

The VRA and Summit County Council Districts Redistricting

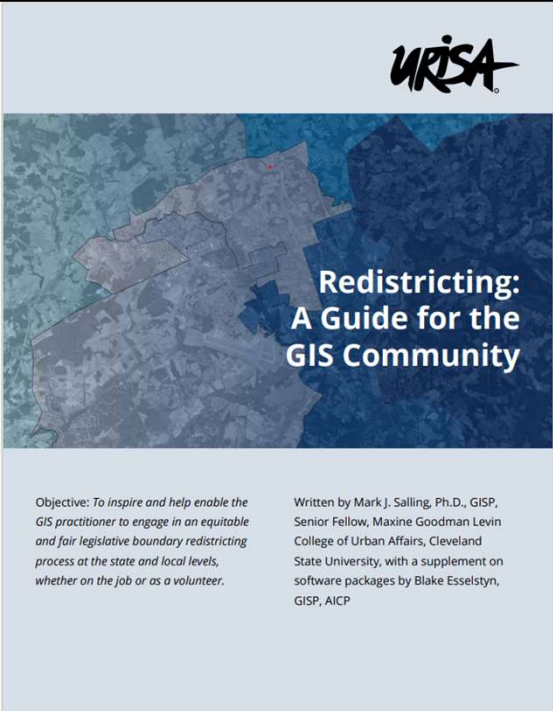
Presented to the
Nonpartisan Independent Council Fair Districting Commission

By

Todd Book – By the Book Advisors, LLC
Mark Salling – Levin Urban College, Cleveland State University

September 28, 2021

1



<https://www.urisa.org/redistricting-guide>

URISA

**Redistricting:
A Guide for the
GIS Community**

Objective: *To inspire and help enable the GIS practitioner to engage in an equitable and fair legislative boundary redistricting process at the state and local levels, whether on the job or as a volunteer.*

Written by Mark J. Salling, Ph.D., GISP, Senior Fellow, Maxine Goodman Levin College of Urban Affairs, Cleveland State University, with a supplement on software packages by Blake Esselstyn, GISP, AICP

2

5.1.2 Compliance with the Voting Rights Act

The Voting Rights Act (VRA) prohibits states (or political subdivisions in the case of wards, for example) from diluting the voting strength of persons based on their race, color, or membership in a language minority. The VRA is intended to prevent viewpoint discrimination against such groups.

Determination of whether the VRA has been violated is ultimately left to the courts, but until recently one practical application of this requirement is that a re-districting plan must draw as many *minority-majority* districts as possible, which are ones in which the majority of the constituents in the district are of a racial or ethnic minority (non-White or Hispanic). Courts have allowed exceptions when there has been a history of high minority turnout and/or crossover voting (e.g., Whites voting for Black-preferred candidates).

The Court noted that the VRA "...does not require a covered jurisdiction to maintain a particular numerical minority percentage. It requires the jurisdiction to maintain a minority's ability to elect a preferred candidate of choice." ("North Carolina Supreme Court Disregards U.S. Supreme Court in Redistricting Case")

3

U.S. Department of Justice

"Guidance under Section 2 of the Voting Rights Act, 52 U.S.C. 10301, for redistricting and methods of electing government bodies" Published September 1, 2021

As amended in 1982, Section 2 prohibits voting practices that result in citizens being denied equal access to the political process on account of race, color, or membership in a language minority group.

It also continues to prohibit adopting or maintaining voting practices for the purpose of disadvantaging citizens on account of race, color, or membership in a language minority group. *Chisom v. Roemer*, 501 U.S. 380, 394 n.21 (1991).

The essence of a discriminatory results claim alleging vote dilution is that a certain electoral law, practice, or structure interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by minority voters to elect their preferred representatives.

Thornburg v. Gingles, 478 U.S. 30, 47 (1986).

The Department's Section 2 cases challenging methods of election for governmental bodies include actions against a variety of jurisdictions, including states, counties, municipalities, school districts, and special districts.

4

Section 2 Analysis: Discriminatory Result

Analysis begins by considering whether three Gingles preconditions exist.

First, the minority group must be sufficiently large and geographically compact to constitute a majority of the voting-age population in a single-member district.

Second, the minority group must be politically cohesive.

And third, the majority must vote sufficiently as a bloc to enable it—in the absence of special circumstances, such as the minority candidate running unopposed—usually to defeat the minority group’s preferred candidate.

If all three Gingles preconditions are present, consideration proceeds to an analysis of the totality of the circumstances in a jurisdiction.

This analysis incorporates factors enumerated in the Senate Report that accompanied the 1982 Voting Rights Act Amendments, which are generally known as the “Senate Factors.”

These factors are themselves drawn from earlier case law.

5

The factors include:

1. the extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process;
2. the extent to which voting in the elections of the state or political subdivision is racially polarized;
3. the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;
4. if there is a candidate slating process, whether the members of the minority group have been denied access to that process;
5. the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process;
6. whether political campaigns have been characterized by overt or subtle racial appeals; and
7. the extent to which members of the minority group have been elected to public office in the jurisdiction.

6

The Senate Report also identified two additional factors that have probative value in some cases:

- whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group; and
- whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous.

The Senate Factors are neither comprehensive nor exclusive, and other factors may also be relevant and may be considered.

...proportionality of minority voters' representation in a single-member district plan is also a relevant fact in the totality of circumstances.

A finding of vote dilution in violation of Section 2 does not require that a particular number or a majority of these factors is present in a jurisdiction.

Districting plans may dilute minority voting strength by cracking or "fragmenting the minority voters among several districts where a bloc-voting majority can routinely outvote them" or by "packing them into one or a small number of districts to minimize their influence."

7

The Department will examine the circumstances surrounding adoption or continued use of a redistricting plan or method of election to determine whether there is direct or circumstantial evidence of any discriminatory purpose of denying or abridging the right to vote on account of race, color, or membership in a language minority group

Direct evidence detailing a discriminatory purpose may be gleaned from the public statements of members of the adopting body or others who may have played a significant role in the process.

..."smoking gun" or other stark evidence of intent is rare and is not required to establish a discriminatory purpose.

The Department will also evaluate whether circumstantial evidence establishes a discriminatory intent.

The Department of Justice will draw the normal inferences from the foreseeability of a discriminatory impact, and Section 2 does not require proof that one or more government actors are "racist" or bear racial animus.

Discriminatory intent need only be one motivating factor behind the enactment or enforcement to violate Section 2. It need not be the only motivating factor.

So, for example, if a jurisdiction purposefully reduces minority voting strength in order to protect an incumbent elected official, the fact that incumbent protection was a motivating factor—or even the primary motivating factor—does not mean a plan is lawful

8

3. Majority Bloc Voting

Whether “the white majority votes sufficiently as a bloc to enable it—in the absence of special circumstances, such as the minority candidate running unopposed—. . . to defeat the minority’s preferred candidate.”

- Similar to Factor 2, but applied to the majority group
- Factors 2 and 3 are often considered together, under the term “racial polarization”

Vote Dilution Claims

If a minority population satisfies all three Gingles requirements, the court examines whether, under the totality of the circumstances, “as a result of the challenged practice or structure, plaintiffs do not have an equal opportunity to participate in the political processes and to elect candidates of their choice.”

- Gingles adopted specific factors for this
- Plus “proportionality” – “the percentage of total [statewide] districts that are [minority] opportunity districts with the [minority] share of the citizen voting age population”

9

Senate Report factors: The history of voting-related discrimination in the jurisdiction

- Extent to which voting in the jurisdiction is racially polarized;
- Extent to which the jurisdiction has used voting practices or procedures that increase the opportunities for discrimination against the minority group;
- Exclusion of members of the minority group from the candidate slating process;
- Extent to which the minority group bears the effects of past discrimination in education, employment, and health;
- Use of overt or subtle racial appeals in political campaigns;
- Extent to which members of the minority group have been elected to public office in the jurisdiction;
- Evidence that elected officials are unresponsive to the minority group’s needs;
- Evidence that the policy underlying the use of the contested practice is tenuous

10

No single factor is dispositive

The most important factors are:

- Extent of racially polarized voting
- Extent to which minorities have been elected to public office in the jurisdiction

How to establish/prove the factors

- Racial polarization – through statistical analysis used for the Gingles factors
- Other factors are based largely on historical/social conditions, may be established by expert reports, testimony from historians and demographers

11

Section 2 of the VRA

<https://irc.az.gov/sites/default/files/media/Voting%20Rights%20Act%20Presentation.pdf>

Whether a group's members "have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice"

Applies to every voting jurisdiction.

Vote dilution – challenge alleges that a voting procedure has resulted in having less opportunity to exercise political power equal to that of a member of a different group

- Common in redistricting challenges
- Happens when there is a "dispersal of [racial minorities] into districts in which they constitute an ineffective minority of voters or from the concentration of [racial minorities] into districts where they constitute an excessive majority" *Thornburg v. Gingles*, 478 U.S. 30, 46 n.11 (1986).

12

Thornburg v. Gingles – test for vote dilution

Is the minority population capable of electing a candidate of its choice in a hypothetical district according to a three-part test (“the Gingles factors”)?

1. the racial group is sufficiently large and geographically compact to constitute a majority in a single-member district;
2. the racial group is politically cohesive; and
3. the majority votes sufficiently as a bloc to enable it to defeat the minority’s preferred candidate

14

1. “Sufficiently large and geographically compact to constitute a majority in a single-member district”

- Must be more than 50% of the voting age population
- “Crossover” districts – where a minority group can usually elect the candidate of its choice with the help of “crossover” voting from White voters do not satisfy the Gingles prong
- “Coalition” districts – where two or more racial minority groups may reach a majority can satisfy the Gingles factor, as long as the groups are sufficiently cohesive
- Compactness asks whether the minority community is sufficiently concentrated, taking into account principles such as maintaining communities of interest and respecting traditional boundaries

15

2. "Politically Cohesive"

- "Whether the minority group has expressed clear political preferences that are distinct from those of the majority." *Gomez v. Watsonville*, 863 F.2d 1407, 1415 (9th Cir. 1988).
- Typically proven through expert testimony and statistical analysis showing correlation between minority status and candidate preference
- Courts may also consider non-statistical evidence (i.e., observations and experiences of those involved)
- No quantitative threshold for how cohesive a group must be

3. The majority must vote sufficiently as a bloc

16

Racial Gerrymandering Claims

- Arise where race "predominates" over other neutral criteria in a redistricting plan
- To withstand constitutional challenge, state must show the plan is "narrowly tailored to meet a compelling state interest."

Case law does not provide bright-line guidance

- Generally, compliance with the VRA is a compelling state interest
- The "prevailing view" is that a state must comply with the VRA, but do no more than necessary to meet those obligations
- The districts should be drawn with consideration for all criteria, not just race

17

Principles

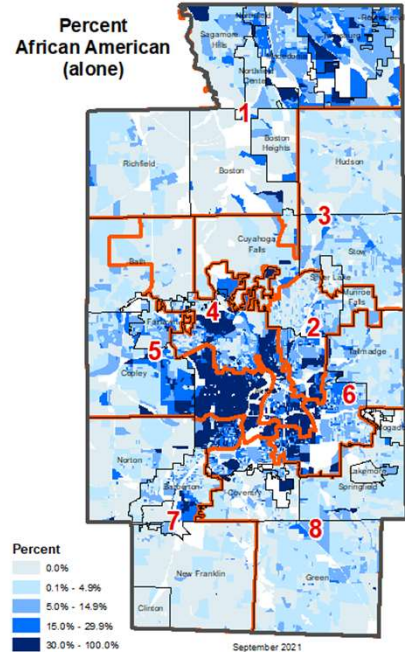
County Charter

- substantially equal population
 - compact
 - composed of contiguous territory
 - **formed by combining existing areas of governmental units, giving preference, in the order named, to townships, municipalities and city wards and precincts.**
- Political subdivisions with noncontiguous portions can be included in one district – e.g., Bath, Coventry, Cuyahoga Falls, Springfield, Twinsburg.
 - Political subdivisions may be divided between more than one district with no limitation upon the division of a political subdivision among districts.
 - Precincts shall not be divided.
 - **Must adhere to federal and state law.**
 - **Consideration will be given to broaden opportunities for historically under-represented and minority communities to elect representatives to the Council.**
 - The Council may establish additional criteria... to use in order to achieve a government that is effective, efficient. and at the same time, accountable, responsive, and fairly representative.

18

Voting Rights Act

District	Total Population		Voting Age Population	
	Percent AA alone	Percent AA any	Percent AA alone	Percent AA any
1	11.8%	13.1%	11.2%	12.0%
2	10.4%	12.4%	9.4%	10.5%
3	3.1%	4.1%	2.9%	3.5%
4	25.1%	28.1%	23.2%	25.0%
5	39.5%	42.3%	38.4%	40.3%
6	15.9%	18.9%	13.5%	15.2%
7	8.8%	10.7%	7.6%	8.6%
8	4.6%	6.1%	4.1%	4.8%
Total	14.8%	16.8%	13.6%	14.8%



19

Discussion