THE LAW OF REDISTRICTING OVERVIEW FOR COUNTY OF SAN DIEGO INDEPENDENT REDISTRICTING COMMISSION

By Bruce L. Adelson, Esq.

Redistricting Overview

Bruce Adelson is a former Senior Trial Attorney for the U.S. Department of Justice. During Bruce's DOJ career, he was lead attorney responsible for Arizona during the 2000 redistricting cycle.

During the 2010 redistricting cycle, Bruce was Voting Rights Act expert for the Arizona Independent Redistricting Commission and did redistricting consultation with many Arizona counties, cities, school and college districts. Consulting expert in *Harris v. AIRC* 993 F.Supp.2d 1042 (D. Ariz., 2014). In April 2016, the U.S. Supreme Court unanimously upheld the plan's legality 9-0.

Redistricting Overview

Redistricting is a LEGAL process.

With specific laws and rules to follow

Redistricting Overview

USDOJ Redistricting Guidance, 9/1/2021

"The Voting Rights Act of 1965 is a landmark civil rights law that protects our democratic process against racial discrimination. One of the key protections of the Voting Rights Act is Section 2, 52 U.S.C. § 10301, which is a permanent nationwide prohibition on voting practices that discriminate on the basis of race, color, or membership in a language minority group."

Redistricting Overview

"Following the release of 2020 Census redistricting data, all fifty States and thousands of counties, parishes, municipalities, school districts, and special purpose districts will craft new districting plans. The Department of Justice will undertake its usual nationwide reviews of districting plans and methods of electing governmental bodies to evaluate compliance with Section 2. It is the Department's view that guidance identifying its general approach to Section 2 in this context would be useful."

Redistricting Overview

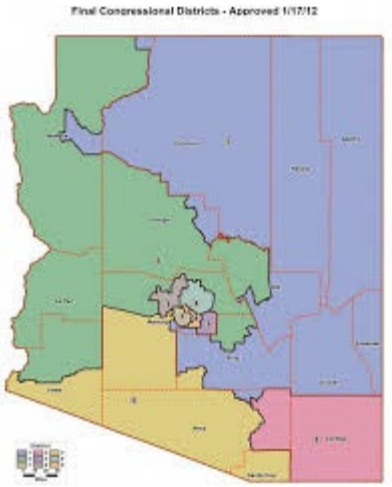
U.S. Supreme Court's Harris v. AIRC

Takeaways:

Show Your Work

Create Strong Record

Objective Expertise



Redistricting Overview

Traditional Redistricting Criteria in California

- A: Must comply with the U.S Constitution and the Voting Rights Act
- B: Equal Population
  - **Criteria A and B are federally mandated. All plans must satisfy these two criteria.**
- C: Compact and Contiguous
- D: Respect communities of interest
- E: Use visible geographic features, city town and county boundaries, and undivided Census Tracts

Redistricting Overview

Compact and contiguous districts

A district is contiguous if all of the lines that create it are connected. A district consisting of two or more unconnected areas is not contiguous. Degree to which all districts in a particular map are contiguous can be limited by natural boundaries.

Redistricting Overview

Measuring compactness is more complex because there is no one method for measuring compactness.

Appearance and function of a district are good ways to determine compactness.

Consider the overall shape of the district, looking to see how tightly drawn the lines are and how smooth the edges are. If the districts drawn are too irregular-looking, it may become a signal to the courts that the lines may have been motivated by a desire to engage in race-based redistricting.

Redistricting Overview

District boundaries should respect not dividing communities of interest (city, town, school district) where possible.

If a community of interest had a strong policy voice in its current district, splitting it in to two under a new district plan, where that voice will be diluted, should be avoided if possible.

Redistricting Overview

District lines shall use visible geographic features, city or town boundaries and undivided Census Tracts.

Redistricting Overview

The process of redrawing a district starts by determining the “ideal” population.

In a single-member district plan, the “ideal” population is equal to the total population of the jurisdiction divided by the total number of districts. For example, if a state’s population is one million and there are ten legislative districts, the “ideal” population of each district is 100,000.

Redistricting Overview

Any amount less or greater than this number is called a “deviation.”

The law allows for some deviations in state and local redistricting plans, generally

at and below 10%

Redistricting Overview

Race is always a part of the redistricting process. Being race-conscious or aware of race during the redistricting process is not, by itself, illegal.

See: *United States v. Hays*, 515 U.S. 737, 745 (1995)

("We recognized in *Shaw*, however, that 'the legislature always is aware of race when it draws district lines, just as it is aware of age, economic status, religious and political persuasion, and a variety of other demographic factors. That sort of race consciousness does not lead inevitably to impermissible race discrimination.'")

Redistricting Overview

The Supreme Court has clearly stated that a redistricting plan will not be held invalid simply because the "redistricting is performed with consciousness of race" or because a jurisdiction intentionally creates a majority-minority district.

Easley v. Cromartie, 532 U.S. 234, 253-54 (2001) (quoting *Bush v. Vera*, 517 U.S. 952, 958 (1996));

Redistricting Overview

"That Alabama expressly adopted and applied a policy of prioritizing mechanical racial targets above all other districting criteria (save one-person, one-vote) provides evidence that race motivated the drawing of particular lines in multiple districts in the State.

The record makes clear that both the District Court and the legislature relied heavily upon a mechanically numerical view as to what counts as forbidden retrogression.

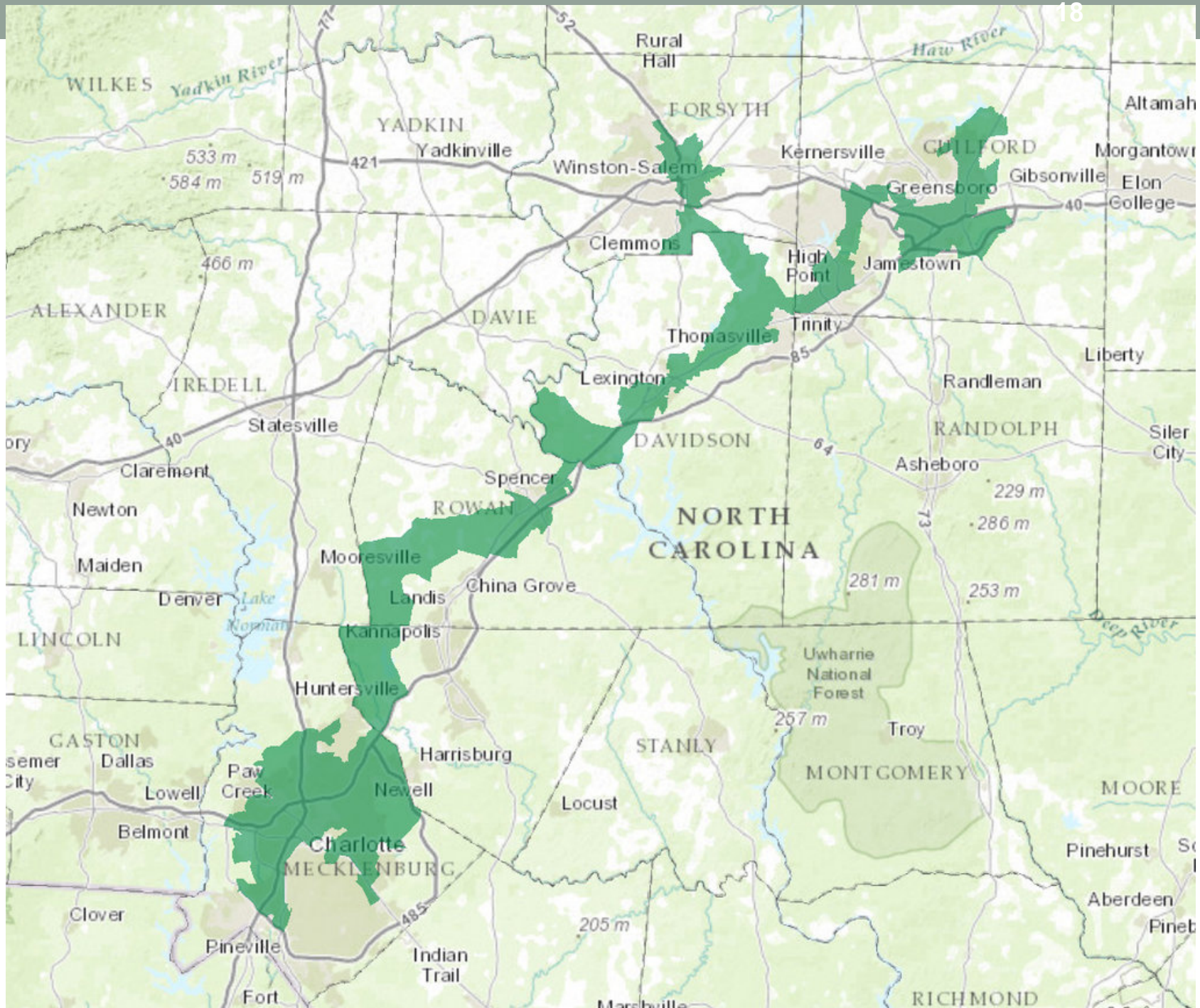
Thus, we agree with the United States that a court's analysis of the narrow tailoring requirement insists only that the legislature have a "strong basis in evidence" in support of the (race-based) choice that it has made."

ALABAMA LEGISLATIVE BLACK CAUCUS ET AL. v. ALABAMA ET AL. (2015)

Redistricting Overview

"Cracking"—"dividing a party's supporters among multiple districts so that they fall short of a majority in each one"

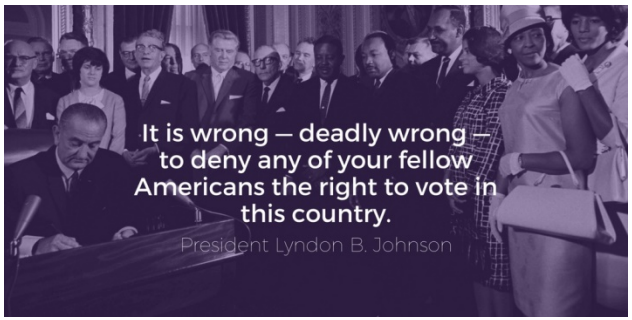
"Packing"— "concentrating one party's backers in a few districts that they win by overwhelming margins"


Rural Hall
Haw River
WILKES
Yadkin River
YADKIN
FORSYTH
Altamah
Yadkinville
Winston-Salem
Kernersville
GUILFORD
Morgantown
533 m
584 m
519 m
421
Gibsonville
Greensboro
Elon College
40
Clemmons
High Point
Jamestown
466 m
ALEXANDER
DAVIE
Thomasville
Trinity
Liberty
Lexington
85
Randleman
IREDELL
Statesville
DAVIDSON
RANDOLPH
Siler City
Claremont
Spencer
64
Asheboro
Newton
ROWAN
229 m
NORTH CAROLINA
286 m
Maiden
Mooresville
China Grove
281 m
253 m
Denver
Lake Norman
Landis
Deep River
LINCOLN
Kannapolis
Uwharrie National Forest
Huntersville
257 m
Troy
GASTON
Dallas
Harrisburg
STANLY
MONTGOMERY
MOORE
Lowell
Paw Creek
Newell
Locust
Belmont
Charlotte
MECKLENBURG
Pinehurst
Aberdeen
Clover
485
205 m
Pineville
Indian Trail
Fort
RICHMOND

Redistricting, DOJ, & Cautionary Tales

Supreme Court struck down District 12. The design of that "serpentine" district, we held, was nothing if not race-centric, and could not be justified as a reasonable attempt to comply with the VRA.

Shaw v. Reno (Shaw II), 517 U.S. 899, 116 S.Ct. 1894, 135 L.Ed.2d 207.



Redistricting, DOJ, & Cautionary Tales

A district that "reaches out to grab small and apparently isolated minority communities" is not reasonably compact.

The recognition of nonracial communities of interest reflects the principle that a State may not "assum[e] from a group of voters' race that they 'think alike, share the same political interests, and will prefer the same candidates at the polls.'"

LEAGUE OF UNITED LATIN AMERICAN CITIZENS(LULAC) v. Perry, 548 U.S. 399 (2006) *Shaw v. Reno*, 509 U. S. 630, 647 (1993).

Redistricting, DOJ, & Cautionary Tales

The Supreme Court has held that Constitution requires skeptical look at redistricting plans when race is the "predominant" reason for putting a significant number of people in or out of a district.

Fourteenth Amendment forbids use of race as predominant district boundary-drawing factor.

ALABAMA LEGISLATIVE BLACK CAUCUS ET AL. v. ALABAMA ET AL. (2015)

Redistricting, DOJ, & Cautionary Tales

That Alabama expressly adopted and applied a policy of prioritizing mechanical racial targets above all other districting criteria (save one-person, one-vote) provides evidence that race motivated the drawing of particular lines in multiple districts in the State.

The record makes clear that both the District Court and the legislature relied heavily upon a mechanically numerical view

Redistricting, DOJ, & Cautionary Tales

This does not mean that race can't be considered, or that when districts drawn primarily based on race are invalid. It means that there has to be a really good reason for subordinating all other districting considerations to race. Court has repeatedly implied that one such compelling reason is compliance with the Voting Rights Act

Compelling, legally acceptable reason for use of race in redistricting is compliance with the Constitution and Voting Rights Act: *Harris v Arizona Independent Redistricting Commission,* 136 S. Ct. 1301, 194 L. Ed. 2d 497 (2016).

Redistricting, DOJ, & Cautionary Tales

Meaningful number of white voters joined a politically cohesive black community to elect that group's favored candidate. In the lingo of voting law, District 1 functioned, election year in and election year out, as a "crossover" district, in which members of the majority help a "large enough" minority to elect its candidate of choice.

Cooper v. Harris, 137 S. Ct. 1455, 197 L.Ed.2d 837 (2017)

Redistricting, DOJ, & Cautionary Tales

Here, electoral history provided no evidence that a § 2 plaintiff could demonstrate the third Gingles prerequisite—effective white bloc-voting.

For most of the twenty years prior to the new plan's adoption, African–Americans had made up less than a majority of District 1's voters; the district's BVAP usually hovered between 46% and 48%.

Yet throughout those two decades, as the District Court noted, District 1 was "an extraordinarily safe district for African–American preferred candidates."

Redistricting, DOJ, & Cautionary Tales

Legal Requirements

- The language minority provisions of the Voting Rights Act require that when a covered state or political subdivision provides registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in the language of the applicable minority group as well as in the English language.
- The requirements of the law are straightforward: all election information that is available in English must also be available in the minority language so that all citizens will have an effective opportunity to register, learn the details of the elections, and cast a free and effective ballot.

DOJ

Redistricting, DOJ, & Cautionary Tales

San Diego County …….. American Indian (All other American Indian Tribes).

San Diego County …….. Chinese (including Taiwanese).

San Diego County ……. Filipino.

San Diego County …….. Hispanic.

San Diego County ……. Vietnamese

Redistricting Overview

Bruce Adelson, Esq.

301-762-5272

badelson1@comcast.net

badelsonfcc@verizon.net