

# Redistricting Issues For City Attorneys

Presented by: C. Robert Heath

Bickerstaff Heath Delgado Acosta LLP

816 Congress Avenue, Suite 1700

Austin, Texas 78701

(512) 472-8021

[www.bickerstaff.com](http://www.bickerstaff.com)



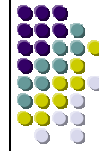
Presented to the TCAA Summer Conference  
June 10-12, 2009

## What Cities Are Affected By Redistricting



- Cities with single-member districts
- Cities with mixed systems (SMD and at-large)
- Cities with at-large systems may want to examine the census data to see if they may now be vulnerable to suit under section 2 of the Voting Rights Act seeking a new election system.

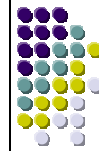
## Districts Must Have Relatively Equal Population



- While not a safe harbor, generally districts will meet constitutional requirements if they have no more than a 10 percent deviation.

©2009 Bickerstaff Heath Delgado Acosta LLP

## Calculating Deviation



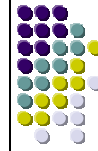
Ideal Size	District 1 Total Population	District 2 Total Population	District 3 Total Population	District 4 Total Population	Deviation
10,000	9,500	10,000	10,200	10,300	8%
	500 less	Exact	200 More	300 More	
	-5.00%	0.00%	+2.00%	+3.00%	
	+3.00% + (-5.00%) = 8.00%				

**Highest Positive Percent + Highest Negative Percent = Maximum Deviation**

**[ (Total Population – Ideal Size) / Ideal Size ] \* 100 ]**

©2009 Bickerstaff Heath Delgado Acosta LLP

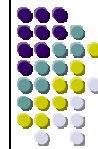
## Section 5 of the Voting Rights Act



- Redistrictings must be precleared by the Department of Justice or a three-judge district court in the District of Columbia.
- The standard is retrogression—Are minorities worse off under the new system?
- Failure to preclear other voting changes can result in delay in obtaining preclearance for your redistricting.

©2009 Bickerstaff Heath Delgado Acosta LLP

## Section 2 of the Voting Rights Act

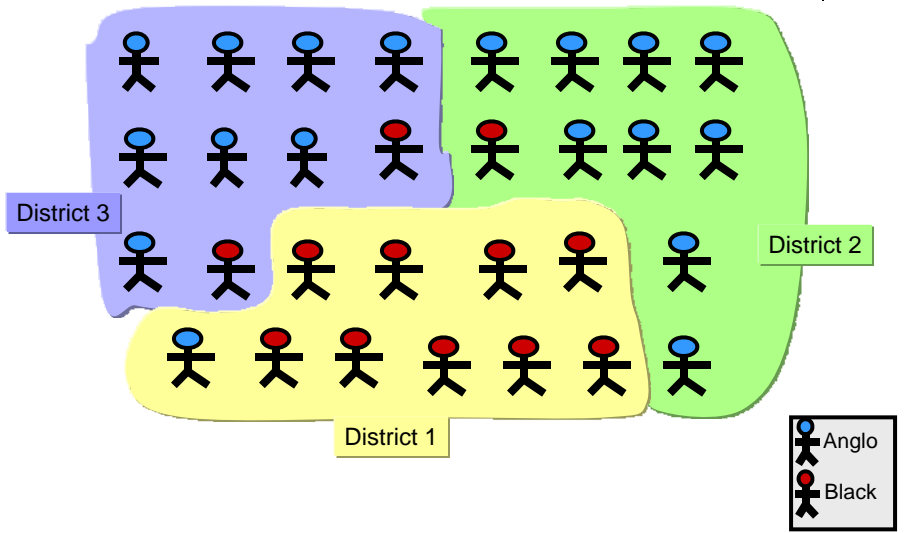


- Section 2 prohibits election practices that discriminate on the basis of race or language minority status.
- Generally you need to avoid cracking or packing.
- Cracking or fracturing is dividing a geographically compact group of minority voters to fragment their voting power.
- Packing is concentrating minority voters in a single district when dividing them would permit the group to elect their candidates of choice in more than one district

©2009 Bickerstaff Heath Delgado Acosta LLP

### Packing Minority in District

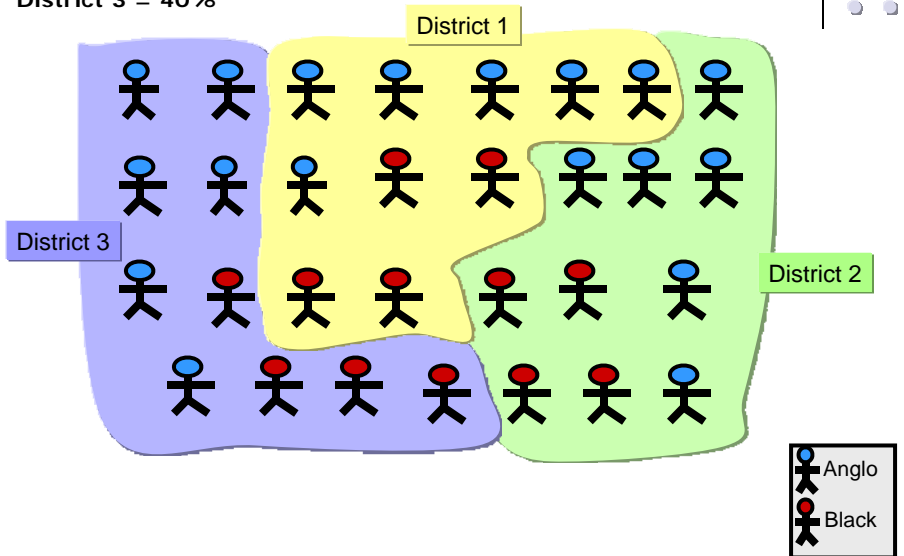
District 1 = 90%  
District 2 = 10%  
District 3 = 10%



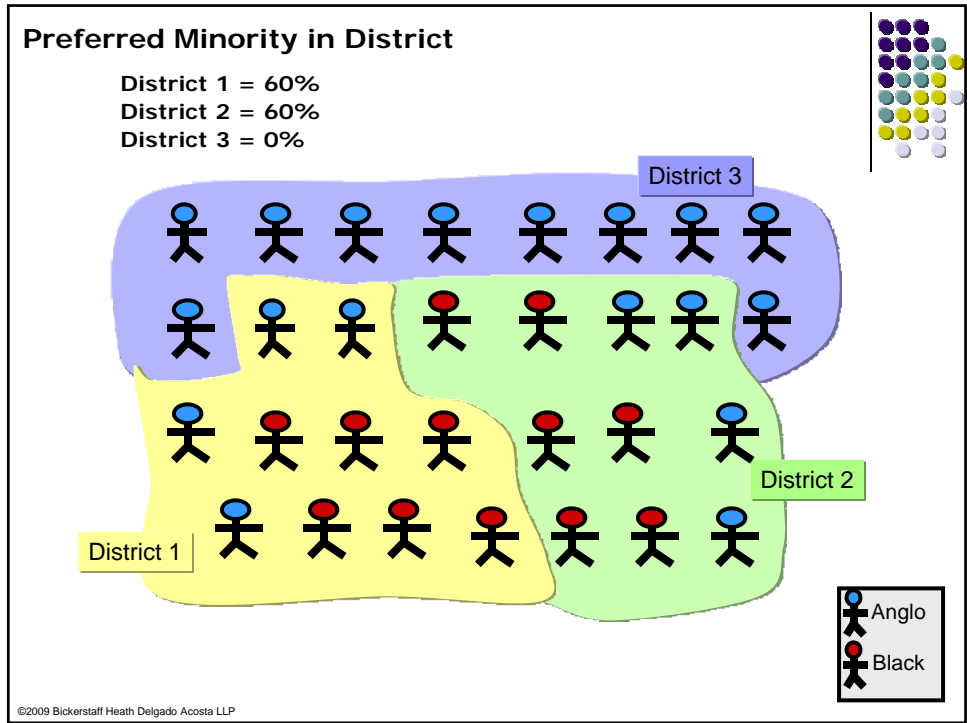
©2009 Bickerstaff Heath Delgado Acosta LLP

### Cracking Minority in District

District 1 = 40%  
District 2 = 40%  
District 3 = 40%

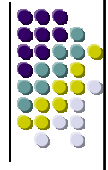


©2009 Bickerstaff Heath Delgado Acosta LLP



- ### Section 2 Threshold Test
- The minority group must be sufficiently large and geographically compact to be able to constitute a majority in a single-member district
  - The minority group must be politically cohesive
  - The white majority must vote as a bloc usually to defeat the minority choice
- ©2009 Bickerstaff Heath Delgado Acosta LLP

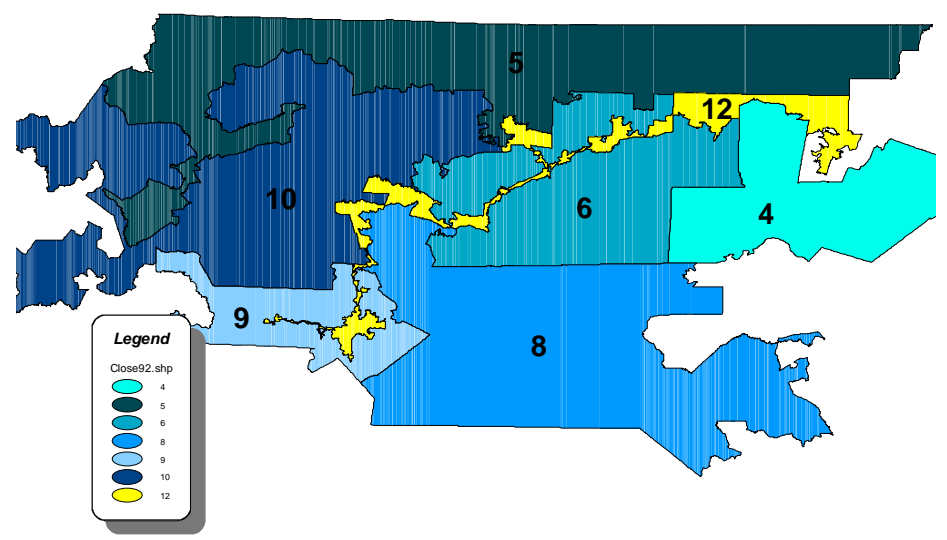
## Shaw v. Reno

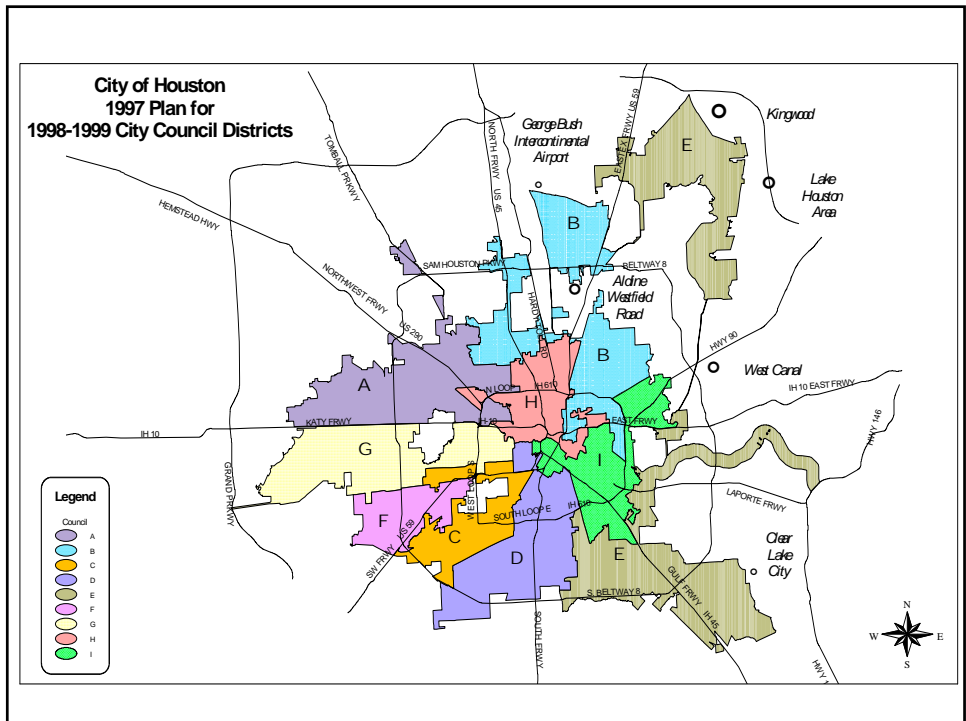
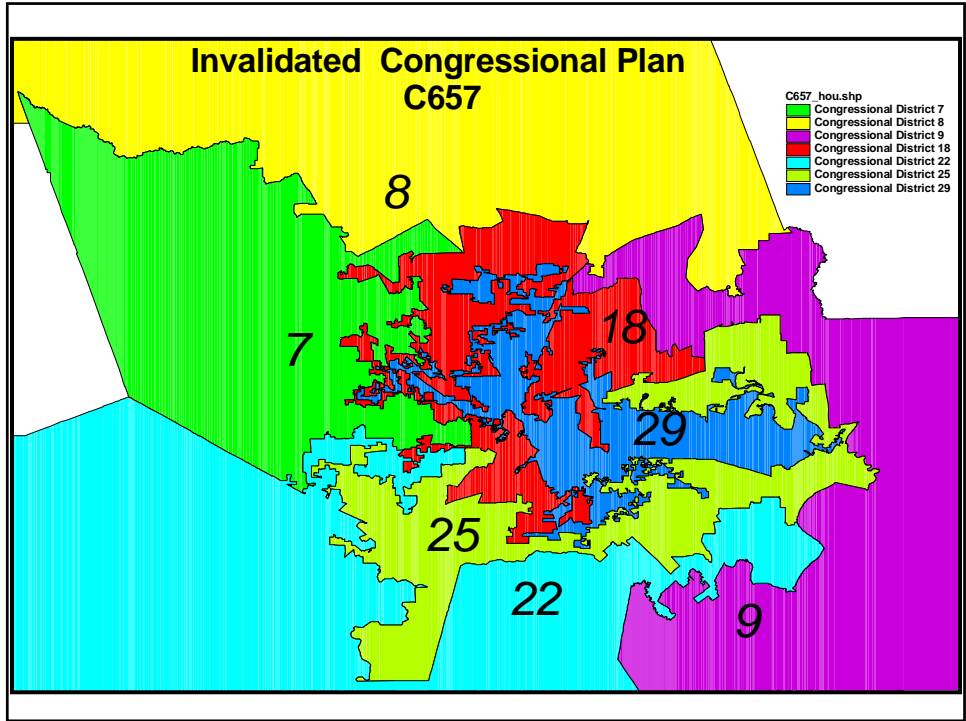


- Race cannot be the predominant factor in the redistricting process to the subordination of traditional districting principles.
- Districts with odd shapes are not necessarily unconstitutional; however, a bizarre shape may be evidence that strongly suggests that race was the predominant factor driving the redistricting decision.

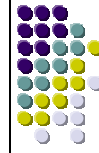
©2009 Bickerstaff Heath Delgado Acosta LLP

### CLOSE UP OF NORTH CAROLINA 1992 PLAN A



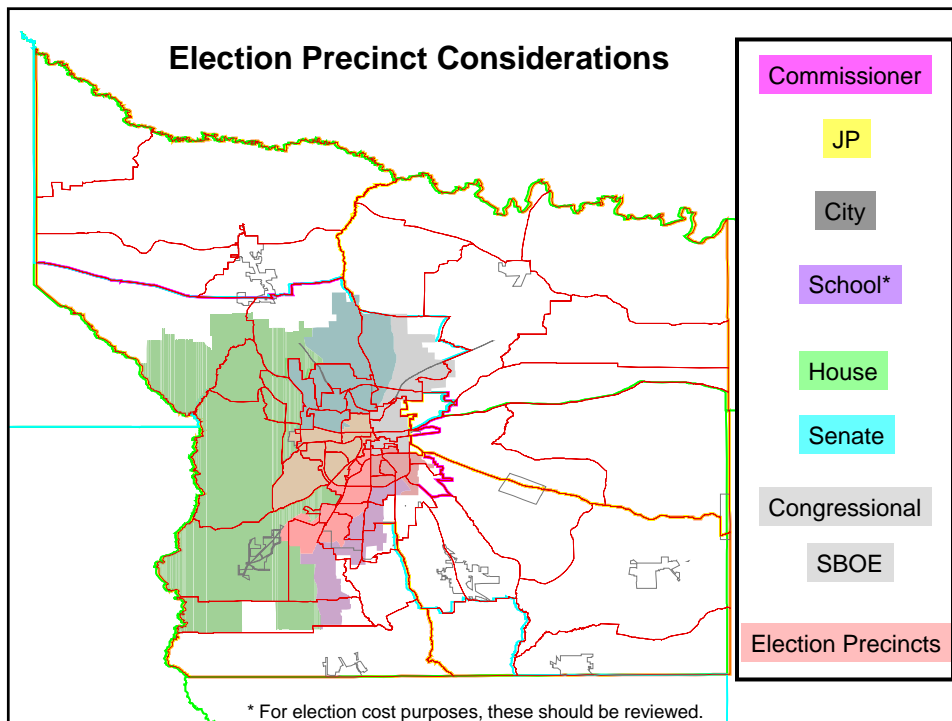


## State Law Issues



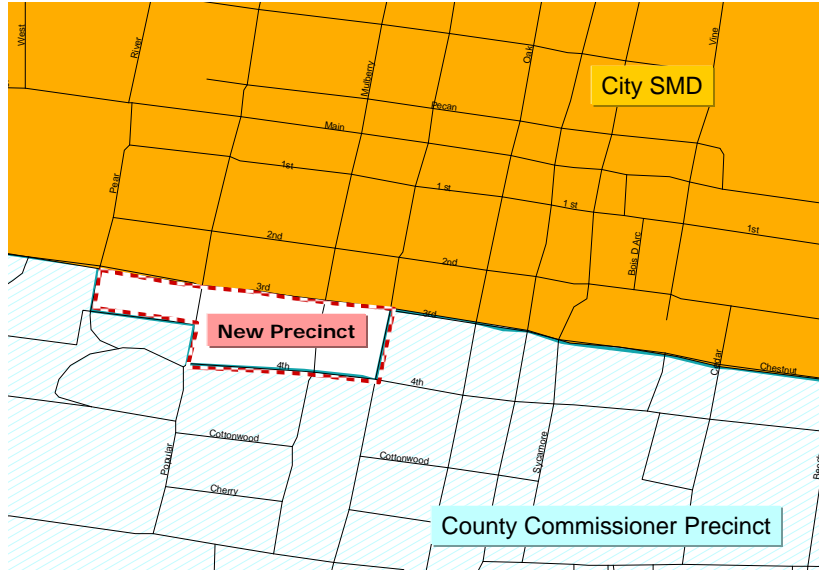
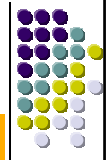
- A redistricting must be adopted at least three months before an election.----Tex. Elec. Code, § 276.006
- In a city of 10,000, a county election precinct may not contain more than one city single-member district– Tex. Elec. Code, § 42.005(a)(6)

©2009 Bickerstaff Heath Delgado Acosta LLP



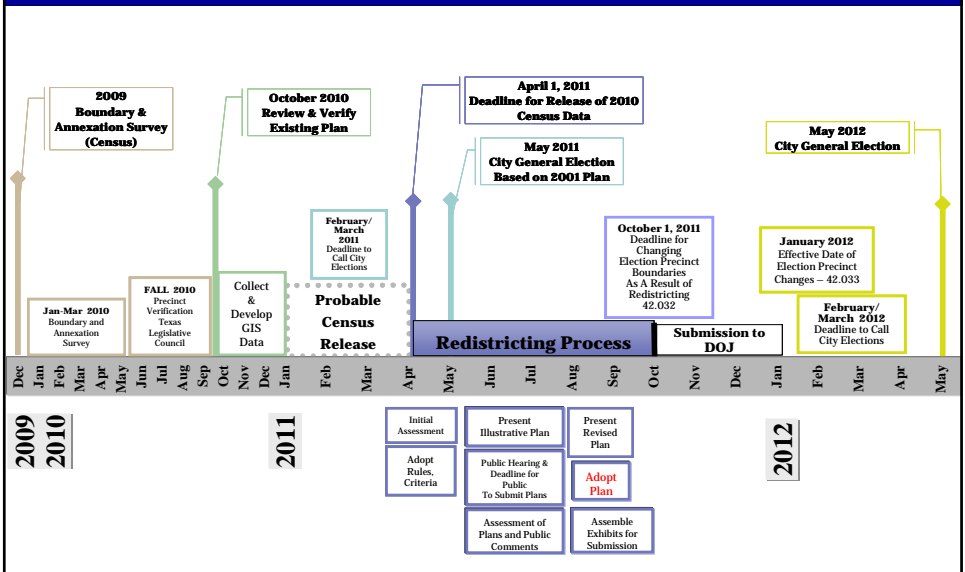


# Election Precinct Issue



©2009 Bickerstaff Heath Delgado Acosta LLP

## Timeline for 2011 Redistricting and Subsequent General Election\*



\*The redistricting time line may be affected by the City Charter.  
©2009 Bickerstaff Heath Delgado Acosta LLP



## What Will Be Different In 2011?

©2009 Bickerstaff Heath Delgado Acosta LLP

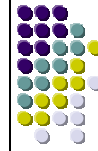


## Will Section 5 Be In Effect?

- Section 5 is currently under challenge in *Northwest Austin Municipal District No. One v. Holder* [NAMUDNO], which was argued in the U. S. Supreme Court on April 29.
- A decision is expected by June 29.
- The basic issue is whether the system that was designed to address southern states' efforts to prevent minority voting in 1965 is congruent and proportional to the current situation.
- Persons reviewing the oral argument believe there is a very good chance that Section 5 will be overturned.
- If Section 5 is overturned, cities will still have to redistrict and will have to comply with the requirements of Section 2.
- If Section 5 is overturned, there is a good chance that Congress will reenact some form of the section assuming the Supreme Court opinion gives Congress that flexibility.

©2009 Bickerstaff Heath Delgado Acosta LLP

## The Census Will Provide More Timely Data on Citizenship



- Citizenship can be an important consideration in Texas cities.

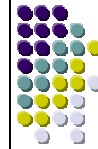
### Percentage of Adult Hispanic Population Who Are Non-Citizens

Lubbock	96.87%	McAllen	73.40%
San Angelo	88.88%	Austin	65.60%
San Antonio	87.60%	Houston	48.41%
Amarillo	80.59%	Dallas	40.09%
El Paso	76.19%		

Data obtained from Summary File 4 and Special Tabulation 56, 2000 Census.

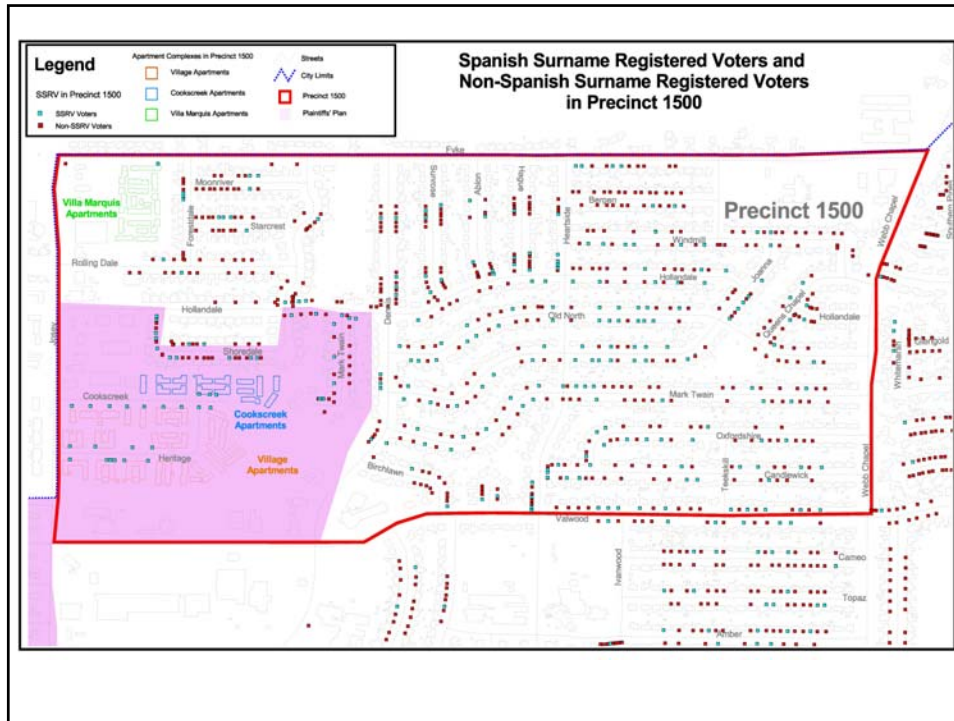
©2009 Bickerstaff Heath Delgado Acosta LLP

## The Census Will Provide More Timely Data on Citizenship



- If a city has low levels of Hispanic citizenship, Hispanic voting strength may be much less than the Hispanic population numbers would suggest.
- In drawing predominantly Hispanic districts, it can be very important to have citizenship data so that the city does not draw what appears to be a Hispanic district but that has minimal Hispanic voting power.
- Knowledge of Hispanic citizen-voting-age population can help the city and the public understand what districting options are available.

©2009 Bickerstaff Heath Delgado Acosta LLP



# Redistricting Issues For City Attorneys

Presented by: **C. Robert Heath**

Bickerstaff Heath Delgado Acosta LLP

816 Congress Avenue, Suite 1700

Austin, Texas 78701

(512) 472-8021

[www.bickerstaff.com](http://www.bickerstaff.com)



Presented to the TCAA Summer Conference  
June 10-12, 2009