

City of Waco, Texas

Redistricting Under the (much delayed) 2020 Census

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The Basics

The Council's redistricting authority is largely, but not entirely, unlimited

- **Limitations on that authority involve constitutional and legal principles:**
 - **The 5th, 14th and 15th Amendment equal protection guarantees**
 - **The Federal Voting Rights Act of 1965, as amended in 1975 and 1982**
 - **State Law Requirements, such as:**
 - The Texas Constitution,
 - The Texas Election Code, the Government Code, etc.

The Constitutional Limitations

A plan must satisfy the equal protection guarantees of the 5th, 14th and 15th amendments

- Equal protection, in this context, requires equity in representation

The “Prime Directive” — Balance population

- **Redistricting must avoid plans that result in:**
 - **Over Representation** — too few residents gives to each increased influence
 - **Under Representation** — too many results in less influence
- Population equity does not require “perfect” equality
- It is judged against a principle commonly referred to as “One-Person One-Vote”
 - Counter intuitively, one-person one-vote refers to warm bodies, not voters

Avery v. Midland County, Tex. — “The Poster Child”

390 U.S. 474, (1968)

One-Person One-Vote applies to local governments

“[T]he Constitution imposes one ground rule for the arrangements of local government: a requirement that units with general governmental powers over an entire geographic area not be apportioned among single-member districts of substantially unequal population.”

- **The population of the four commissioner precincts was:**
 - One with 67,906, containing most of the city of Midland
 - Then three rural districts with populations of 852, 414, and 828, respectively

The basis of the complaint is obvious.

Q How near to equal must population be balanced?

One-Person One-Vote

- **The determination is based on the population variance:**
 - (1) between that of the highest and lowest populated Districts, and**
 - (2) among all Districts**
- Variance is measured in terms of the maximum and average deviation from an ideal precinct
- The maximum deviation — the percentage of the variance between the highest and lowest populated districts — may not exceed 10%, without a compelling justification
- The average deviation — the mean of the average variance of all precincts collectively — subject to no specific limitation, but a common ceiling is +/- 3 or 4%
- Judicial Districts and Executive Officers are not subject to one-person one-vote, only representative offices
 - For example, while changes must not be drawn in ways that retrogress or dilute the effectiveness of minority voters the districts do not come under one-person one-vote scrutiny.
- Congressional seats are subject to a *de minimus* standard

City of Waco, Texas			2011 Benchmark - 2010 Census Count			3/21/11
	Ideal	24961				
	Total	White	Black	Other	Hispanic	Total Minority
	<u>124805</u>	<u>57217</u>	<u>26954</u>	<u>3687</u>	<u>36947</u>	<u>67588</u>
		45.85%	21.60%	2.95%	29.60%	54.15%
District	total	white	black	other	hispanic	total minority
1	23090	6695	10433	505	5457	16395
-1,871.0		29.00%	45.18%	2.19%	23.63%	71.00%
2	22803	9833	2105	1162	9703	12970
-2,158.0		43.12%	9.23%	5.10%	42.55%	56.88%
3	28332	15538	5095	1168	6531	12794
3,371.0		54.84%	17.98%	4.12%	23.05%	45.16%
4	21055	4821	6058	229	9947	16234
-3,906.0		22.90%	28.77%	1.09%	47.24%	77.10%
5	29525	20330	3263	623	5309	9195
4,564.0		68.86%	11.05%	2.11%	17.98%	31.14%
Max. Variance = 8,470		Max. Deviation = 33.93%		Board of Estimates = 28.28%		

Plans Must Avoid Unlawful Discrimination

The 5th and 14th amendments prohibit the federal and state governments from drawing distinctions among individuals based solely on differences irrelevant to any legitimate governmental objective, including race and ethnicity

This guarantee was specifically extended to the right to vote by the 15th amendment

§1 “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.”

§ 2 “The Congress shall have the power to enforce this article by appropriate legislation.”

Congress exercised this power through the Voting Rights Act (VRA) of 1965, as amended:

- **In 1975** — brought Texas under the mandatory preclearance provisions for the first time
- **In 1982** — added discriminatory “effect” to “intent” as a violation of the VRA

The Voting Rights Act

Dilution - VRA §2

- **Packing** — concentrating population to avoid creation of impair minority influence
- **Cracking** — splitting an insular minority concentration to impair minority influence

Retrogression — VRA §§ 4 and 5

- Preclearance, was intended to prevent states from staying a jump ahead of the law
- While preclearance is no longer required, retrogression remains a concern

“Our decision in no way affects the permanent nationwide ban on racial discrimination in voting found in § 2. We issue no holding on § 5 itself, only on the coverage formula. Congress may draft another formula based on current conditions.” *Shelby County, Ala. v. Holder*, 570 U.S. 529, 557 (2013).

The “Poster Child” for retrogression — *Gomillion, v. Lightfoot*, 81 S.Ct. 125, 126 (1960)

Legislative Act 140 would have transformed the City of Tuskegee from a square “into a strangely irregular 28-sided figure” with the effect of removing from the city all save 4 or 5 of its 400 Black voters while not removing a single white voter or resident.

- **Meaningful public input can protect against inadvertent violation of the VRA**

City of Waco, Texas			2011 Current - 2010 Census Count				Model One
Ideal 24961							
	Total	White	Black	Other	Hispanic	Total Minority	
	<u>124805</u>	<u>57217</u>	<u>26954</u>	<u>3687</u>	<u>36947</u>	<u>67588</u>	
		45.85%	21.60%	2.95%	29.60%	54.15%	
District	total	white	black	other	hispanic	total minority	
1	24755	7313	10857	529	6056	17442	
-206		29.54%	43.86%	2.14%	24.46%	70.46%	
2	25403	10809	2705	1197	10692	14594	
442		42.55%	10.65%	4.71%	42.09%	57.45%	
3	25068	14210	4321	1122	5415	10858	
107		56.69%	17.24%	4.48%	21.60%	43.31%	
4	25117	6022	7131	276	11688	19095	
156		23.98%	28.39%	1.10%	46.53%	76.02%	
5	24462	18863	1940	563	3096	5599	
-499		77.11%	7.93%	2.30%	12.66%	22.89%	
Max. Variance = 941		Max. Deviation = 3.77%		Board of Estimates = 3.14%			

Comparison

2011 Current -v- 2001 Benchmark - 2010 Census Count

Benchmark

1	-1871	-7.50%		Max Var	8470
2	-2158	-8.65%			
3	3371	13.51%			
4	-3906	-15.65%		Max Dev	<u>33.93%</u>
5	4564	18.28%			
over	4564	18.28%		# Single	5
under	-3906	-15.65%		# at large	1
				Bd of Est.	<u>28.28%</u>

Current

1	-206	-0.83%		Max Var	941
2	442	1.77%			
3	107	0.43%			
4	156	0.62%		Max Dev	<u>3.77%</u>
5	-499	-2.00%			
over	442	1.77%		# Single	5
under	-499	-2.00%		# at large	1
				Bd of Est.	<u>3.14%</u>

Traditional Redistricting Criteria

Caveat: The “Horns of the Dilemma” — Plans must also avoid reverse racial Gerrymanders

“Districts that are bizarrely shaped and noncompact, and that otherwise neglect traditional districting principles and deviate substantially from the hypothetical court-drawn district, for predominately racial reasons are unconstitutional.” *Bush v. Vera*, 116 S.Ct. 1941 (1996)

- **Maintaining the Core of Existing Districts** — for the benefit of those represented
- **Protecting Incumbency** — again, for the benefit of voters who chose the incumbent
- **Use of Existing Election Precincts** — once more for the voters, to reduce confusion
- **Maintaining Communities of Interest** — this does not apply to partisanship
- **Compactness and Contiguity** — no salients or “bar-bells”
- **Use of Natural or Physical Boundaries** — something that can be seen on the ground
- **Duties of the office** — unlikely to play much of a roll for Cities, unlike counties without unified road systems

In summary, the process involves:

- **Determining whether redistricting is required, based on the 2020 Census**

If redistricting is required, any plan must:

- Balance population among the Council Districts;
- Comply with the equal protection guarantees of the Constitution;
- Consider traditional redistricting criteria;
- Navigate the dilemma created by the dual requirements of:
 - Satisfying the Voting Rights Act, while
 - Avoiding a reverse racial Gerrymander;
- Provide for meaningful public input.

My job is to get the Council as close as the law allows to whatever plan it determines best serves the needs of the City