	0.09%
ACS 2004	3,030,118	30,320	36,016	18,376	0.61%
ACS 2005	3,037,078	19,463	23,120	11,796	0.39%
ACS 2006	3,221,390	19,509	23,245	11,860	0.37%
ACS 2007	3,260,536	19,410	23,127	11,800	0.36%
ACS 2008	3,298,689	21,541	25,666	13,095	0.40%
ACS 2005-2007	3,200,161	11,337	13,508	6,892	0.22%
ACS 2006-2008	3,250,452	11,664	13,897	7,091	0.22%

Data sources: American Community Survey (ACS) 1-year and 3-year estimates
Census 2000 Summary File 3

Estimates of Hispanic Citizenship Voting Age Population in Harris County

	Hispanic Citizenship VAP Estimate	Margin of Error (+/-) at 90% Confidence Level	Margin of Error (+/-) at 95% Confidence Level	Standard Error	Coefficient of Variation
Census 2000	374,190	3,609	4,300	2,194	0.59%
ACS 2004	461,923	18,837	22,376	11,416	2.47%
ACS 2005	460,699	12,650	15,027	7,667	1.66%
ACS 2006	491,177	12,260	14,608	7,453	1.52%
ACS 2007	495,006	11,606	13,829	7,055	1.43%
ACS 2008	508,167	12,144	14,469	7,382	1.45%
ACS 2005-2007	481,155	7,318	8,720	4,449	0.92%
ACS 2006-2008	492,886	7,393	8,809	4,494	0.91%

Data sources: American Community Survey (ACS) 1-year and 3-year estimates
Census 2000 Summary File 3

- Even though no five-year data has been released on citizenship, at this point it appears that the five-year ACS data is the most likely to be useful in evaluating the CVAP of a proposed district. Several major issues remain:
 - Level of geography of data—tract v. block group—especially important for districts with smaller populations. In the past, census tracts have contained between 2,500 to 8,000 people.
 - Age of geography—release in December 2010 will be on Census 2000 geography. While tract geography will likely change very little between 2000 and 2010, block groups are likely to have greater change.



- Single number vs. range. Is it accurate to report a single number indicating a district is a majority-minority CVAP district when the range indicates it may not be? Which confidence level do you use? Higher confidence level has greater range.
- Allocation of data from split units of geography.
 - District lines are likely to split the units of geography used to report citizenship data—especially if data is only reported by tract. How will these split units be reported?



Allocation of split geography (cont'd)

- The solution likely involves assuming a uniform rate of citizenship across the unit being split and basing the split on some measure of population. This is further complicated if the number is reported as a range rather than a single number.
- As an alternative, the citizenship could be reported based only on whole units of geography used in the district or the citizenship rate of some larger unit (like a city or county) within which the district is completely contained.



Conclusion

- If you expect that your state (or unit of local government) has a number of minority persons covered by Section 2 of the Voting Rights Act sufficient to form a district, you need to consider the issue of citizenship in your redistricting. The largest minority group to be involved will be Latinos or persons of Hispanic origin.



- While the law has likely already reached the point at which CVAP will be required for a demonstration majority–minority district under Section 2, other uses for the CVAP data (such as compliance with a one-person, one-vote standard based on citizens) will be increasingly problematic given that the data is not actual census data but sampled data that may be best expressed in a range rather than a single number.



- While many previous reported cases seem to assume that the citizenship data is on the same level as the census data, it is not. Changes to the way citizenship data is collected from 2000 further remove the data from the realm of the census. The level at which this data is ultimately reported and the method by which it is allocated to split units of geography may have a great effect in arriving at the CVAP calculated for a proposed district.

