

# THE FEDERAL VOTING RIGHTS ACT AS APPLIED TO REDISTRICTING- AN OVERVIEW

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A PRESENTATION FOR THE SACRAMENTO CITIZENS REDISTRICTING  
ADVISORY COMMITTEE  
May 9, 2011

# Overview

- I. Constitutional Considerations
- II. Voting Rights Act of 1965
- III. Racial Gerrymandering
- IV. Sources and References



I.

# CONSTITUTIONAL CONSIDERATIONS



# Voting Rights: U.S. Constitution

- ▶ **14<sup>th</sup> Amendment [1868]**

“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; or deny to any person within its jurisdiction the equal protection of the laws.”

- ▶ **15<sup>th</sup> Amendment [1870]**

“The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude...”



# Voting Rights: U.S. Constitution

## (cont'd)

- ▶ **19<sup>th</sup> Amendment [1920]**

“The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.”

- ▶ **24<sup>th</sup> Amendment [1870]**

“The right of citizens of the United States to vote in any primary or other election [for federal office], shall not be denied or abridged by the United States or any State by reason or failure to pay any poll tax or other tax.”

- ▶ **26<sup>th</sup> Amendment [1971]**

“The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.”



# Other Constitutional concepts

- ▶ Generally:
  - “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land[.]” (Article VI, (aka the Supremacy Clause))
- ▶ Specifically:
  - In addition to the self-executing right in the 15<sup>th</sup> Amendment, the Amendment also grants Congress the “power to enforce this article by appropriate legislation.” (Amend. XV, § 2)

II.

# VOTING RIGHTS ACT OF 1965



# Pre-Voting Rights Act (VRA)

- ▶ After ratification of 15<sup>th</sup> Amendment, Congress passed Enforcement Act of 1870 [criminalized obstruction of right to vote; 1871 amendment detailed federal supervision of electoral process]
  - Lapse of time/interest led to spotty enforcement
  - Most provisions repealed in 1894
- ▶ Starting in 1890, many Southern States effectively disfranchised African-Americans through poll taxes, literacy and comprehension tests, residency requirements, etc.
- ▶ A series of statutes in 1950s and 1960s depended on individual lawsuits filed by the Department of Justice
  - But some States adopted new rules to perpetuate discrimination



# Passage of VRA

- ▶ **“An Act to enforce the fifteenth amendment to the Constitution of the United States, and for other purposes.”** [P.L. 89–110, 79 Stat. 437 (1965)]
- ▶ Selma tragedy led to action; signed by LBJ
- ▶ Passed after extensive debate.
- ▶ Amended four times:
  - 1970
  - 1975
  - 1982 (intent to discriminate not required for violation)
  - 2006



Eighty-ninth Congress of the United States of America

AT THE FIRST SESSION

Begun and held at the City of Washington on Monday, the fourth day of January, one thousand nine hundred and sixty-five

An Act

To enforce the fifteenth amendment to the Constitution of the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act shall be known as the "Voting Rights Act of 1965".

Sec. 2. No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color.

Sec. 3. (a) Whenever the Attorney General institutes a proceeding under any statute to enforce the guarantees of the fifteenth amendment in any State or political subdivision the court shall authorize the appointment of Federal examiners by the United States Civil Service Commission in accordance with section 6 to serve for such period of time and for such political subdivisions as the court shall determine is appropriate to enforce the guarantees of the fifteenth amendment (1) as part of any interlocutory order if the court determines that the appointment of such examiners is necessary to enforce such guarantees or (2) as part of any final judgment if the court finds that violations of the fifteenth amendment justifying equitable relief have occurred in such State or subdivision: Provided, That the court need not authorize the appointment of examiners if any incidents of denial or abridgement of the right to vote on account of race or color (1) have been few in number and have been promptly and effectively corrected by State or local action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future.

(b) If in a proceeding instituted by the Attorney General under any statute to enforce the guarantees of the fifteenth amendment in any State or political subdivision the court finds that a test or device has been used for the purpose or with the effect of denying or abridging the right of any citizen of the United States to vote on account of race or color, it shall suspend the use of tests and devices in such State or political subdivisions as the court shall determine is appropriate and for such period as it deems necessary.

(c) If in any proceeding instituted by the Attorney General under any statute to enforce the guarantees of the fifteenth amendment in any State or political subdivision the court finds that violations of the fifteenth amendment justifying equitable relief have occurred within the territory of such State or political subdivision, the court, in addition to such relief as it may grant, shall retain jurisdiction for such period as it may deem appropriate and during such period no voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect at the time the proceeding was commenced shall be enforced unless and until the court finds that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color: Provided, That such qualification, prerequisite, standard, practice, or procedure may be enforced if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such



Sec. 17. Nothing in this Act shall be construed to deny, impair, or otherwise adversely affect the right to vote of any person registered to vote under the law of any State or political subdivision.

Sec. 18. There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of this Act.

Sec. 19. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

John W. McCormack  
Speaker of the House of Representatives.

Hubert H. Humphrey  
Vice President of the United States  
President of the Senate

APPROVED

AUG - 6 1965

Lyndon B. Johnson



# VRA and Redistricting – Section 5

- ▶ Covered jurisdictions must get U.S. Department of Justice approval before changes in election laws and voting procedures (including redistricting) [42 U.S.C. § 1973c]
- ▶ Specific jurisdictions covered:
  - 9 States fully covered
  - 7 States are partially covered
    - California: Kings, Merced, Monterey, & Yuba Counties
- ▶ Sacramento is NOT covered by Section 5.



# VRA and Redistricting–Section 2

- ▶ Forbids any “standard, practice, or procedure” imposed “in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees [for language minorities].” (42 U.S.C. § 1973(a).)
- ▶ “in a manner which results in” = intentional discrimination OR effect of discrimination
- ▶ Challenges are usually that a districting scheme “dilutes” minority voting strength



# VRA and Redistricting–Section 2 (cont'd)

- ▶ “A violation of subsection (a) is established if, based on the totality of the circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: Provided, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.” (42 U.S.C. § 1973(b).)



# VRA and Redistricting–Section 2 (cont’d)

## – “*Gingles*” requirements

- ▶ Three threshold conditions for establishing Section 2 violation:
  - (1) The minority group allegedly harmed is sufficiently large and geographically compact to constitute a majority in a single district;
  - (2) The minority group is politically cohesive; and
  - (3) The majority votes sufficiently as a bloc to enable it usually to defeat the minority group’s preferred candidate.

(*Thornburg v. Gingles*, 478 U.S. 30, 50–51 (1986))



# VRA and Redistricting–Section 2 (cont’d)

## – “*Gingles*” requirements +

- ▶ The 3 *Gingles* requirements are necessary, but not sufficient
- ▶ Section 2 further requires that the “totality of the circumstances” substantiates that a minority group possesses less relative opportunity to elect candidate of its choice

*(League of United Latin American Citizens v. Perry, 548 U.S. 399 (2006))*



# VRA and Redistricting–Section 2 (cont’d)

## – “totality of circumstances”

As identified by the Supreme Court and the Senate Report on the 1982 amendments (partial list):

- History of institutionalized discrimination
- The extent of racially–polarized voting
- The extent to which members of the minority group have been elected to office
- Proportion of elected offices held by members of the minority group to share of the population

**Note:** inquiry dependent on facts of each case

**Note further:** standards/procedures must be fair, but members of a minority group do not have a right to a “proportional representation” (See 42 U.S.C. § 1973(b).)



# VRA and Redistricting – Definitions (cont'd)

- ▶ **“Majority–minority districts”** = a minority group composes a numerical, working majority of the voting–age population
  - [§ 2 can require creation]
- ▶ **“Influence districts”** = minority group can influence the outcome of an election even if its preferred candidate cannot be elected
  - [§ 2 does not require creation]
- ▶ **“Crossover districts”** = minority voters make up less than a majority of voting age population, but it is, at least potentially, large enough to elect the candidate of its choice with help from majority–group voters who cross over to help minority’s preferred candidate (see **“coalitional districts”**)
  - [§ 2 does not require]
- ▶ **“Coalition–district claims”** = two minority groups from a coalition to elect the candidate of the coalition’s choice



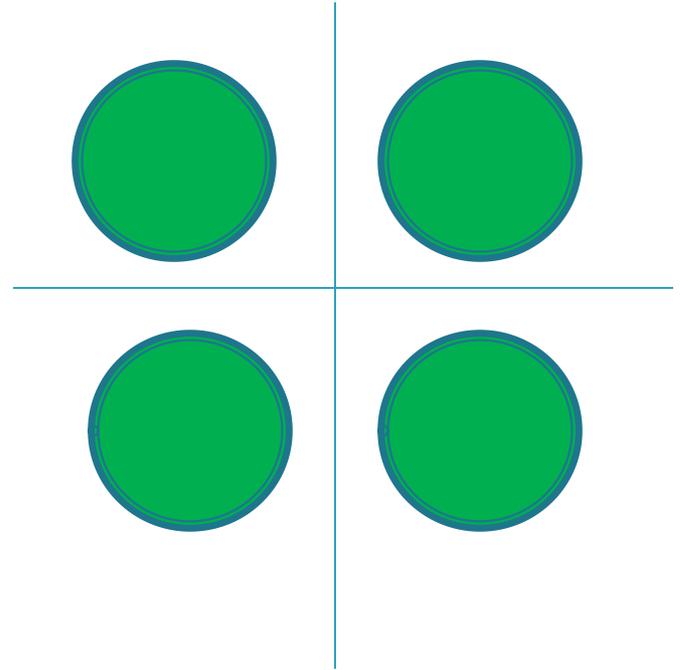
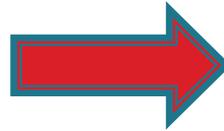
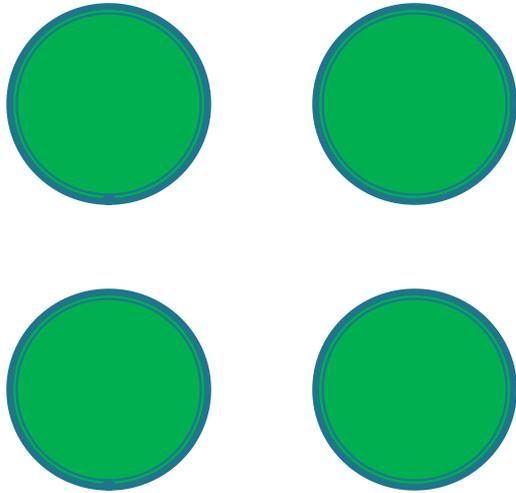
# VRA and Redistricting – Definitions

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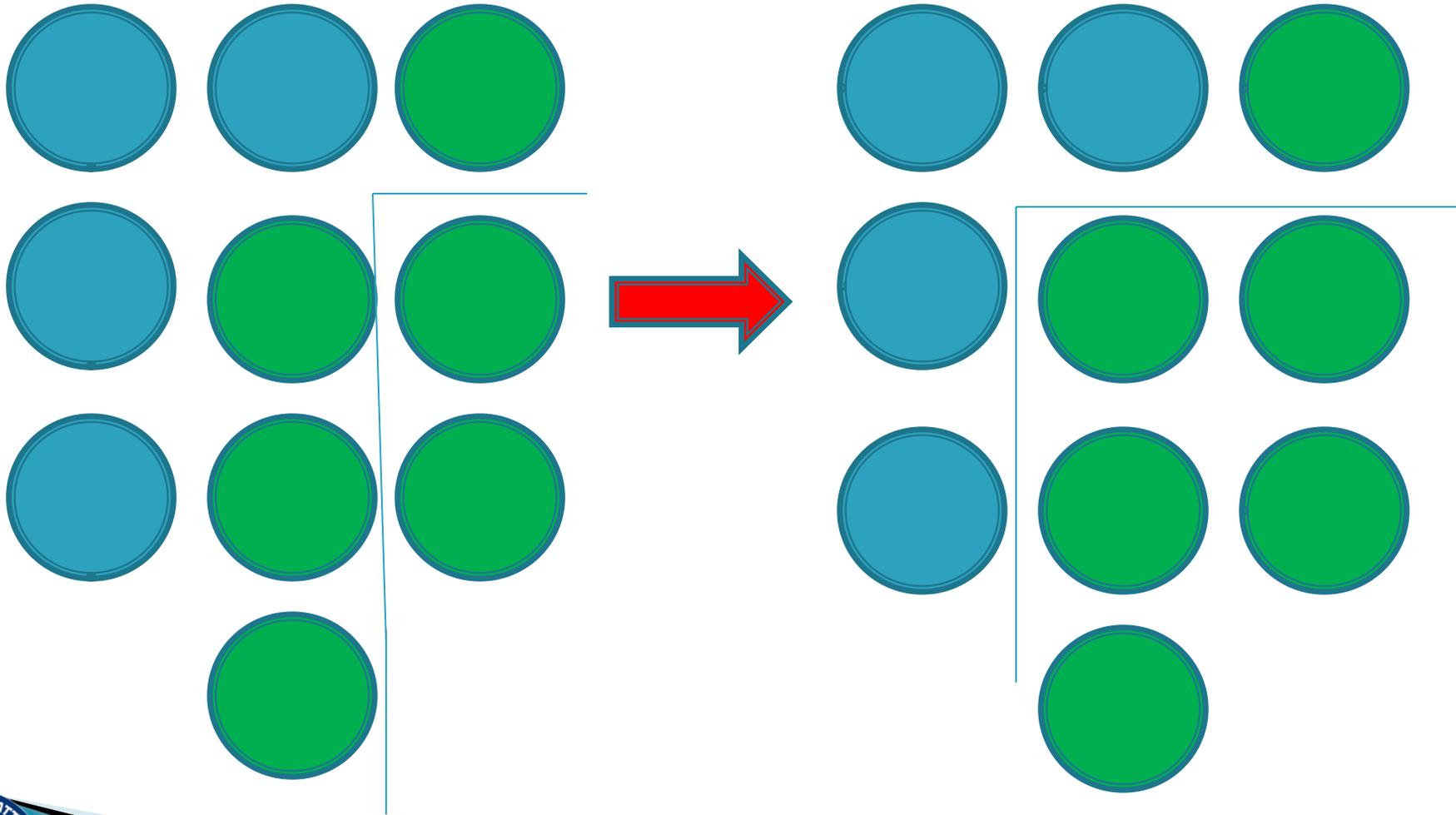
- ▶ **“Packing”** = placing significant concentration of a minority group in one district, allowing the group more than enough voting strength in one district, but thereby reducing its strength in others
- ▶ **“Cracking”** = splitting a minority group into multiple districts so it does not have significant voting power in any district



# “Cracking”



# “Packing”



III.

# RACIAL GERRYMANDERING



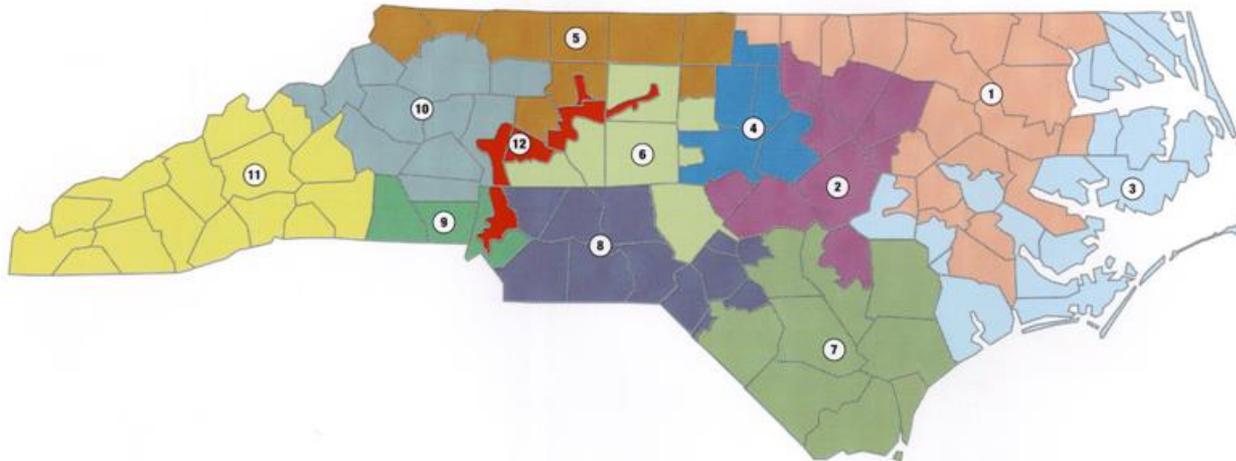
# Racial Gerrymandering

- ▶ Beyond the Voting Rights Act
  - ➔ typically brought as a claim under the 14th Amendment
- ▶ Early history: used to exclude minority groups
- ▶ More recently used to increase minority representation
- ▶ U.S. Supreme Court has applied a strict scrutiny standard to strike down plans that arbitrarily used race as the sole, primary, or predominant basis for redistricting without adequate justification  
(See, e.g., *Shaw v. Reno*, 509 U.S. 630, 643 (1993))



# Racial Gerrymander: *Hunt v. Cromartie*, 526 U.S. 541 (1999)

## APPENDIX TO OPINION OF THE COURT



IV.

# SOURCES AND REFERENCES



United States Constitution

42 U.S.C. § 1973, et seq.

U.S. Supreme Court decisions (as cited, and many others)

January 18, 2011, Memorandum to City Council, “2011 – Legal Principles” (In SRCAC’s 4/25/11 packet)

U.S. Department of Justice, Civil Rights Division, Voting Section (see [www.justice.gov/crt/about/vot](http://www.justice.gov/crt/about/vot))

