

Redistricting 101

An Overview of Drawing New Districts In Practice and Under the Law

On the heels of every decennial Census, states, counties, school boards and municipalities struggle with the concept of dividing the geographic area under their jurisdiction into new districts. For some, especially in local governments, it may be to lay out residence districts while keeping an at-large election scheme, while for others it's a question of adjusting the boundaries of districts so that the population of each is within acceptable deviation limits.

The Census

The United States Constitution directs that an "actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by Law direct." From our first Census in 1790 the Country has grown from 3,929,214 to 331,449,281 in the 2020 count. Palm Beach County's population is currently estimated at 1,524,560.

The law requires the Census Bureau to provide states the opportunity to identify the small area geography for which they need data in order to conduct legislative redistricting. The law also requires the U.S. Census Bureau to furnish tabulations of population to each state, including for those small areas the states have identified, within one year of Census Day.

Since the first Census Redistricting Data Program, conducted as part of the 1980 Census, the U.S. Census Bureau has included summaries for the major race groups specified by the Statistical Programs and Standards Office of the U.S. Office of Management and Budget (OMB) in Directive 15 (as issued in 1977 and revised in 1997). Originally, the tabulation groups included White, Black, American Indian/Alaska Native, and Asian/Pacific Islander, plus "some other race." These race data were also cross tabulated by Hispanic/Non-Hispanic origin. At the request of the state legislatures and the Department of Justice, for the 1990 Census Redistricting Data Program, voting age (18 years old and over) was added to the cross-tabulation of race and Hispanic origin. For the 2000 Census, these categories were revised to the current categories used today.

While the law provides that data be released to the States one year after Census Day, which would have been April 1, 2021, that deadline has been pushed back to August 16, 2021

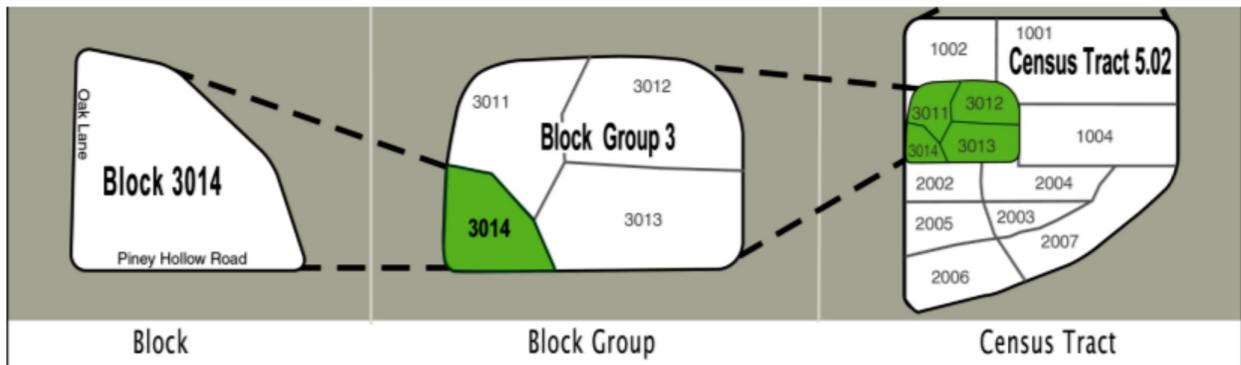
for legacy format summary files and by September 30, 2021 for additional formats. The delay was necessitated by the COVID-19 pandemic. The pandemic lowered the self-reporting rates in various jurisdictions and the difficulty of hiring and retaining Census workers to go into the field and attempt to complete the enumeration. For instance, in Palm Beach County, the City of Palm Beach only saw an initial self-return rate for Census forms of 44 percent, while Royal Palm Beach had a return rate of 76 percent. The Census Bureau stopped the count in October 2020. The Census Bureau has traditionally compared the national Census count with survey data, a method employed since the 1950 Census, to double check the accuracy of the total count.

Whether the data from the 2020 Census is completely accurate or not, it carries a presumption of accuracy. It will be used by the Legislatures of the several States to draw Congressional districts and State Legislative seats. Counties and municipalities will use it to draw their districts, as well.

Census Geography

There is a hierarchy on how the nation is divided. The most obvious division are the States. The populations of each State are kept separate. Within States there are counties. Inside counties are Census tracts, and within those are Block Groups, and within those are Blocks. The chart below shows how these areas nest within each other.

A Census Block is the smallest area used for the collection of the 100 percent data. They are usually bounded on all sides by roads, highways, water bodies, or natural boundaries. natural or man-made boundaries. Think of an urban or suburban city block.



Two or more Blocks make up a Block Group. These are the smallest units that will reflect tabulations of sample data, the results of surveys taken rather than an actual enumeration or a “head count”. The population of Block Groups range from 600 to 3,000.

Two or more Block Groups make up a Census Tract. Optimally Census tracts contains about 4,000 people each, with a range of between 1,200 and 8,000.

The Census Bureau will also accumulate Census Tracts into municipalities or, where tracts are outside of municipal boundaries but as part of recognized communities or neighborhoods, into Census Designated Places.

Census data and geography will also be made available by United States Postal Service Zip Codes and voting precincts. Although the Census Bureau does not collect voter registration data and election results by precincts, the availability of population and ethnic data by precinct allows the use of election and registration data broken out by precincts to allow governments to test whether the districts drawn will perform for groups of politically cohesive voters.

Drawing districts has been likened to snapping Lego blocks together. However, it is not a freeform event. There are concepts that must be understood and rules that must be followed to ensure that a redistricting plan can survive a court challenge.

Ideal Districts and Deviations

According to the final count data released on August 16,2020, the Palm Beach County population is 1,492,191. For either the Palm Beach County Commission or the Palm Beach County School Board, each government with 7 seats, the “ideal” population for each Board member district would be 213,170. ¹

The United States Supreme Court has held that Congressional districts within a state must be as near as possible to a zero deviation. After the 2020 Census, the Florida Legislature, for instance, drew a Congressional plan where the difference between the most populated district and the least populated district was 1 person. From Pensacola down to Key West, the population of the Florida Congressional districts was nearly perfect.

The standards for non-Congressional is different. As precise as the Florida Legislature was in 2010 in drawing the Congressional map, it was more relaxed when it came to drawing the State House and Senate plans. The House map had a total deviation of 3.98 percent and a total

¹ **Deviation** is how much the population of a district is larger or smaller than the ideal population.

Ideal District Population	=	Total population/ Number of Seats
Absolute Deviation	=	District Population – Ideal Population
Overall Range	=	Largest Positive Deviation + Largest Negative Deviation (without + or – sign)

deviation of 1.92 in the Senate. The federal courts have adopted 10 percent as a rule of thumb in evaluating non-Congressional districts, that it so long as the difference between the largest and smallest districts do not exceed a maximum of 10 percent, there will be no finding of a violation of the Equal Protection Clause of the 14th Amendment to the Constitution. States can go above 10 percent but must be prepared to demonstrate that extraneous circumstances meant that districts could not be drawn with a lower total deviation. In Hawaii, the separation of the state into numerous islands and large expanses of open ocean allowed its Legislature to come up with a House redistricting plan with a total deviation of 21.57 percent and a Senate plan with an overall deviation of 44.22 percent.

Applying the maximum deviations to districts for the Palm Beach County Commission or School Board would mean that, with an ideal population of 217,794, a plan with the largest districts with a population of 228,684 (5% above the ideal) and the smallest district of 206,904 (5% below the ideal) could survive a legal challenge if brought on the grounds that the plan was mathematically imprecise.

Discrimination

Even in the example shown above, where the largest district was 5 percent above the ideal population and the smallest district was 5 percent below, the configuration would probably not survive a challenge where it could be shown that the choices made were for the purposes of discriminating against a racial, ethnic, language, religious, or other protected group.

Say, for instance, a local jurisdiction drew the lines so that the large district held every person of a protected group and the population within the district was higher than the rest so as to isolate the members of the protected group within a single district, where the group could form the majority in two districts. If that was done, it would probably be declared to be an illegal “packing” of minorities. Packing is usually done to limit a minority group to a minimal number of seats by so densely compressing minorities that they can’t be used to become a majority in two or more single member districts.

“Cracking” is a process of splitting a geographically compact minority group and spreading its members out among several districts so that they never comprise a majority in a single member district.

After the passage of the Voting Rights Act of 1965, the Supreme Court limited challenges to districting plans where the protected minority group both plead and proved that it was the

victim of intentional discrimination. The Court, however, initially limited lawsuits under the Voting Rights Act to instances where it could be shown that a registration or voting device was put in place because of discriminatory intent. Congress made certain findings in the VRA and held that any changes, including the movement of polling places and voter registration offices, in Section 5 covered jurisdictions had to be approved by the Department of Justice or in a declaratory judgment action brought in the District Court of the District of Columbia.² The burden was placed on the governmental body making the changes to prove that they were not caused by discriminatory intent. On June 25, 2013 the Supreme Court ruled in the case *Shelby County v. Holder*, 570 U.S. 529 (2013) that the coverage formula in Section 4(b) of the Voting Rights Act, which was used to determine the states and political subdivisions subject to Section 5 preclearance, was unconstitutional.³

In time, it became harder to prove a discriminatory intent. Congress amended the Voting Rights Act in 1982, adding an “effects” standard to Section 2. Now, a member of a protected class could prevail by showing that the change would have a discriminatory effect on the protected group.

The Supreme Court upheld this new “effects” standard in the seminal case of *Thornburg v. Gingles*, 478 U.S. 30 (1986). Section 2(a) of the amended VRA prohibited a State or political subdivision from imposing any voting qualifications or prerequisites to voting, or any standards, practices, or procedures that result in the denial or abridgment of the right of any citizen to vote on account of race or color. Section 2(b), as amended, provided that § 2(a) is violated where the “totality of circumstances” reveals that

the political processes leading to nomination or election . . . are not equally open to participation by members of a [protected class] . . . in that its members have less opportunity than other members of

² A formula designed by Congress in Section 4(b) of the VRA applies Section 5 to any state or county where a “test or device” such as a literacy test was used as of November 1, 1964, and where there was a participation rate of under 50 percent by eligible voters in the 1964 presidential election. Later amendments to the Act incorporated participation in the elections of 1968 and 1972 into the coverage formula.

Prior to a 2013 Supreme Court decision, Section 5 affected all or part of 15 states.

- Whole State Covered: Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas and Virginia
- Counties Covered: California (3 counties), Florida (5), New York (3), North Carolina (40) and South Dakota (2)
- Townships Covered: Michigan (2 townships)

³ The Court effectively halted the use of the Section 5 preclearance process its use by invalidating the formula that determined which jurisdictions were subject to the preclearance obligation.

the electorate to participate in the political process and to elect representatives of their choice,

and that the extent to which members of a protected class have been elected to office is one circumstance that may be considered.

When the Supreme Court decided the *Thornburg* case, it announced several standards which are still relevant to a claim under the VRA. A plaintiff in a challenge to a voting plan must show that the protected group is large enough and compact enough to form a majority in a single member district. The plaintiff must also that minority voters are politically cohesive, that is, they must usually vote to support the same candidates. And finally, the plaintiff must demonstrate that the majority of voters who are not members of the minority group, usually vote as a bloc to defeat the minority preferred candidate. These three factors became known as the “Gingles preconditions”. If a plaintiff does not prove each of these factors, then the trial court need not proceed any further.

In a case where a plaintiff could demonstrate each of the three Gingles preconditions, it still bore the burden of showing by “a totality of circumstances” the existence of racially polarized voting; the legacy of official discrimination in voting matters, education, housing, employment, and health services; and the persistence of campaign appeals to racial prejudice impaired the ability of geographically insular and politically cohesive groups of minority voters to participate equally in the political process and to elect candidates of their choice.

Congress later enacted language minority provisions because it found that:

[T]hrough the use of various practices and procedures, citizens of language minorities have been effectively excluded from participation in the electoral process. Among other factors, the denial of the right to vote of such minority group citizens is ordinarily directly related to the unequal educational opportunities afforded them resulting in high illiteracy and low voting participation.

A jurisdiction is covered under Section 203 where the number of United States citizens of voting age is a single language group within the jurisdiction:

- Is more than 10,000, or
- Is more than five percent of all voting age citizens, or
- On an Indian reservation, exceeds five percent of all reservation residents; and
- The illiteracy rate of the group is higher than the national illiteracy rate

The enactment of Section 203 also allowed members of language minority groups to challenge election schemes under the Voting Rights Act.

Traditional Redistricting Criteria

Maps that appear to avoid usage of generally accepted traditional redistricting principles may indicate that the boundaries signal discrimination or one or more districts violate a constitutional or statutory standard. The criteria can be divided into objective or geographic and other criteria.

Equal population, also known as the one-person, one-vote principle is based on compliance with the Equal Protection Clause of the 14th Amendment. Generally, rebalancing district populations every 10 years meets the minimal requirements for maintaining a reasonably current scheme of representation.

Compliance with the Voting Rights Act is based on the Equal Protection Clause and Section 2 of the Voting Rights Act. Section 2 prohibits the denial or abridgement of the right to vote on account of race or color. The Equal Protection Clause prohibits redistricting strictly on the basis of race.

Preserve communities of interest, including municipal boundaries where reasonable in order to avoid splitting among different districts. These communities of interest may defined by geography, economic status or political interests.

Follow natural and man-made boundaries in order to avoid splitting census derived geography and enumeration. Census geography can be duplicated using current GIS systems. Generally, district boundaries follow roads, railroads, creeks, streams and bridges.

Geographic compactness can be measured by the extent to which a district's geography is dispersed around its center. Compactness is used in racial gerrymandering cases to determine whether race was the predominant factor in the drafting of district lines. It is used in Section 2 cases to determine if minority voters have the opportunity to elect candidates of choice to public office.

Contiguous districts require that all parts of the individual districts be connected so as to facilitate travel to all parts of the district without leaving crossing the district boundary. Some geography may not be naturally contiguous such as islands and may have to be counted as part of the most logical district.

Preservation of the cores of existing districts assures that the current district boundaries will be maintained. This insures the continuity of representation for voters by minimizing changes to the district.

A Practical Roadmap for Redistricting in Palm Beach County

In order to draft a plan that is legally defensible under the Voting Rights Act, it is recommended that the Palm Beach County Commission and the Palm Beach County School Board undertake a multi-step process to redistrict the relevant governmental bodies.

(1) Voter Registration and Election Data Analysis

Although there is no hard and fast rule, it is recommended that at least the last 10 years of voter registration data and election returns be collected and analyzed. The Supreme Court and various lower courts have accepted two distinct methodologies for determining whether racially polarized voting is present in a jurisdiction. The first method is the Extreme Case method, where all the precincts in a jurisdiction that are 90 percent or greater minority and 90 percent majority are identified and the results in various Countywide elections are compared for each group. If the analysis shows that in precincts that are 90 percent or more Black voter registration voted for Candidate A in an election while Candidate B is favored by the precincts that are 90 percent or greater non-Black, then this may be evidence of racially polarized voting. All of the other elections in a given election year are similarly analyzed and the analysis is conducted for all elections over the last 10-12 years. At the end of the analysis, a pattern may emerge that demonstrates whether minority voters are politically cohesive and whether non-minority voters usually vote to defeat the minority preferred candidates.

NOTE: The large number of first- and second-generation Hispanic citizens in Palm Beach County will require additional analysis to see if there is a phenomenon of shifting coalitions, where Non-Hispanic White and Hispanic voters form a voting coalition to usually defeat the preferred candidate of Black voter or whether a coalition of Black and Non-Hispanic White voters ally to defeat the preferred candidates of Hispanic voters. (This phenomenon was observed in the Voting Rights Act case brought in Miami-Dade County where

challenges to the at-large voting system of the County Commission and School Board were successfully made by Jerry Wilson and Stephen Cody.

(2) Demographic data will be acquired

In order to lay the foundation for redistricting choices that may be made, historical information will be assembled regarding the the legacy of official discrimination in voting matters, historical discrimination in education, discrimination in housing, differences and discrimination in employment and income level, and differing experiences in health indicators and access to health services. A historical review of past political campaigns and the use of campaign appeals to racial prejudice must be undertaken, together with an assembly of past elections of minority candidates

(3) Census data will be acquired

The Census block level data is scheduled to be released in September 2021. That data must be prepared and inputted into the software that will be used to actually draw the districts. The block boundary files and the descriptors of Census Block, Census Block Group, and Census Tract designations will also be merged with the Census data.

(4) Public meetings with governmental officials

A public meeting held in the Sunshine would permit the members of the County Commission and the School Board to set forth overarching criteria that will be used in drawing the districts. For instance, is there a preference for exact population equality among districts or can they be drawn with the maximum deviations allowed by law? Should there be an emphasis on keeping municipalities intact or should boundaries be draw without regard to whether municipalities are split between one or more district?

(5) Meetings with governmental officials will be held

After the broad criteria are adopted, the Consultants should meet with each member of the County Commission and School Board to get their input into there views on relevant communities of interest that should be placed in the same or in neighboring districts.

(6) Potential meeting with the public can be scheduled

A series of public meetings maybe helpful to review the plans that were put in place after the 2010 Census and to preview how the current districts may or may not be used to draw the new districts. As reference, the City of Miami is beginning its redistricting process and is considering holding at least one public meeting in each of the five single member districts.

(7) One or more plans should be brought forward during public meetings

The requisite number of meetings must be scheduled so that the draft plans can be consider and voted on, with any amendments that a member may wish to propose. A final plan will be adopted.

(8) The boundaries of the new districting plans must be delivered to the Supervisor

of Elections In 2022, the Florida Legislature will be redistricting the Florida House and Senate, as well as the new Congressional Districts. Municipalities in Palm Beach County may also undertake their own redistricting. Growth in various areas and all these changes may require the Supervisor of Elections to undertake a wholesale reprecincting of Palm Beach County. The boundaries of the County Commission and the School Board will have to be made available in time for the reprecincting of the County.

The Wilson P.C.

Jerry Wilson, Esq. • Jerred B. Wilson, Esq. • Stephen Cody, J.D.
1 West Court Square, Suite 750 • Decatur, GA 30030
Office: (470) 575-6130 • Direct: (470) 575-6133 • Fax: (470) 575-6138
Email: jerry@thewilsonpc.com