

# GUIDE TO DISTRICTING LAW

PREPARED FOR THE CHULA VISTA DISTRICTING COMMISSION

1. Introduction.....	2
2. Traditional Districting Principles .....	2
• Communities of Interest.....	2
• Contiguity and Compactness.....	3
• Incumbency and Political Parties .....	4
3. Substantial Equality of Population .....	5
4. Requirements of the Federal Voting Rights Act of 1965.....	6
5. The Acceptable Use of Race .....	10
6. The California Voting Rights Act .....	11
Appendix A: What Is and Is Not “Compact” in Districting .....	i



Prepared by the ACLU of California Voting Rights Project  
November 2014

## 1. Introduction

District lines have enormous power. District lines can keep people with common interests, culture, language, and history bundled together so they can effectively advocate for themselves and make their voices heard in local affairs. Unfortunately, in jurisdictions across the United States, district lines have been drawn and are still being drawn that split those communities apart, robbing them of their voice and making it much harder to elect a representative responsive to their needs. District lines have also been used to pack those communities together, so they have influence in fewer districts than their size merits. In order to protect racial, ethnic, and language minorities from these sorts of abuses and manipulations, a number of laws have been developed that provide racial, ethnic, and language minorities with protections in the districting process. This guide explains those laws in simple terms and explains where and how the districting criteria in the Chula Vista City Charter<sup>1</sup> mirror or interact with them.

## 2. Traditional Districting Principles

The Supreme Court recognizes a set of general principles that guide districting, often referred to as “traditional districting principles.”<sup>2</sup> These traditional principles are at the heart of a districting commission’s work.

- **Communities of Interest**

The Supreme Court has identified keeping “communities of interest” intact as a traditional districting principle.<sup>3</sup> The Chula Vista City Charter mandates that City Council boundaries “respect communities of interest to the extent practicable.”<sup>4</sup> The Charter defines communities of interest in a way that is broadly consistent with Supreme Court precedent and the customary understanding of the term in the voting rights community:

[A] geographic area comprised of residents who share similar interests including, but not limited to, social, cultural, ethnic, geographic or economic interests, or formal government or quasi-governmental relationships, but not including relationships with political parties, incumbents, or candidates.<sup>5</sup>

In other words, Chula Vista’s communities of interest are its overlapping sets of neighborhoods, networks, and groups that share interests, views, cultures, histories, languages, and values. In practice,

---

<sup>1</sup> Chula Vista City Charter § 300.5.F.

<sup>2</sup> See e.g. *Shaw v. Reno*, 509 U.S. 630, 642, 647, 651 (1993); *Bush v. Vera*, 517 U.S. 952, 958, 966, 977 (1996).

<sup>3</sup> *Bush v. Vera*, 517 U.S. at 977.

<sup>4</sup> Chula Vista City Charter § 300.F.5.4.

<sup>5</sup> *Id.*

communities of interest take shape for a districting commission only through extensive public testimony from community members. *The residents of Chula Vista will identify the city's communities of interest for you.* The Districting Commission should pay attention to testimony regarding:

- ❖ shared interests in schools, housing, crime, transit, health conditions, land use, and environmental conditions;
- ❖ common social and civic networks, including churches, temples, homeowner associations, and community centers, and shared use of community spaces, like parks and shopping centers;
- ❖ racial and ethnic compositions, cultural identities, and households that predominantly speak a language other than English;
- ❖ similar socio-economic status, including but not limited to income, home-ownership, and education levels;
- ❖ shared political boundary lines from jurisdictions other than City Council, including school districts, community college districts, and water districts;
- ❖ “visible natural and man-made features, street lines and/or City boundary lines.”<sup>6</sup>

## • Contiguity and Compactness

The Supreme Court has identified contiguity and compactness as traditional districting principles.<sup>7</sup> The City Charter mandates they be considered by the Districting Commission.<sup>8</sup>

### What is contiguity?

Contiguity is simple to ensure. A district is contiguous if its perimeter can be traced in one, unbroken line. A district consisting of two or more unconnected areas is not contiguous.

### What is compactness?

There are various social science measures of compactness, but most courts have applied an intuitive “eyeball” test to determine if a district is compact.<sup>9</sup>

The Districting Commission must be careful to give compactness the appropriate weight. No court has ever suggested that districting bodies should prioritize drawing simple geometric shapes.<sup>10</sup> The Chula Vista Districting Commission should not and would not draw four rectangles on a map and wrap up its work. Far more important is making sure that the districts the Districting Commission draws are

---

<sup>6</sup> This element of communities of interest is specifically highlighted by Chula Vista City Charter § 300.F.5.3.

<sup>7</sup> *Shaw v. Reno*, 509 U.S. at 647.

<sup>8</sup> Chula Vista City Charter § 300.F.5.2.

<sup>9</sup> See e.g. *Cuthair v. Montezuma-Cortez, Colo. Sch. Dist.*, 7 F. Supp. 2d 1152, 1167 (D. Colo. 1998) (determining that a disputed district was compact using a “simple visual inspection”).

<sup>10</sup> In fact, the Supreme Court has held, “The Constitution does not mandate regularity of district shape.” *Bush v. Vera*, 517 U.S. at 962.

reflective of the city's communities of interest and compliant with the Constitution and the Voting Rights Act, both of which are discussed later in this Guide.

Furthermore, a district has rarely been successfully challenged on the grounds that it is not compact. Courts understand that because line-drawers must draw districts that are reflective of community of interest testimony, districts frequently have somewhat irregular shapes and rarely use straight lines. The only time the Supreme Court has rejected a district on compactness grounds was when the district in question was "non-compact by any objective standard that can be conceived" and reportedly "the least geographically compact district in the Nation,"<sup>11</sup> and the Court had evidence that the line-drawers had created such a bizarre district because they had subjugated all considerations, including compactness, to a desire to intentionally separate voters by race.<sup>12</sup>

To illustrate what is and is not acceptably compact for the purpose of districting, examples of districts that have been challenged on compactness grounds are attached. See **Appendix A**. The first map is the 51<sup>st</sup> Congressional District, incorporating southern San Diego County and Imperial County. Although irregular in shape, the 51<sup>st</sup> Congressional District was deemed by a California court to be "reasonably compact."<sup>13</sup> The second map is of the district referenced above that was rejected by the Supreme Court for failing the compactness requirement.

- **Incumbency and Political Parties**

The Chula Vista City Charter states that "[d]istrict boundaries shall be drawn without regard for advantage or disadvantage to incumbents or challengers" and "[d]istrict boundaries shall be drawn without regard for advantage or disadvantage to any political party."<sup>14</sup> Additionally, the Chula Vista City Charter defines communities of interest to explicitly exclude relationships residents or communities within Chula Vista have with "political parties, incumbents, or candidates."<sup>15</sup> Incumbency and political parties are commonly understood to be traditional districting principles, meaning districting commissions can consider how different district lines will advantage or disadvantage incumbents and political parties. But local law may and often does take certain traditional districting principles off the table. This is the case in Chula Vista as it pertains to incumbency and political parties.

As a result, the Districting Commission cannot consider where current City Council members live while drawing lines. Nor can it consider which district compositions would favor incumbents or anticipated challengers. Finally, the Districting Commission cannot consider which district compositions would generate the easiest playing field for any political party, now or in the future.

---

<sup>11</sup> *Shaw v. Hunt*, 517 U.S. 899, 906 (1996).

<sup>12</sup> The Supreme Court deemed North Carolina's 12<sup>th</sup> Congressional District a racial gerrymander meriting strict scrutiny and remanded it to a federal District Court. *Shaw v. Reno*, 509 U.S. at 641, 658. The District Court held the district passed strict scrutiny and the Supreme Court, considering the district a second time, reversed. *Shaw v. Hunt*, 517 U.S. at 916-18.

<sup>13</sup> *Cano v. Davis*, 211 F. Supp. 2d 1208, 1222 (C.D. Cal. 2002).

<sup>14</sup> Chula Vista City Charter §§ 300.5.F.5, 6.

<sup>15</sup> Chula Vista City Charter § 300.F.5.4.

### 3. Substantial Equality of Population

In a series of court cases in the 1960s, the Supreme Court held that the Fourteenth Amendment of the United States Constitution requires that all districts within a political jurisdiction have “substantial equality of population.”<sup>16</sup> The Chula Vista City Charter incorporates this idea, mandating that City Council districts have “reasonably equal populations.”<sup>17</sup>

The Supreme Court requires *substantial* equality of population and the City Charter requires *reasonably* equal populations because drawing districts of *exactly* equal populations is difficult and often at odds with the other goals of a districting commission. Drawing district lines that keep communities of interest intact, that are reflective of public testimony, and that are reasonably compact and contiguous may result in districts that have slightly different populations.

How much deviation in population is allowed between districts? The Supreme Court has stated that deviation of up to 10 percent will be treated as presumptively constitutional, meaning that it is assumed to be constitutional unless proven otherwise.<sup>18</sup> Deviation between districts is determined as follows:

1. Divide the total population of Chula Vista by four to determine the “average” number of people that should be in each City Council district.
2. Once a district map is drawn, calculate how much larger the largest district is (on a percentage basis) than the “average.”
3. Next calculate how much smaller the smallest district is (on a percentage basis) than the “average.”
4. Add the percentage deviation above the average for the largest district to the percentage deviation below the average for the smallest district. The sum of the two constitutes the total deviation for that particular district map.

If the sum is under 10 percent, the district map is presumed to comply with the constitutional requirement of substantial equality of population.<sup>19</sup> Maps with population deviations above 10 percent

---

<sup>16</sup> *Reynolds v. Sims*, 377 U.S. 533, 579 (1964); see also *Gray v. Sanders*, 372 U.S. 368 (1963), *Wesberry v. Sanders*, 376 U.S. 1 (1964).

<sup>17</sup> Chula Vista City Charter § 300.5.F.1.

<sup>18</sup> *White v. Regester*, 412 U.S. 755, 764 (1973) (“we do not consider relatively minor population deviations among state legislative districts to substantially dilute the weight of individual votes in the larger districts so as to deprive individuals in these districts of fair and effective representation . . . we cannot glean an equal protection violation from the single fact that two legislative districts in Texas differ from one another by as much as 9.9%”).

<sup>19</sup> A different set of rules apply to federal congressional districts, which must meet a much stricter population equality standard. Congressional districts must be “as mathematically equal as reasonably possible,” which is usually understood to mean 1 percent deviation or less. *White v. Weiser*, 412 U.S. 783, 790 (1973).

can be justified only in rare circumstances.<sup>20</sup> Below is an example of hypothetical population deviation for four Chula Vista districts that would meet the constitutional standard.

<b>Chula Vista total pop: 256,780<sup>21</sup></b>	<b>Example 1: Exact population equality</b>			<b>Example 2: Allowable population deviation under the “substantial equality of population” standard</b>			
	Residents per district	% of total population	Deviation from avg. district	Residents per district	% of total population	Deviation from avg. district	
	District 1	64,195	25%	0%	76,777	29.9%	+4.9%
	District 2	64,195	25%	0%	62,141	24.2%	-0.8%
	District 3	64,195	25%	0%	65,992	25.7%	+0.7%
	District 4	64,195	25%	0%	51,870	20.2%	-4.8%
	256,780	100%	0%	256,780	100%	9.7%	

The hypothetical population distribution in Example 2 would be presumed constitutional for the purposes of substantial equality of population. Population deviation is determined by adding the percentage by which the largest district is over the average district size (4.9%) to the percentage by which the smallest district is below the average district size (4.8%). The result, 9.7%, is within the allowable limit for population deviation for local jurisdictions, as determined by the Supreme Court.

Note that the appropriate measure of population when considering substantial equality of population is *total population*, not alternative measures like the population of *voters* or population of *citizens who are of voting age* (commonly known as the citizen voting-age population (CVAP)). This reflects the principle that a City Council represents all of the city’s residents, not merely those who are eligible to vote.

#### **4. Requirements of the Federal Voting Rights Act of 1965**

The federal Voting Rights Act (VRA) of 1965<sup>22</sup> stands for the idea that every voter should have a chance to cast a meaningful ballot. To achieve this goal, the VRA prevents or remedies elections systems and practices that have the effect of diluting the voting power of racial, ethnic, and language minorities.

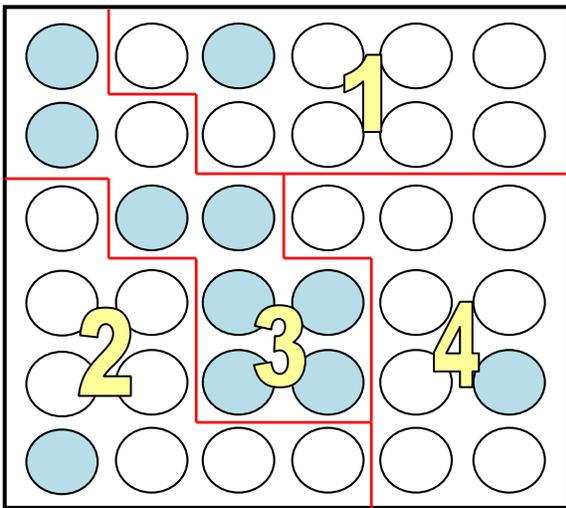
Various districting and redistricting techniques have historically been used, and are still used, to dilute the political power of racial, ethnic, and language minorities. The two most common techniques are “packing” and “cracking.” “Packing” refers to concentrating as many minorities as possible in as few districts as possible to limit the total number of districts in which they have influence. If a community

<sup>20</sup> See e.g. *Mahan v. Howell*, 410 U.S. 315, 325 (1973) (affirming population deviation of 16.4 percent on the grounds that the deviation was “based on legitimate considerations incident to the effectuation of a rational state policy”).

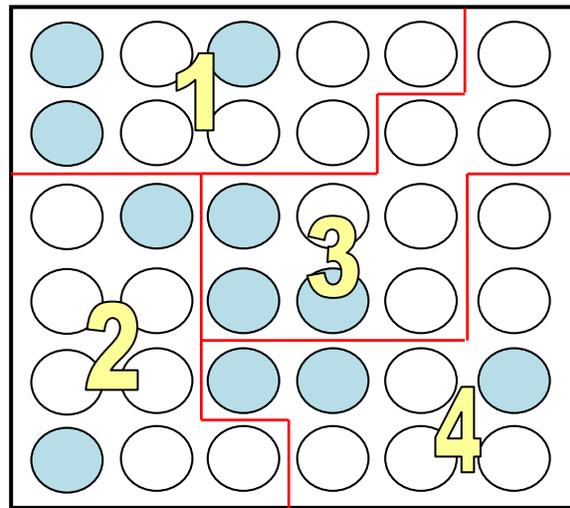
<sup>21</sup> State & County QuickFacts, Chula Vista (city), California, United States Census Bureau.

<sup>22</sup> 52 U.S.C.A. § 10301.

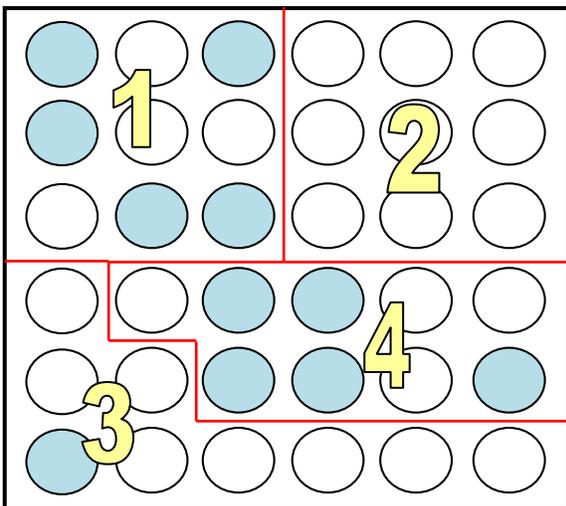
could be 55 percent of two different districts, but are concentrated together such that they are 80 percent of just one district and 15 percent of another, “packing” has occurred. “Cracking” refers to fragmenting concentrations of minority populations among multiple districts to ensure that they have no effective voice in any one district. If a community could be 60 percent of one district, but is instead split so it is 20 percent of four different districts, “cracking” has occurred. The examples below demonstrate three ways a districting body could map four districts within the same city. In this simplified hypothetical, minority voters are represented by blue dots. The first example “packs” blue voters. The second “cracks” them. The third example does neither, thus avoiding minority vote dilution.



PACKING



CRACKING



NEITHER PACKING NOR CRACKING

	% minority residents		
	Packing	Cracking	Neither
D1	11%	33%	56%
D2	11%	22%	0%
D3	89%	33%	11%
D4	11%	33%	56%

To prevent packing, cracking, and other discrimination in our elections systems, the VRA prohibits district maps that unlawfully dilute the voting power of any racial, ethnic, or language minority group.<sup>23</sup>

<sup>23</sup> *Id.* at § 10301(a).

Map drawers need not *intend* to discriminate against minority voters for a map to be found in violation of the VRA. It is enough that a map *results* in minority vote dilution for it to be found unlawful.

*How can a district map be drawn that complies with the federal Voting Rights Act?*

In the simplest possible terms, the VRA requires the following: If Chula Vista is home to a politically cohesive minority group that (1) has experienced difficulty electing candidates of its choice and (2) has experienced discrimination historically, the Districting Commission should draw a district in which that minority group is over 50 percent of the district, if the minority group is geographically compact enough to do so.<sup>24</sup>

Listening attentively to and being responsive to community of interest testimony will help the Districting Commission comply with the Voting Rights Act because of the role race, ethnicity, and language play in both defining communities of interest and in meeting the requirements of the VRA.

*What is the appropriate measure of population in a majority-minority district?*

As discussed at the end of Section 3, different measures of population exist. When considering the substantial equality of population requirement mandated by the Constitution, the total population of each district is considered. However, the population measure that is used to determine whether a racial, ethnic, or language minority can be the majority of a district is *not* the total population. Instead, the measure used is the “citizen voting age population” (CVAP), meaning the population of the district’s residents who are United States citizens and 18 years of age or older.<sup>25</sup> CVAP represents all registered voters and those unregistered individuals who could register to vote if they so choose. In other words, the effectiveness of a minority population in a district is measured by whether the *eligible voters* of that minority population represent a majority of all *eligible voters* in that district.

The demographer the Districting Commission has hired will be able to provide extensive data on the citizen voting age population of Chula Vista in order to analyze the types of districts that can be drawn and to ensure compliance with the Voting Rights Act.

---

<sup>24</sup> To challenge a district map on the grounds that it violates the VRA, a plaintiff would have to show three conditions in court. These three conditions are often referred to as the “*Gingles* conditions” because of the Supreme Court case in which they were first identified: (1) A minority group must be large enough and geographically compact enough that it could constitute a majority of a district; (2) that minority group must be politically cohesive, meaning that most or all of its members vote in a similar way; and (3) majority voters must vote as a bloc in a way that usually defeats the minority’s preferred candidate. *Thornburg v. Gingles*, 478 U.S. 30, 49-51 (1986). If these three conditions are satisfied but the district map does not include a district in which the minority group in question is over 50 percent of the population, a court will then seek to determine if, under the “totality of circumstances,” the districting plan results in minority vote dilution. *See e.g. Johnson v. De Grandy*, 512 U.S. 997, 1009-1014 (1994) (emphasizing that an examination of *Gingles* conditions is not sufficient in isolation, but instead must be followed by the totality of the circumstances analysis).

<sup>25</sup> *Romero v. City of Pomona*, 883 F. 2d 1418, 1426 (9<sup>th</sup> Cir. 1989) (“[E]ligible minority voter population, rather than total minority population, is the appropriate measure of geographical compactness.”)

What kinds of districts can be drawn to empower historically disenfranchised communities?

A districting commission can use different kinds of districts to empower historically disenfranchised communities. The appropriate districts for any particular jurisdiction obviously depend on the size of the communities in that jurisdiction, how diffuse or compact they are, how politically cohesive they are, and the testimony from community members indicating their common interests and desires for their particular districts. However, there are four types of districts of which the Districting Commission should be aware and can utilize to ensure that racial, ethnic, and language minorities are afforded an equal opportunity to participate in the city's elections:

**Majority-minority district.** A district is known as a “majority-minority district” when “a minority group composes a numerical, working majority” of the district.<sup>26</sup> As discussed earlier, the Voting Rights Act requires a majority-minority district under a very specific set of circumstances indicating that minority vote dilution has occurred or is occurring.

**Crossover district.** A district is known as a “crossover district” when a racial or language minority is *not* large enough to compose the majority of a district but is large enough that when the minority's votes are combined with those of similarly-minded voters from the majority population, the preferred candidates of the minority have an opportunity to win. The Supreme Court has held that the Voting Rights Act does not mandate the creation of crossover districts but that jurisdictions “that wish to draw crossover districts are free to do so where no other prohibition exists.”<sup>27</sup>

**Minority coalition district.** A district is known as a “coalition district” when two racial, ethnic, or language minority groups can be combined to form a majority of the district. Although the Supreme Court has not directly addressed the question of whether the Voting Rights Act requires the creation of coalition districts, a majority of federal circuit courts that have considered the question have held that coalition districts must be created when two racial, ethnic, or language minority groups meet the same set of criteria one racial, ethnic, or language minority group meets in the analysis of a standard majority-minority district.<sup>28</sup> In other words, if two politically cohesive racial, ethnic, or language minority groups (1) have experienced difficulty electing candidates of their choice and (2) have experienced discrimination historically, the Districting Commission should draw a district in which the two minority groups combine to form over 50 percent of the district, if the minority groups are geographically compact enough to do so.

---

<sup>26</sup> *Bartlett v. Strickland*, 556 U.S. 1, 13 (2009).

<sup>27</sup> *Bartlett v. Strickland*, 556 U.S. at 24.

<sup>28</sup> *Campos v. City of Baytown*, 840 F. 2d 1240, 1244 (5<sup>th</sup> Cir. 1998) (holding that blacks and Latinos may be combined to meet first *Gingles* condition of a geographically compact minority); *Concerned Citizens of Hardee County v. Hardee County Bd. of Comm'rs*, 906 F. 2d 524 (11<sup>th</sup> Cir. 1990) (blacks and Latinos combined to form a majority-minority district, meeting first *Gingles* condition, but upholding district court ruling that blacks and Latinos were not shown to be politically cohesive, failing second *Gingles* condition); *but see Nixon v. Kent County*, 76 F. 3d 1381, 1386 (6<sup>th</sup> Cir. 1996) (holding that Congress did not intend for multiple minority groups to be combined to meet the first *Gingles* condition).

The Ninth Circuit has implicitly recognized that coalition districts are protected under the VRA.<sup>29</sup> The California Supreme Court has likewise written approvingly of coalition districts.<sup>30</sup>

**Influence district.** A district is known as an “influence district” when a racial or language minority is not large enough to compose the majority of a district but is still substantial enough in size to influence election outcomes in that district. While the U.S. Supreme Court has made clear that the Voting Rights Act does not guarantee influence districts to racial and language minority groups,<sup>31</sup> just as with coalition districts and crossover districts, nothing prevents a districting body from creating influence districts if it so chooses. The California Supreme Court has written approvingly of influence districts.<sup>32</sup>

## 5. *The Acceptable Use of Race*

The Supreme Court has declared that districting may be performed “with consciousness of race.”<sup>33</sup> Indeed, it would be impossible to properly undertake a districting process without consideration of race given the many protections afforded to racial, ethnic, and language minorities by the federal Voting Rights Act. Furthermore, understanding the racial, ethnic, and language communities of a jurisdiction has always been part of determining that jurisdiction’s communities of interest.

The Supreme Court has permitted a challenge to the use of race in districting under very narrow circumstances: when a majority-minority district was so bizarrely shaped that it was clear the line-drawers were motivated entirely by a desire to put voters of a particular race in the same district.<sup>34</sup> But the use of race is problematic in these and only these situations. In the words of the Supreme Court, “The constitutional wrong occurs when race becomes the *dominant and controlling* consideration.”<sup>35</sup> This is why the commission should look at other factors in addition to race – such as shared history and language, common social networks, and shared interests in schools, health, and public safety – that indicate whether members of racial groups in Chula Vista also form communities of interest.

---

<sup>29</sup> *Badillo v. City of Stockton, Cal.*, 956 F. 2d 884, 886, 891 (9<sup>th</sup> Cir. 1992) (acknowledging that “[H]ispanics and blacks together could form a majority in a single-member district” but going on to hold that plaintiffs had failed to show Hispanics and blacks in the contested district were political cohesive, failing the second *Gingles* condition).

<sup>30</sup> *Wilson v. Eu*, 1 Cal. 4th 707, 715 (1992).

<sup>31</sup> *League of United Latin American Citizens v. Perry*, 548 U.S. 399, 446 (2006) (If the Voting Rights Act “were interpreted to protect this kind of influence, it would unnecessarily infuse race into virtually every redistricting.”)

<sup>32</sup> *Wilson v. Eu*, 1 Cal. 4th at 715.

<sup>33</sup> *Bush v. Vera*, 517 U.S. at 958.

<sup>34</sup> *Shaw v. Reno*, 509 U.S. at 642. A district of this sort is sometimes referred to as “racial gerrymander.” *Id.* at 640-42, 658.

<sup>35</sup> *Shaw v. Hunt*, 517 U.S. at 905 (emphasis added).

## 6. *The California Voting Rights Act*

In 2001, California passed the California Voting Rights Act (CVRA), which makes it easier to challenge at-large election systems that have the effect of diluting the voting strength of minority populations.<sup>36</sup> Because the CVRA is limited to challenges to at-large election systems, it does not apply in Chula Vista, where the line-drawing process has already been initiated at the behest of voters.

---

<sup>36</sup> Cal. Elec. Code § 14025 et. seq. Unlike the federal Voting Rights Act, the CVRA does not ask plaintiffs to establish the existence of a geographically compact minority population in order to bring a legal claim. Also unlike the federal Voting Rights Act, the CVRA officially codifies the possibility of influence districts.

## Appendix A: What Is and Is Not “Compact” in Districting

In *Cano v. Davis*, 211 F. Supp. 2d 1208, 1222 (C.D. Cal. 2002), a California state court found that Congressional District 51, which at the time included a long stretch that ran along the U.S.-Mexico border and connected Imperial County with south San Diego County, was “reasonably compact.” The court found that the district was “no more irregular in shape than any other district created by the legislature, and certainly [did] not constitute a showing of bizarreness that would support an inference that the [district was] racially gerrymandered.” As a result, the district was allowed to stand.

### Congressional District 51



**51** Congressional District  
*Imperial* County

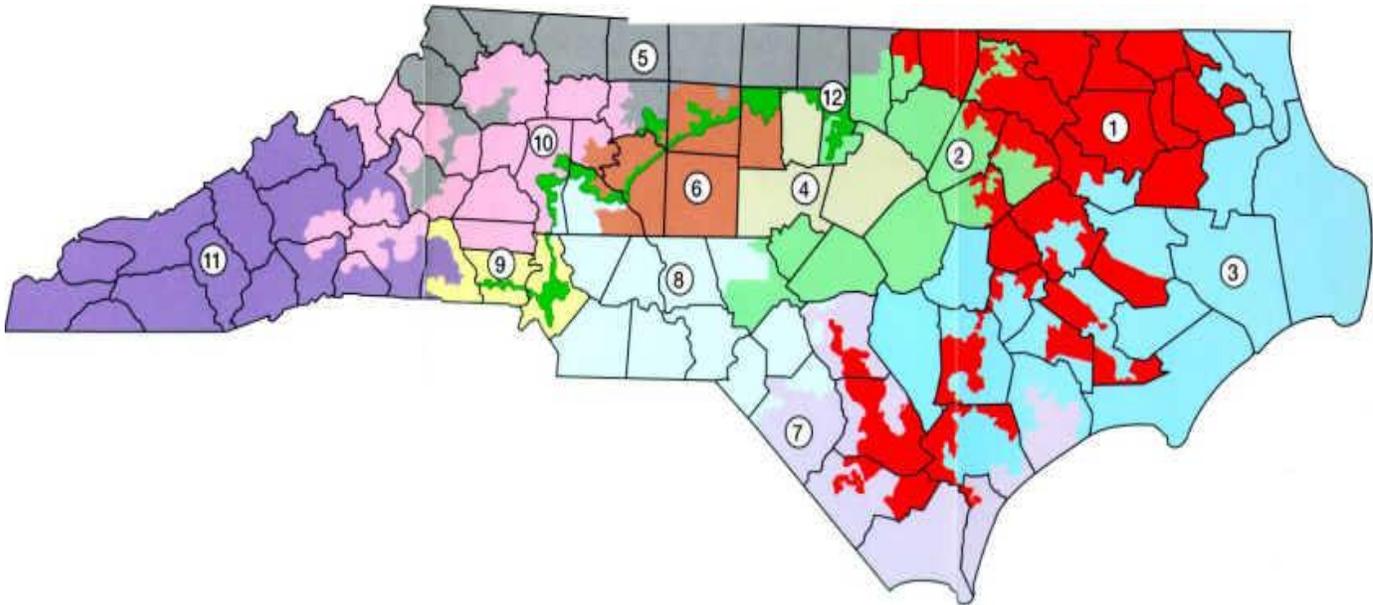


California (53 Districts)

In *Shaw v. Reno*, 509 U.S. 630 (1993) and *Shaw v. Hunt*, 517 U.S. 899 (1996), the United State Supreme Court considered North Carolina Congressional District 12, an African American majority district. The district is the skinny, forest-green district on the map below. The Court described the district like so:

“The second majority-black district, District 12, is even more unusually shaped. It is approximately 160 miles long and, for much of its length, no wider than the I-85 corridor. It winds in snakelike fashion . . . until it gobbles in enough enclaves of black neighborhoods. . . . One state legislator has remarked that ‘[i]f you drove down the interstate with both car doors open, you’d kill most of the people in the district.’”<sup>37</sup>

The Court found that race was the “predominant factor” in drawing District 12 and that it was not compact enough to survive legal challenge.<sup>38</sup> The district had to be redrawn.



<sup>37</sup> *Shaw v. Reno*, 509 U.S. at 635-36 (citations and quotations omitted).

<sup>38</sup> *Shaw v. Hunt*, 517 U.S. at 906, 916.