



NIELSEN MERKSAMER
PARRINELLO GROSS & LEONI, LLP



**Commuter Flight:
Participating in Local Redistricting
By Chris Skinnell • March 31, 2011**



Process: Key Dates (General Law Cities)

- April 1, 2011: Deadline for Census Bureau to release redistricting data (actually released March 8, 2011).
- October 31, 2011: Deadline for completion. (Elections Code § 21602)
- Consequence if Deadline Missed: Councilmembers elected at-large until districts adjusted (§ 21602)
- Don't push your luck: remember, the Registrar's office has to process everybody's lines!





Process: Key Dates (Other Entities)

- Counties: October 31, 2011 (§ 21501)
- School Districts (if currently in districts): March 1, 2012 (Education Code § 5019.5)
- Special Districts (water districts, irrigation districts, community service districts, etc.): “No change in division boundaries may be made within 180 days preceding the election of any director.” (§ 22000(d))
- Charter cities: No formal deadline in state law (*see* §§ 21620–21620.1); generally set by the Charter itself.





Process: Public Hearings (General Law Cities)

- **Two Minimum:** “The council shall hold at least one public hearing on any proposal to adjust the boundaries of a district prior to a public hearing at which the council votes to approve or defeat the proposal.” (§ 21601.1)
- **No Maximum.** The Council may choose to hold additional public hearings to solicit community input.





Process: Optional Advisory Committee

- “The council may appoint a committee composed of residents of the city to study the matter of changing the boundaries of the council districts. . .” (§ 21605)
- Recommendations are advisory only; council adopts final plan.
- Deadline for Advisory Committee’s Report to Council: August 1, 2011.





Process: Effect on Incumbents

- No one's term cut short. (§ 21606)
- As terms finish, new district with the same number as the district in which the expiring councilmember's term was elected comes up for election.
- Incumbent can only run in new district if he or she resides therein.





Drawing the Lines: Legal Considerations

- Overriding criterion is population equality (§ 21601; *Reynolds v. Sims*, 377 U.S. 533 (1964)).
- Unlike congressional districts, local electoral districts do not require perfect equality. Some deviation acceptable to serve valid state interests.
- Total deviation less than 10% presumptively constitutional. (Caution: the presumption *can* be overcome!)
- And state law *may* be more restrictive.





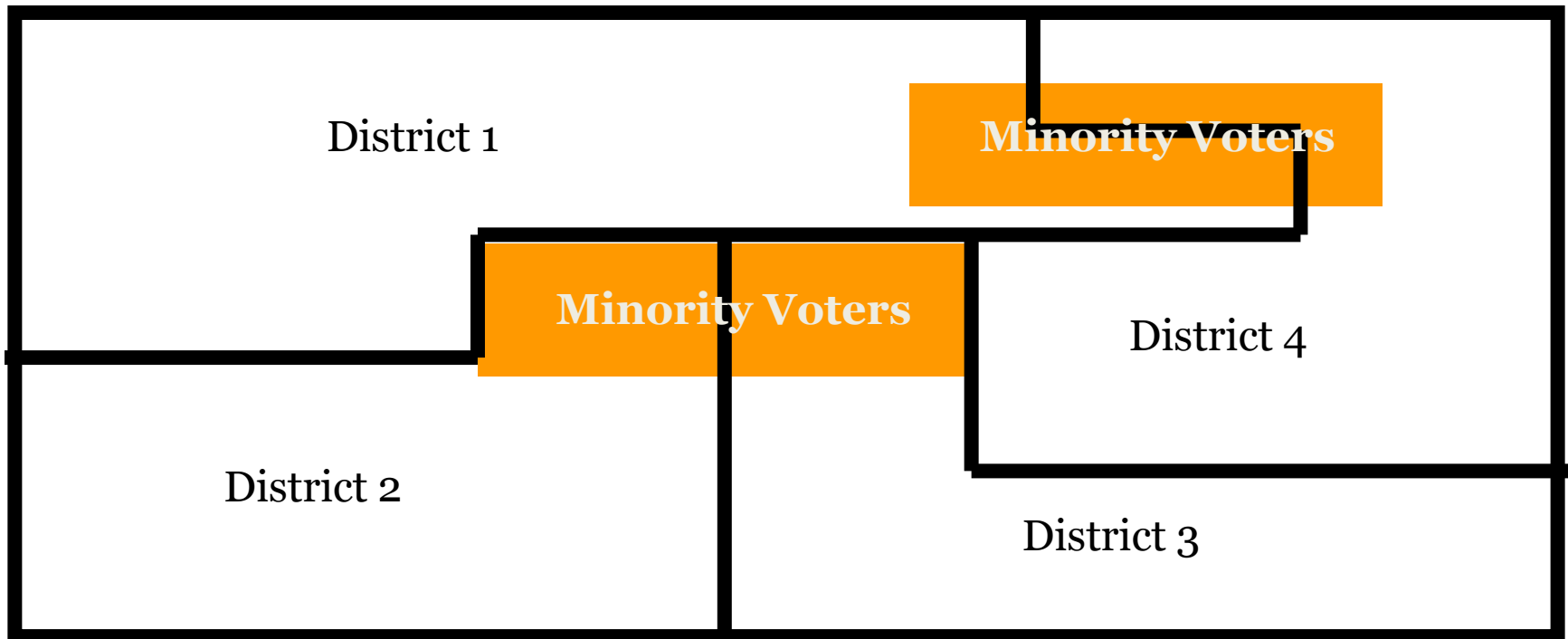
Legal Considerations: Voting Rights Act

- Section 2 of the federal Voting Rights Act prohibits electoral systems, including redistrictings, which dilute minority voting rights by denying minorities an equal opportunity to nominate and elect candidates of their choice.



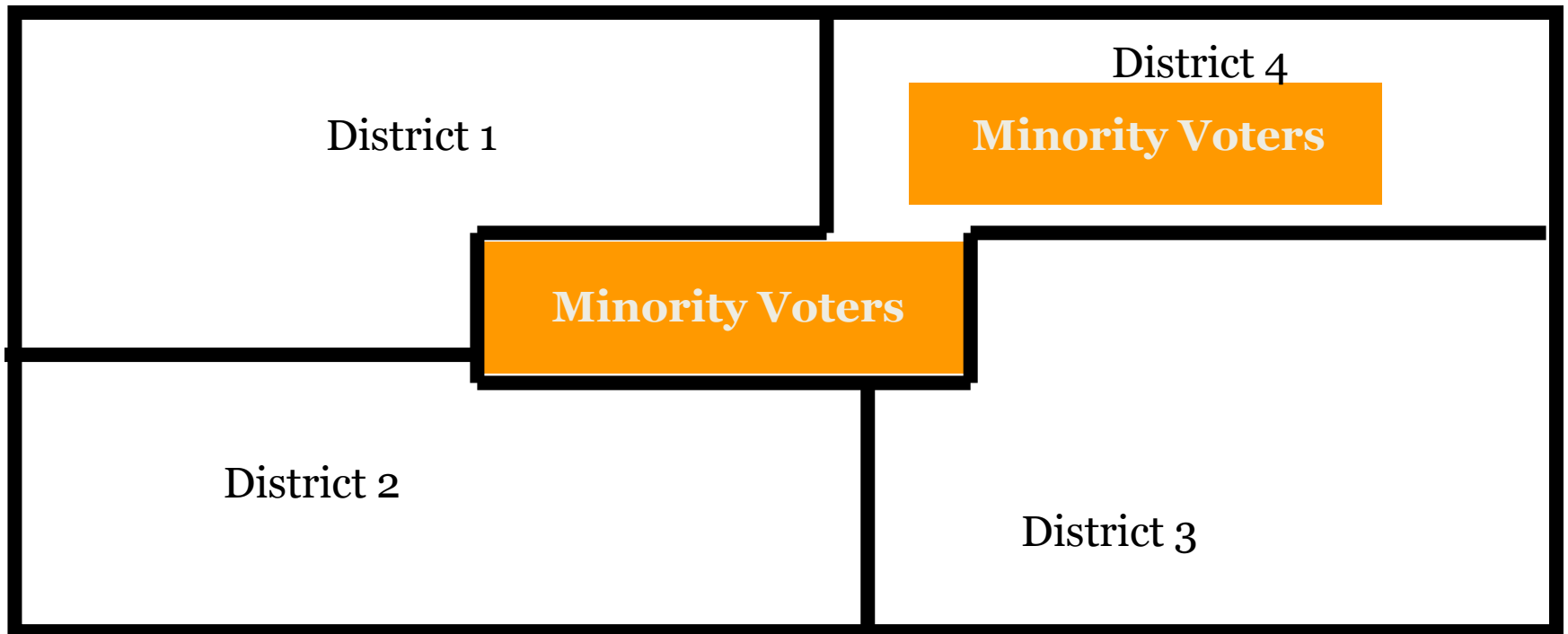


Voting Rights Act: Cracking





Voting Rights Act: Packing





Legal Considerations: Voting Rights Act

- Not required to draw a majority-minority district unless a compact district can be drawn with a minority population that is greater than 50% citizen voting age population. *Bartlett v. Strickland*, 129 S. Ct. 1231, 1246 (U.S. 2009).
- *Bartlett* does not prohibit entities from drawing minority “influence” districts.





Legal Considerations: No Racial Gerrymandering

- The Fourteenth Amendment prohibits using race as the “predominant” criterion in drawing districts and the subordination of other considerations. *Shaw v. Reno*, 509 U.S. 630 (1993) ; *Bush v. Vera*, 517 U.S. 952 (1996); *Miller v. Johnson*, 515 U.S. 900 (1995).
- It does not, however, prohibit all consideration of race in redistricting. *Easley v. Cromartie*, 532 U.S. 234 (2001).
- Some tension with Section 2.
- Looks matter!





Legal Considerations: Statutory Criteria

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

Elections Code § 21601





Legal Considerations: Other Criteria

- Statutory criteria not exclusive.
- Some other legitimate criteria include:
 - Preserving cores of existing districts.
 - Preventing head-to-head contests between incumbents.
 - Or incumbent-blind redistricting.
 - Anticipating future population growth.





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