

# Legal & Policy Criteria Governing Establishment of Districts

A Presentation by:

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to the

*City of Encinitas*

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# Process for Changing Electoral System to Adopt District Elections

# California Elec. Code § 10010

- If a jurisdiction receives a demand letter alleging a violation of the California Voting Rights Act, the jurisdiction has 45 days to decide whether to adopt a resolution of intention to move to district-based voting, during which the would-be plaintiff cannot file suit. If it adopts such a resolution, would-be plaintiffs cannot file suit for an additional 90 days.
  - Letter received: July 20, 2017
  - Resolution of Intention adopted: August 30, 2017
- The Elections Code requires that at least five public hearings be held during the 90 days:
  - Two initial hearings, no more than 30 days apart, to receive public input. These hearings must take place before any draft maps are drawn.
  - Two additional informational hearings to receive public input on proposed maps. Must take place within a period of 45 days, and cannot commence until draft maps have been published for at least seven days.
  - A final hearing, after which the jurisdiction can vote to adopt a map.
    - If a map is revised at or following a hearing, it shall be published and made available to the public for at least seven days before being adopted.

# Process: Adopted Timeline

| Activity  | Timing             |
|---|--------------------|
| First Public Hearing on Composition of Districts – no maps  | September 6, 2017  |
| Second Public Hearing on Composition of Districts – no maps (w/i 30 days of first)                  | September 20, 2017 |
| Draft Maps and Election Rotation Published (at least 7 days prior to next round of public hearings) | September 29, 2017 |
| Two Public Workshops (one A.M. and one P.M.), not required by law                                   | September 30, 2017 |
| First Public Hearing on Proposed Maps   | October 11, 2017   |
| Second Public Hearing on Proposed Maps (w/i 45 days of first)                                       | November 8, 2017   |
| Final Public Hearing and Consideration of Ordinance to Adopt Map                                    | November 15, 2017  |
| End of 90-day Litigation Hold   | November 28, 2017  |
| Implement Adopted Districts   | November 2018/2020 |

# Process: Election Rotation

- To be proposed in connection with maps and set by final ordinance.
- Rotates in over two election cycles.
- No councilmember's term cut short (*see* Elec. Code § 22000(e)), but
- When his or her term ends, an incumbent can only run from the new district in which he or she resides, assuming it is up for election

# Legal Considerations Governing Districting

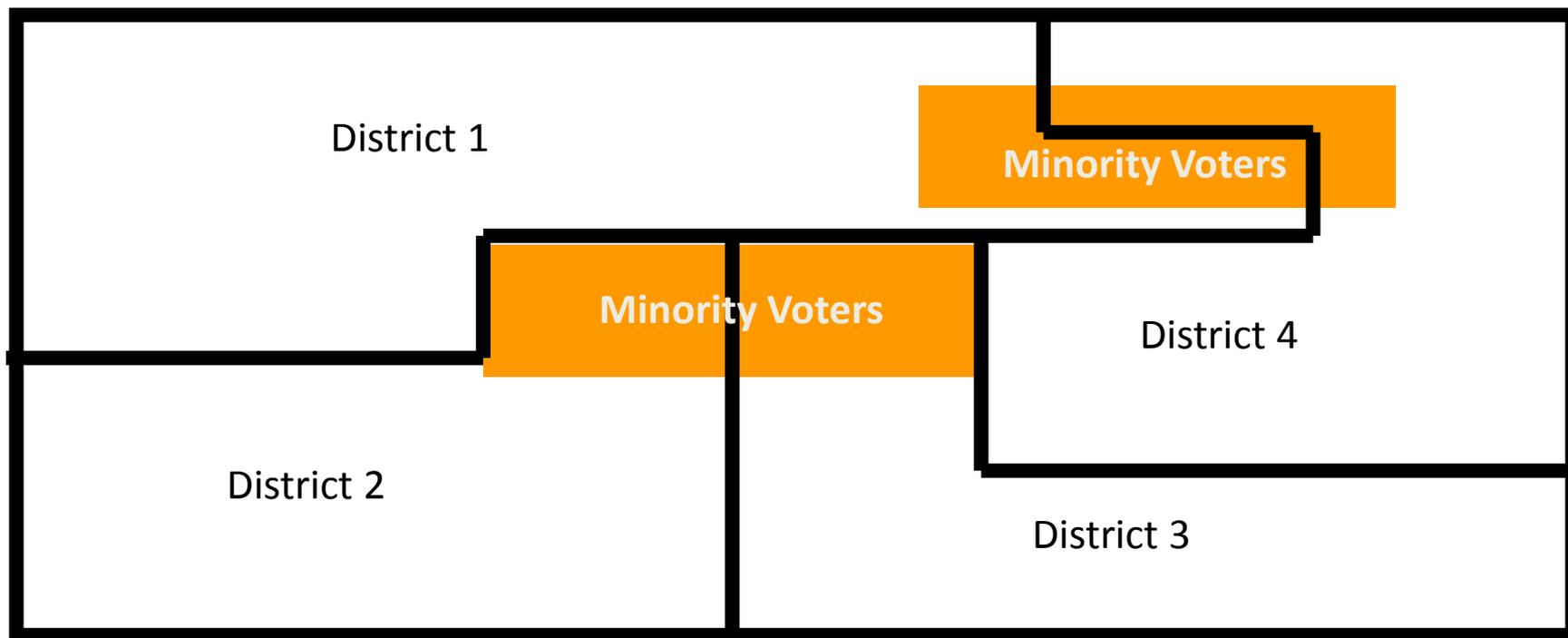
# Drawing the Lines—Legal Considerations: Population Equality

- Overriding criterion is total population equality (*see Reynolds v. Sims*, 377 U.S. 533 (1964); Elec. Code § 22000).
- Unlike congressional districts, local electoral districts do not require perfect equality—some deviation acceptable to serve valid governmental interests.
- Total deviation less than 10% presumptively constitutional. (Caution: the presumption *can* be overcome!)
  - Total Encinitas Population (2010 Census): 59,518
  - Ideal in 5-0 Plan: 11,904; Ideal in 4-1 Plan: 14,880
- Redistricting in 2021.

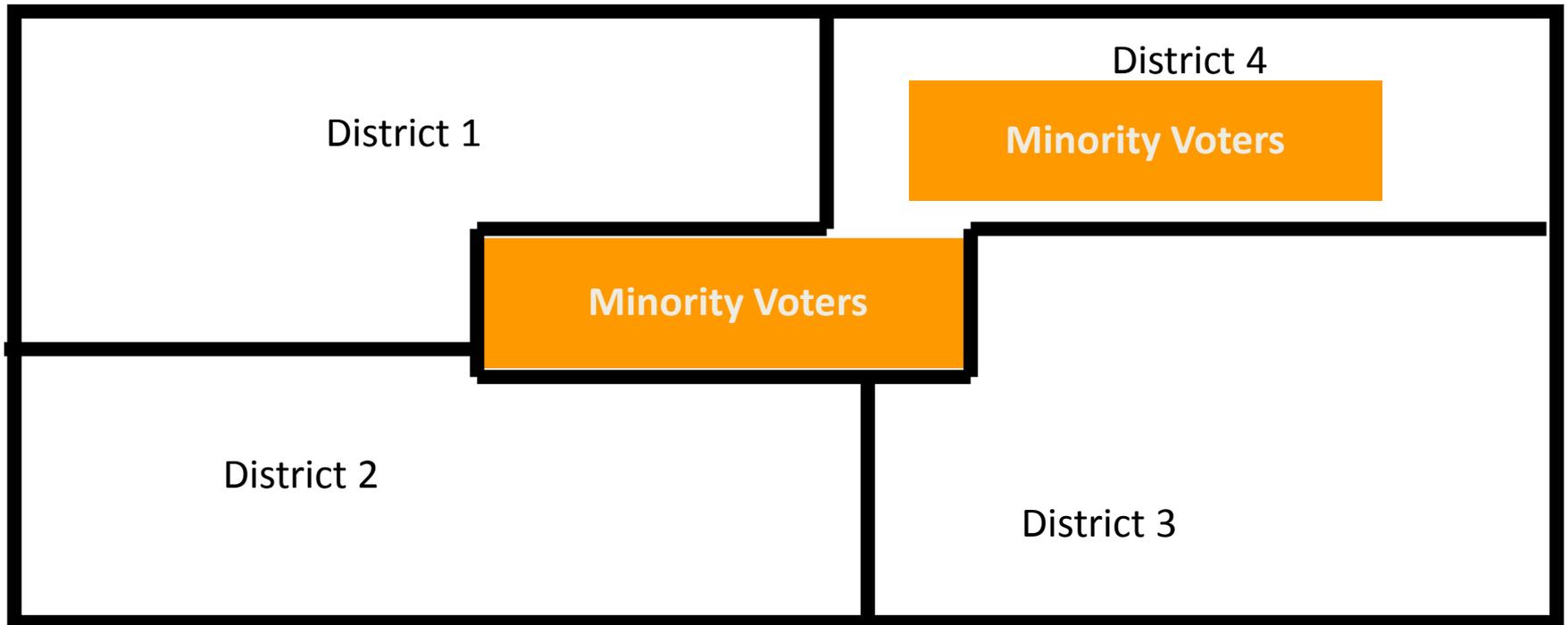
# Drawing the Lines—Legal Considerations: Federal VRA

- Section 2 of the federal Voting Rights Act prohibits electoral systems (including district plans), which dilute racial and language minority voting rights by denying them an equal opportunity to nominate and elect candidates of their choice.
- “Language minorities” are specifically defined in federal law: to mean persons of American Indian, Asian American, Alaskan Natives or Spanish heritage. CVRA expressly adopts the definition of “language minority.”
- Creation of minority districts required only if the minority group can form the majority in a single member district that otherwise complies with the law. *Bartlett v. Strickland*, 556 U.S. 1 (2009).
- California Voting Rights Act is silent with respect to the shape of electoral districts, so long as they are used.

# Voting Rights Act: Cracking



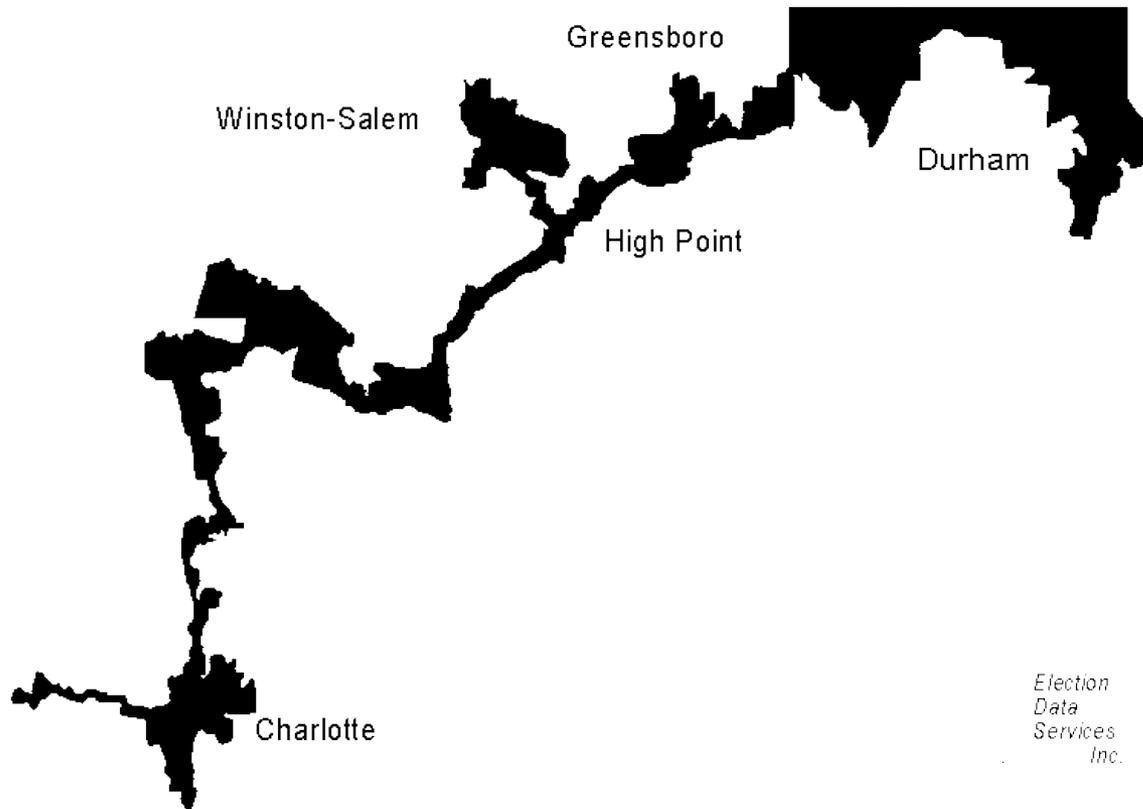
# Voting Rights Act: Packing



# Drawing the Lines—Legal Considerations: No Gerrymandering

- The Fourteenth Amendment restricts the use of race as the “predominant” criterion in drawing districts and the subordination of other considerations. *Shaw v. Reno*, 509 U.S. 630 (1993); *Miller v. Johnson*, 515 U.S. 900 (1995).
- Looks matter! Bizarrely shaped electoral districts can be evidence that racial considerations predominate. (See next slide, NC CD 12 stretched 160 miles across the central part of the State, for part of its length no wider than the freeway right-of-way.)
- But bizarre shape is not required for racial considerations to “predominate.”
- Fourteenth Amendment does not, however, prohibit all consideration of race in redistricting. *Easley v. Cromartie*, 532 U.S. 234 (2001).
- **Focus on communities of interest.**

# Drawing the Lines—Legal Considerations: No Gerrymandering



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# Legal Considerations: Other Permissible Criteria

- Topography.
- Geography.
- Cohesiveness, contiguity, compactness and integrity of territory.
- Communities of interest.
  - Old Encinitas, New Encinitas, Olivenhain, Leucadia, Cardiff-by-the-Sea

*See Elec. Code § 21602.*

# Legal Considerations: Other Criteria Approved by Courts

- Preventing head-to-head contests between incumbents, to the extent reasonably possible.
- Respecting the boundaries of political subdivisions (*e.g.*, school attendance areas, city boundaries, etc.).
- Use of whole census geography (*e.g.*, census blocks).
- Other non-discriminatory, evenly applied criteria (*e.g.*, location of school facilities, planned development).
- Political considerations are inevitable.

# Questions?