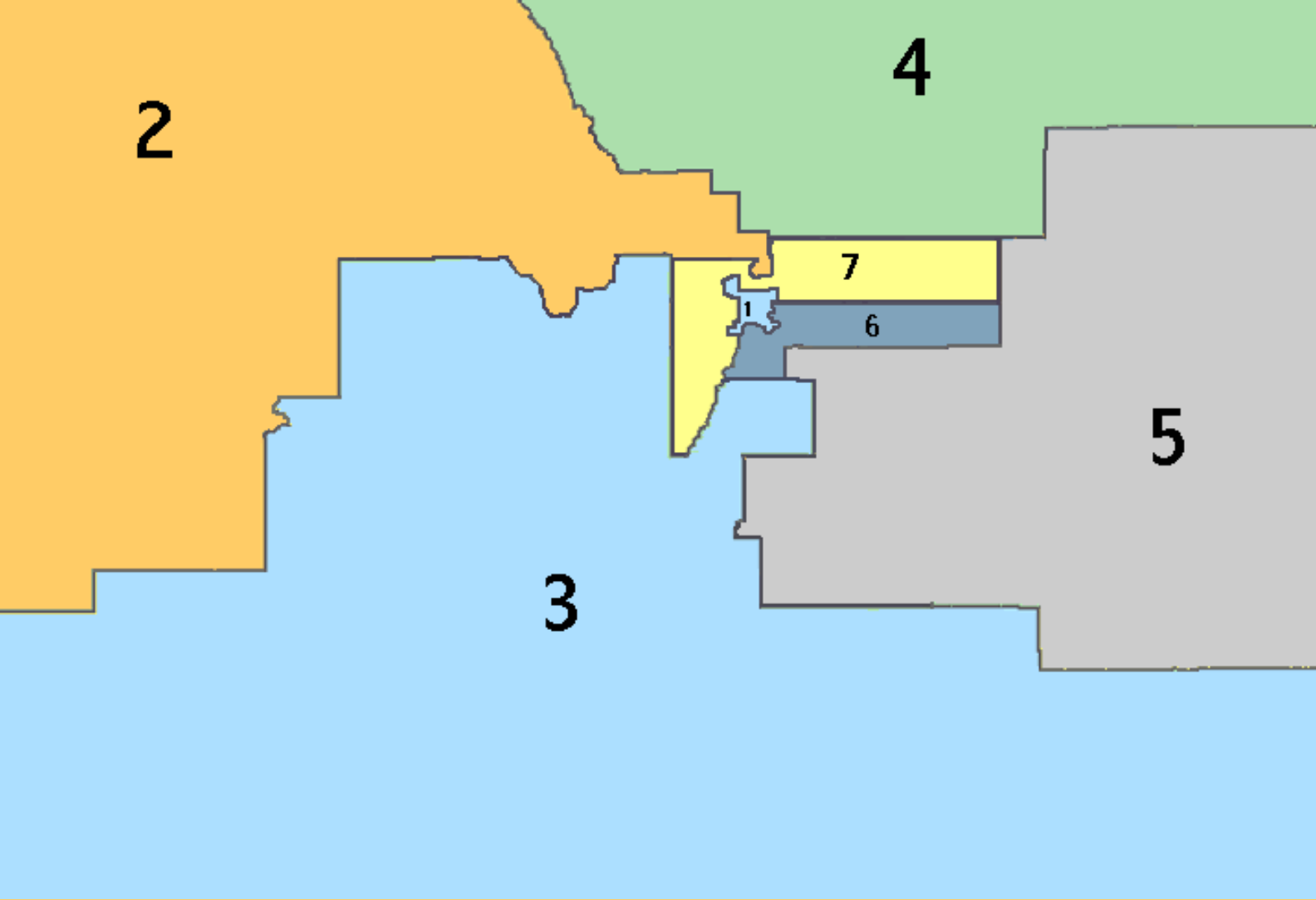


independent
REDISTRICTING
commissions

**REFORMING REDISTRICTING
WITHOUT REVERSING PROGRESS
TOWARD RACIAL EQUALITY**

LDF
DEFEND EDUCATE EMPOWER

a report by THE POLITICAL PARTICIPATION GROUP
NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.



**NAACP LEGAL DEFENSE
AND EDUCATIONAL FUND, INC.**

John Payton, President and Director-Counsel

National Headquarters

99 Hudson Street, Suite 1600

New York, NY 10013

212.965.2200

800.221.7822

Fax 212.226.7592

www.naacpldf.org

www.thedefendersonline.com

Washington, DC Office

1444 Eye Street NW 10th Floor

Washington, DC 20005

202.682.1300

Fax 202.682.1312

LDF's POLITICAL PARTICIPATION GROUP

The Political Participation Group's mission is to use legal, legislative, public education, and advocacy strategies to promote the full, equal, and active participation of African Americans in America's democracy.

Ryan P. Haygood
Co-Director, Political
Participation Group

Jenigh Garrett
Assistant Counsel

Kristen Clarke
Co-Director, Political
Participation Group

Dale Ho
Assistant Counsel



Introduction

Shortly after the 2010 Census, states throughout the country will redraw the lines that determine how to divide the population of each state into electoral districts—a process called redistricting. The composition of a district affects election outcomes and determines representation at the federal, state, and local levels.

In most states, redistricting is carried out by members of the legislature. But on the eve of the quickly approaching 2010 redistricting cycle, voters and elected officials in a number of states across the country are considering a range of proposals that aim to alter the redistricting process. One such proposal is to create **Independent Redistricting Commissions (IRCs)**. An IRC is a committee composed of appointed officials who assume responsibility for redistricting within a state.

Proponents of IRCs argue that transferring responsibility for redistricting from elected officials to appointed commission members will ensure that political motivations and self-interest do not influence the redistricting process. Thus, proponents argue, IRCs will help eliminate political and partisan objectives as a dominant factor in determining district lines.

However, our nation's unfortunate history of persistent and adaptive discrimination in the electoral process—including redistricting reform efforts that have suppressed minority voting rights, ultimately leading to the enactment of the Voting Rights Act of 1965 (VRA)—requires a careful examination of all redistricting reform proposals. LDF's long experience of enforcing the VRA reveals that creating a commission free of dominant political influence should not be the only concern when considering proposals for redistricting reform. IRCs should adhere to and be guided by principles consistent with the VRA.

LDF proposes the following principles to better ensure compliance with the mandates of the VRA and to direct the creation of, and work carried out by, Independent Redistricting Commissions:

Principle 1: Include language that protects minority voting rights principles in redistricting criteria;

Principle 2: Reject redistricting criteria that will hinder the protection of minority voting rights principles;

Principle 3: Require the creation of districts where minorities can combine with other groups to have an opportunity to elect candidates of their choice when feasible;

Principle 4: Establish a process structured to yield a diverse commission;

Principle 5: Include minority perspectives at the planning stage; and

Principle 6: Eliminate fairness barriers that dilute minority voting strength.

Adhering to these guiding principles will help safeguard against racial discrimination in the creation of IRCs and provide minority groups the opportunity to elect candidates of their choice. Ultimately, these guiding principles will be instrumental in fully realizing the letter and spirit of the Voting Rights Act.

What is Redistricting?

Redistricting is rooted in our system of government and representation. The United States Constitution requires that each state is represented by two U.S. Senators and that seats in the U.S. House of Representatives be divided among the states. Each state receives a number of seats in the House of Representatives proportionate to its population as recorded



by the Census conducted. After each Census, the number of seats in the House of Representatives for each state is adjusted depending on whether its population increased or decreased in comparison to other states. States with more people are given more representation in the House of Representatives. This process—called “reapportionment”—occurs once every ten years, based on the results of the Census.

After reapportionment, each state is divided into districts for the election of federal representatives. If the Census results for a particular state show that the number of representatives previously allotted to such state should change or that the population within existing electoral districts should be adjusted, the electoral districts must be redrawn. The process of redrawing the lines of an electoral district after reapportionment is called redistricting.

Although the reallocation of congressional seats only occurs at the federal level, redistricting occurs at almost every level of government. Local units of government, such as city councils, county commissions and school boards, also redistrict once every ten years to reflect population changes after the Census.

The Redistricting Process, Minority Voting Rights and the Voting Rights Act

How does redistricting affect minority voting rights?

Each decade, some redistricting plans “dilute” or weaken the ability of minority racial groups to elect candidates of their choice.

Redistricting techniques historically employed to dilute minority voting rights include:

“**Cracking**” – fragmenting concentrations of minority population and dispersing them among other districts to prevent minority opportunities to elect candidates of their choice.

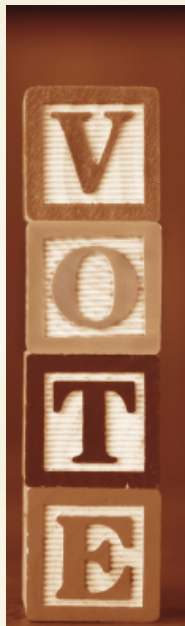
“**Stacking**” – combining concentrations of minority population with greater concentrations of white population to prevent minority opportunities to elect candidates of their choice.

“**Packing**” – over-concentrating minorities in as few districts as possible to minimize the number of districts in which minorities constitute a numerical majority (referred to as “majority-minority districts”).

These techniques result in the dilution of minority voting strength, since minorities are not able to elect as many candidates to office as they could if the districts were drawn in a fair way.

How does the Voting Rights Act prevent minority vote dilution?

The Voting Rights Act has two important provisions which prohibit weakening voting strength: Section 2 and Section 5.



Section 2 prohibits practices that intend to or result in the denial or abridgement of the right to vote on account of race, color, or status as a language minority. A violation of Section 2 is established if, based on the totality of circumstances, it is shown that voting practices are not equally open to participation by minorities. Hence, voting practices that limit the chance of minority voters to elect the candidates of their choice violates Section 2.

Section 5 requires all or part of 16 “covered jurisdictions” with a history of discrimination in voting practices to submit changes to voting laws, rules, or procedures to the federal government for “preclearance,” a review process designed to make sure that proposed voting changes in these jurisdictions are not racially discriminatory. Voting practices that violate Section 5 are prevented from being enforced in the covered jurisdictions.

Independent Redistricting Commissions (IRCs)

How common are IRCs?

Almost half of states throughout the country have an IRC participating in the redistricting process. IRCs have varying forms – some are a subset of the legislature; some serve as a fail-safe alternative if the legislature cannot agree; and others advise the legislature in its redistricting process. However, only Arizona and California have IRCs that completely exclude elected officials from the process. Other states, such as Iowa, Idaho, Montana, and Washington, have a commission that involves elected officials at some point during the redistricting decision-making process.

Does the creation of an IRC guarantee the protection of minority voting rights?

Unfortunately, IRCs do not guarantee a process or final redistricting plan that will protect minority voting rights. Indeed, during the 2000 redistricting cycle, the redistricting plan adopted by an IRC in Arizona resulted in an objection under Section 5 of the Voting Rights Act.

The opportunity for minority communities to elect candidates of their choice can be, and often is, dramatically affected by the drawing of district lines. Hence, while redistricting proposals calling for the creation of IRCs may be meant to cure the perceived partisan or incumbency problems with the existing composition of redistricting bodies (by replacing elected officials with appointed ones), they merely shift the focus from districts designed to aid the election of a particular party or candidate to districts that do not favor a particular party or candidate. If an IRC proposal does not adequately safeguard minority voting rights, redistricting criteria can harm minority voters. In fact, some IRC proposals have included stringent criteria that frustrate the application of Voting Rights Act principles.

Proposed IRC Guiding Principles to Prevent Minority Vote Dilution

IRCs must not only consider eliminating partisan influences when drawing district lines but also (1) guarantee that districts are drawn in compliance with Section 2 and Section 5 of the Voting Rights Act and (2) contain guidelines consistent with the Voting Rights Act.

LDF proposes the following principles to assist IRCs in carrying out their redistricting responsibility in compliance with the Voting Rights Act.

Principle 1: Include Language That Protects Minority Voting Rights Principles in Redistricting Criteria

Some IRC proposals provide criteria designed to limit political gerrymandering. To that end, these proposals require that IRCs attempt to create districts that are “fair,” “competitive,” “balanced,” or drawn “without favoring one party or an incumbent.” But this guideline often results in the overreliance on stringent criteria to restrict the creation

of maps in which one political party dominates specific legislative districts or to insure that incumbents do not have to face competition. Overreliance on stringent criteria, however, can directly impact the ability of a minority group to elect a candidate of their choice. An IRC would not create meaningful redistricting reform if the resulting districts would not preserve or ensure the equal opportunity of minority voters to elect the candidate of their choice.

It is critical, therefore, that the principles of Sections 2 and 5 of the Voting Rights Act are properly reflected by including language that reflects both the letter and the spirit of the Act. At the same time, partisan dominance or neutrality should not be an overriding goal of an IRC proposal or those drawing redistricting plans.

Principle 2: Reject Redistricting Criteria That Will Hinder the Protection of Minority Voting Rights Principles

IRC proposals that require strict compliance with mandatory criteria could harm minority voters. In theory, mandatory criteria are intended to prevent the creation of gerrymandered districts. In practice, however, even districts that do not appear gerrymandered may produce grossly distorted results. Indeed, a redistricting plan that rigidly complies with criteria designed to appear less partisan may actually be fundamentally unfair to the voters living in the area.

To combat this result, IRC proposals must allow the flexible application of redistricting criteria and exclude criteria that would hinder compliance with Voting Rights Act principles. Flexibility will help protect minority voting rights by reinforcing the need to carefully balance attempts to eliminate the political aspects of redistricting with the importance of ensuring that minority voting rights are protected. It can also protect against a process overly-focused on partisan or incumbency gerrymandering, which could turn a purported measure of reform into a measure of regression.

Principle 3: Require the Creation of Districts Where Minorities Can Combine with Other Groups to Have an Opportunity to Elect Candidates of Their Choice When Feasible

Even when a group of racial minorities do not constitute a majority of a district, district lines can be drawn to allow multiple groups – such as African Americans and Latinos – to aggregate their votes and elect their desired representative. Redistricting officials should protect the political power of all minority voters by creating districts that allow cohesive groups, regardless of their individual racial background, to be joined together. An independent redistricting commission proposal that encourages such functional coalition opportunities for minorities to elect a candidate of their choice can help create a more inclusive democratic process.

Principle 4: Establish a Process Structured to Yield a Diverse Commission

One rarely discussed benefit of leaving the redistricting process in the hands of elected officials is that, to the extent that they are fairly constituted and representative bodies, they were elected by communities identified during the previous redistricting cycle. During the 2000 redistricting cycle, elected minority officials played a significant role in the redistricting decision-making process for the first time.

Given that minority participation in the redistricting process is a relatively recent phenomenon, jurisdictions should proceed cautiously before adopting IRCs that would remove responsibility for redistricting entirely away from duly elected representatives (and, as a result, the minority groups whose interests they represent) and place it into the hands of a few individuals who are not subject to public accountability for their actions.

Thus, it is important that an IRC be diverse and representative, fairly created, and responsive to minority interests.

Principle 5: Include Minority Perspectives at the Planning Stage

It is difficult to shoehorn minority voting rights principles into an IRC framework when substantial input and involvement from individuals and organizations that have historically advocated for minority voters' interests are not included when preliminary decisions are made. When redistricting commissions are first being considered, reformers must meet with minority voting rights advocates to resolve and address issues that may arise in the establishment of a commission and to ensure the maintenance of long-standing traditional redistricting criteria aimed at protecting minority voting rights. In this way, protection of minority rights can be incorporated into all aspects of the proposal at the ground level.

Principle 6: Eliminate Fairness Barriers That Dilute Minority Voting Strength

Most recent IRC proposals have failed to address two recognizable fairness barriers for minority voters: (1) the census miscount of prisoners, and (2) felon disenfranchisement laws. Although rarely discussed in the context of redistricting, these two barriers significantly reduce the voting strength of minority communities during the redistricting process. Correcting both of these problems is an important step in creating a redistricting process that is fair to all voters.

Miscounting prisoners as residents of municipalities where they are confined – and not as members of their pre-incarceration communities – must be addressed in any redistricting proposal that strives to reform the redistricting process. Because prisoners are counted as residents of the districts where they are incarcerated, Census data artificially inflate the population of districts in which prisons and jails are located, and artificially deflate the population of districts prisoners lived in prior to their incarceration. Since many prisoners reside in low-income, urban communities with high concentrations of racial minorities before entering the criminal justice system, this method of counting results in improperly low population counts of communities of color, which in turn can decrease the number of government representatives allotted to such communities during the redistricting process.


This distorts the “one person, one vote” principle, dilutes the voting strength of prisoners’ home communities and, consequently, weakens the voting strength of communities of color. In order to prevent the dilution of minority voting strength, IRCs and other proposed redistricting reform measures must include corrective action to address the erroneous designation by the Census of prisoners’ residences.

Felon disenfranchisement laws work hand in hand with the miscount of prisoners to dilute the voting strength of minority voters even further. Today, 5.3 million Americans cannot vote because of a felony conviction. Because America’s fractured criminal justice system and disproportionate policing and imprisonment repeatedly align along the lines of race and class, felon disenfranchisement laws result in the exclusion of vastly disproportionate percentages of racial minorities from the electorate. Legislatures of many states intended this result when they adopted felon disenfranchisement laws after the Civil War as a reaction to the inclusion of Blacks as voters. Correcting the census miscount of prisoners can only be fully corrected by allowing prisoners to vote, either absentee or on a machine, with voters in their home district. IRCs attempting to redraw district boundaries should correct this disparity.

Conclusion

Future redistricting cycles must be fair. With so much at stake, redistricting reform efforts, including calls for IRCs, must ensure that protections afforded by the Voting Rights Act are respected and minority voting rights are safeguarded. Minority voting rights must not become a casualty of efforts to create districts with a hypothetical increase in partisan “neutrality,” “fairness,” or “competitiveness.”

All redistricting proposals must (1) ensure that commissions are diverse (in reality, not just aspiration); (2) include language requiring full compliance with both the letter and the spirit of the Voting Rights Act; and (3) establish and promote the protection of minority voting rights as state law.



The NAACP Legal Defense and Educational Fund is America's legal counsel on issues of race.

Through advocacy and litigation, LDF focuses on issues of education, voter protection, economic justice and criminal justice.

We encourage students to embark on careers in the public interest through scholarship and internship programs.

LDF pursues racial justice to move our nation toward a society that fulfills the promise of equality for all Americans.

Reforming Redistricting Without Reversing Progress Toward Racial Equality