

# Legal & Policy Criteria Governing Establishment of Districts

A Presentation by:

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to the

*City of San Rafael*

February 5, 2018

# Process for Changing Electoral System to Adopt District Elections

# California Elec. Code § 10010

- Resolution of Intention adopted: January 16, 2018
- The Elections Code requires that at least five public hearings be held during within 90 days of that resolution:
  - Two initial hearings, no more than 30 days apart, to receive public input. These hearings must take place before any draft maps are drawn. **Presently scheduled for February 5 and 20, 2018**
    - Proposed maps made public. **Presently scheduled for February 26, 2018**
  - 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. **Presently scheduled for March 5 and 19, 2018**
  - A final hearing, after which the jurisdiction can vote to adopt a map. **Presently scheduled for April 16, 2018**
    - 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.
  - 90<sup>th</sup> Day is April 16, 2018

# Process: Adopted Timeline

Activity	Timing
First Public Hearing on Composition of Districts – no maps	February 5, 2018
Second Public Hearing on Composition of Districts – no maps (w/i 30 days of first)	February 20, 2018
Draft Maps and Election Rotation Published (at least 7 days prior to next round of public hearings)	February 26, 2018
First Public Hearing on Proposed Maps & Election Sequence	March 5, 2018
Second Public Hearing on Proposed Maps (w/i 45 days of first)	March 19, 2018
Final Public Hearing and Consideration of Ordinance to Adopt Map	April 16, 2018
End of 90-day Litigation Hold	April 16, 2018
Implement Adopted Districts	November 2020
Redistricting (per California Elections Code § 21620)	March – November 2021

# 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

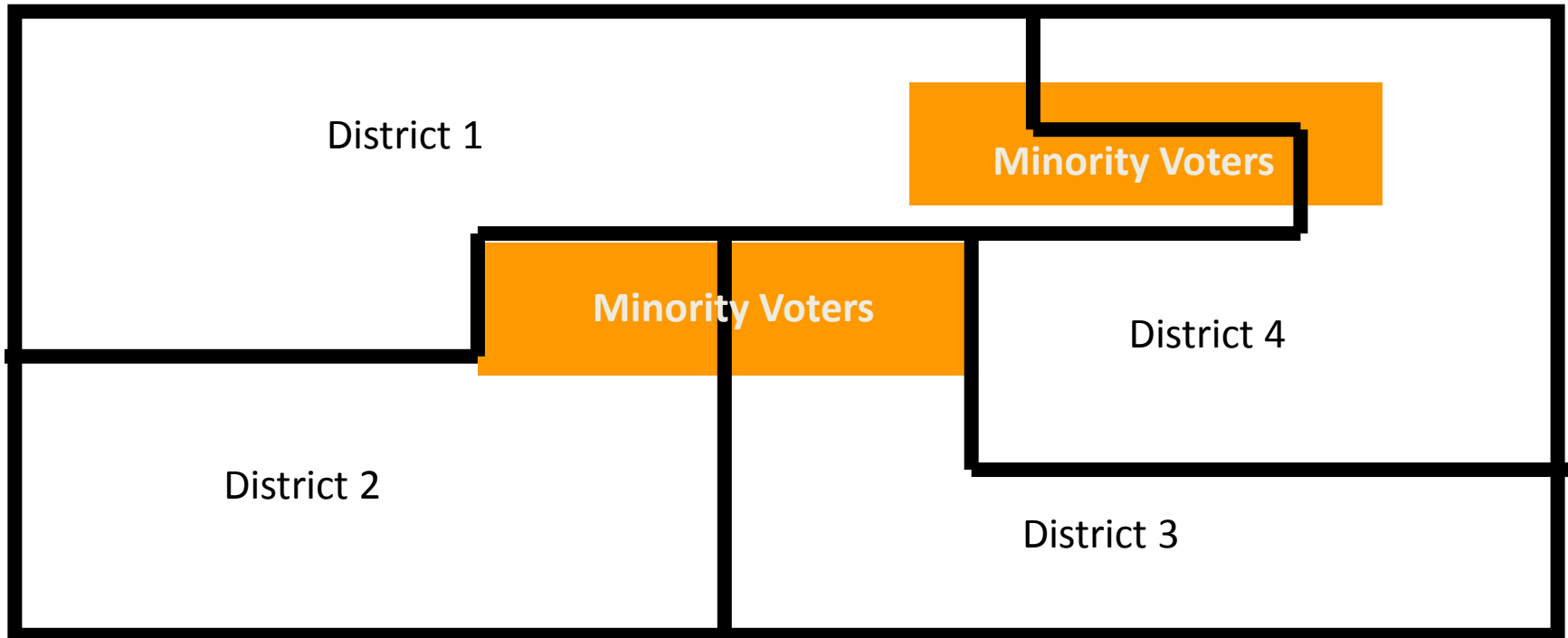
- Overriding criterion is total population equality (*see Reynolds v. Sims*, 377 U.S. 533 (1964); Elec. Code § 22000).
- Unlike congressional districts, local electoral districts do not require perfect equality—some deviation acceptable to serve valid governmental interests.
- Total deviation less than 10% presumptively constitutional. (Caution: the presumption *can* be overcome!)
  - Total San Rafael Population (2010 Census): 57,713
  - Ideal Population: 14,429
- Redistricting in 2021.

# Drawing the Lines—Legal Considerations: Federal VRA

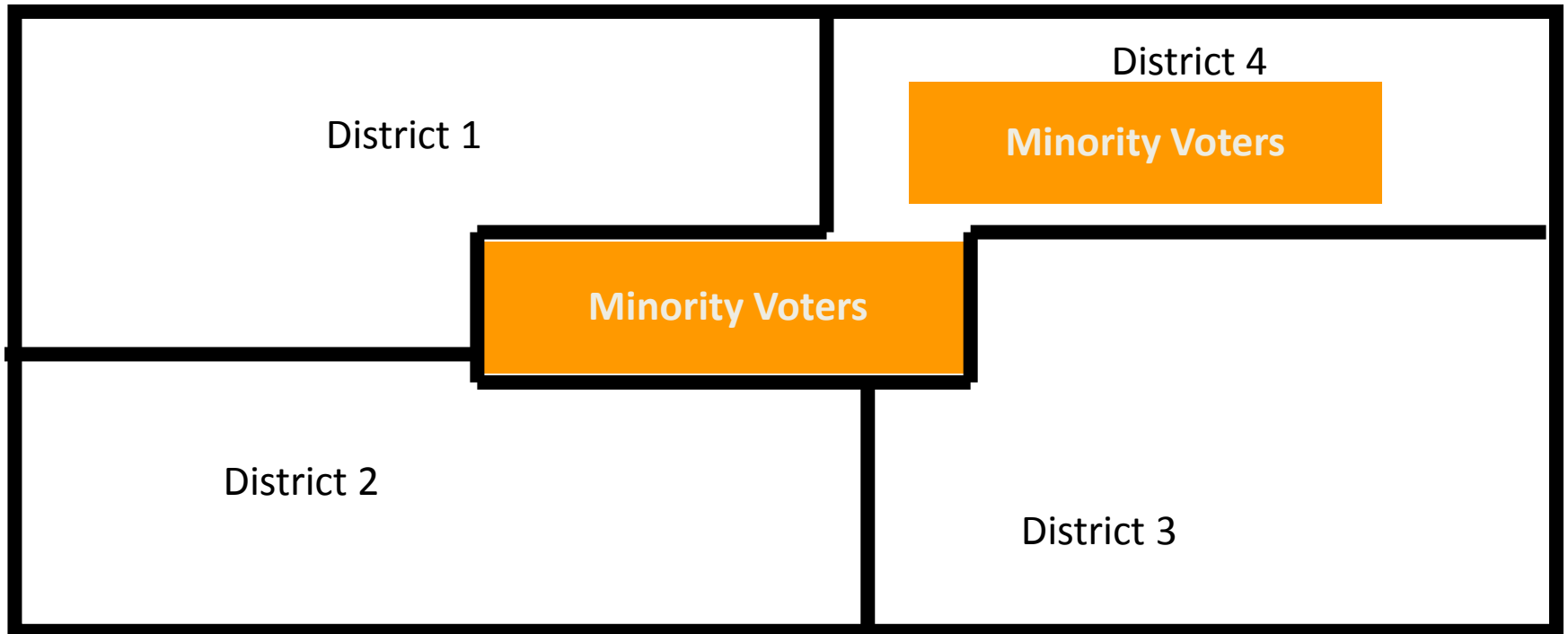
- Section 2 of the federal Voting Rights Act prohibits electoral systems (including district plans), which dilute racial and language minority voting rights by denying them an equal opportunity to nominate and elect candidates of their choice.
- “Language minorities” are specifically defined in federal 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



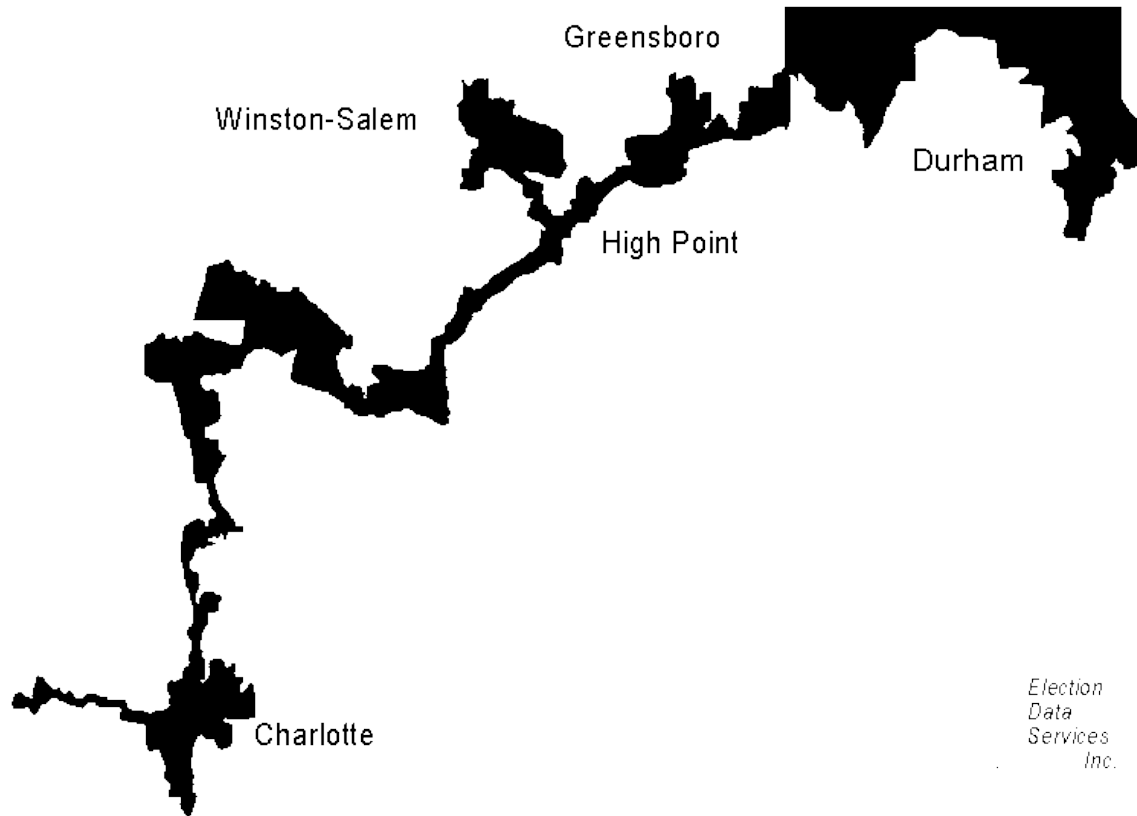
# Voting Rights Act: Packing



# 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



*Election  
Data  
Services  
Inc.*

# Legal Considerations: Other Permissible Criteria

- Topography.
- Geography.
- Cohesiveness, contiguity, compactness and integrity of territory.
- Communities of interest.

*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).

# Questions?