

Texas City Attorneys Association
Fall Virtual Conference
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Municipal Redistricting Obligations Triggered by the Upcoming Release of the 2020 Federal Census

Presented by:

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Presentation Overview

- **Changes In Redistricting Law From the Last Redistricting Cycle**
- **Overview of Current Census Bureau Operations and Data Release Schedule**
- **Election Schedules During the Redistricting Process**
- **Redistricting Process for 2021**

Section 5 of the VRA

- Section 5 of the VRA
 - Application and Coverage
 - Coverage in Texas
 - Preclearance
 - Effect of Section 5 on redistricting plans

Shelby County v. Holder, 570 U.S. 529 (2013)

- Supreme Court overturns Section 4
 - Overturning the Section 4 coverage formula effectively eliminates Section 5
 - Preclearance is no longer required

Redistricting Post-Shelby County

- Cities still have responsibilities under the VRA when adopting plans
- Cities can still be sued under Section 2
- Section 2 suits may be more plentiful
- Section 5 standard was retrogression and the Section 2 standard is discrimination
 - Why you need to be careful
- Adopting a plan that would pass muster under Section 5 will make it more likely that the City will avoid litigation under Section 2

Who Counts in Redistricting?

- Texas Cases challenging the use of total population
 - Urged use of an eligible-voter apportionment base such as citizen-voting-age population (CVAP)
 - Use of CVAP would have greatest impact on Hispanic districts
 - Concentrations of non-citizens in urban areas
 - Effect on Hispanic majority districts
 - Partisan Impact of drawing districts based upon CVAP

Evenwel v. Abbott, *136 S.Ct. 1120 (2016)*

- Challenge of Texas Senate Districts
- Total Population
 - Deviation was about 8 percent
- CVAP
 - Deviation exceeded 40 percent
- Supreme Court ruled that Texas was not required to use CVAP or a similar metric rather than total population

Evenwel v. Abbott, *136 S.Ct. 1120 (2016)*

- Left unanswered the question of whether a city or other jurisdiction could choose to use a CVAP apportionment base
- Jurisdictions may prefer to use CVAP as the measure for determining if districts are in balance
- While such a measure may be permissible, there are reasons it may not be advisable

Evenwel v. Abbott, *136 S.Ct. 1120 (2016)*

- Total population comes from the census and is highly accurate at the block level used to draw districts, while CVAP is reported only at the larger block-group level, is derived from a sample compiled over a five-year period rather than on a single day as is the census, and is accompanied by a margin of error that can be substantial
- Because the use of CVAP is likely to have an adverse impact on Hispanics, the use of CVAP or a similar metric for drawing districts is likely to draw a section 2 challenge

What kind of Census Numbers Will We Have?

- Trump Administration showed interest in adding a citizenship question to the 2020 Census
- Memo from Commerce Secretary Wilbur Ross directing Census Bureau to add a citizenship question
- Census professionals strenuously opposed the addition
 - Testing the question, accuracy of the responses, and potential for discouraging nonresponses to the census questionnaire

What kind of Census Numbers Will We Have?

- The Secretary's alleged rationale for adding the citizenship question was to assist the Department of Justice in its enforcement of the VRA.
- Suits challenging the addition of the citizenship question were brought in federal courts in New York, Maryland, and California
- The New York case was the first to be decided

What kind of Census Numbers Will We Have?

- Supreme Court's decision on adding the citizenship question
 - The Court found the Department's rationale of needing the data to enforce the Voting Rights Act to be pretextual
 - The case was remanded
 - Deadlines on printing the census questionnaires
 - Commerce Department ran out of time to come up with a different reasoned justification
 - Effort to include the question on the 2020 Census ended

What kind of Census Numbers Will We Have?

- President Trump's Executive Order
 - Produce block-level citizenship data by combining census responses with administrative records
 - The Bureau plans to release CVAP data at the block level
 - Until data is released, we won't know if it is sufficiently accurate for use for redistricting in the event a jurisdiction decides to use CVAP as the apportionment base
 - Depending on result of the 2020 election, a new administration could decide whether to release CVAP data

Timing of the Census Release

- Pandemic has delayed Census operations
- Under law, the statewide census data
 - Report to the President by December 31, 2020
 - Delivered to the States by March 31, 2021
- To ensure a complete Census, Trump Administration asked Congress to extend deadlines by four months
 - House enacted the extension
 - Senate has not considered it

Timing of the Census Release

- In the meantime, the Administration has changed its position
 - Now wants statewide numbers reported by the original December 31 deadline
 - Census Bureau announces acceleration of collection of census data
- Commerce Department Inspector General investigated and concluded:
 - Decision to accelerate was not made by Census Bureau
 - Accelerated schedule increases risks to obtaining a complete and accurate 2020 census

Timing of the Census Release

- Memorandum from President Trump states plans to deduct undocumented non-citizens from the totals before sending them to Congress to be used to apportion congressional seats to the states
 - Consequence of altering the numbers
 - Reduce the number of congressional seats assigned to California
 - Likely cost Texas one or more seats
- District courts enjoin the effort to adjust the numbers to be sent to the Congress and the efforts to stop data collection in order to meet the December 31 deadline
 - Litigation continues
 - Release schedule remains unclear at this time.

Who Must Redistrict?

- Home Rule Cities with Single Member Districts
- General Law Cities that elect Aldermen from Wards
- Some Cities with residency districts may have a charter requirement to rebalance

Timing of Redistricting Process

- Will depend on the City's General Election Cycle
- Data Release Schedule Determines Project Timing
- Will Discuss Elections Scheduled
 - Annually or Bi-annually in **May**
 - Annually or Bi-annually in **November**

Timing of Redistricting Process

- **General Elections scheduled for May 2021 Are Not Impacted by the Release of the Census**
 - Any release data, traditional or delayed will not affect a May 2021 election
 - Elections will be held on the current plan; redistricting initiated after the canvass of the May 2021 election as discussed further later in the presentation

Timing of Redistricting

- **Elections scheduled for November 2021**
 - Data Release Schedule Determines Project Timing
 - Traditional Release of April 2021 requires accelerated process completed by mid-July 2021
 - Delayed Release after April 2021 may make process technically impossible to implement for November 2021 elections

Timing of Redistricting

- **Elections scheduled for May 2022
(Annual May General Elections)**
 - Data Release Schedule Determines Project Timing
 - Traditional Release of April 2021 requires normal process completed by January 2022
 - Initiate redistricting process after the canvass of May 21 General Election
 - Completion must be in time to allow candidate filing for May 2022 General Elections (Typically mid-January 2022)

Timing of Redistricting

- **Bi-annual General Elections with next elections scheduled for **May 2023****
 - Data release schedule impacts project timing, but less so
 - Traditional or even a reasonably delayed release allows for plenty of time to complete a typical redistricting cycle prior to the election for these type of entities
 - Deadline to complete redistricting is mid-January of 2023

Redistricting Process

- City will need to prepare for an initial assessment to determine if the new data shows that existing districts are out of balance
 - Threshold issue – use total population from census release?
 - 10% Deviation Rule
- Districts that are out of balance
 - A **process** should be established to redraw the districts

Redistricting Process

- **Establish redistricting criteria based on traditional districting principles**
- **Understand and apply the legal principles**
- **Understand and be prepared to articulate the changes in the rules from prior decades**

- **Decide which data to use**
- **Understand Constituent expectations**
- **In the absence of a DOJ preclearance letter, document conclusions and build a record in the event of a voting rights challenge**

Redistricting Process

- **Establish a process for public participation**
 - **Public Hearings**
 - **Solicitation of Plans**
 - **Constituent Expectations**

Redistricting Process

- **Build an illustrative plan based upon criteria and traditional districting principles**
- **Adopt a Plan**
- **Coordinate with County Elections' Staff**
 - **Election Precinct Issues**
 - **Vote Centers**

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Resources:

Evenwel Case <https://bit.ly/3mLGMxA>

Shelby County
Case <https://bit.ly/3hY4eE8>

Westlaw
Redistricting
Article <https://bit.ly/32VEu78>

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