

The Nineteenth Annual Riley Fletcher Basic Municipal Law Seminar
February 20-21, 2020



Texas Cities and Redistricting

Presented by:

C. Robert Heath, Partner

Bickerstaff Heath Delgado Acosta LLP

The Census is coming

....and **redistricting** is right behind

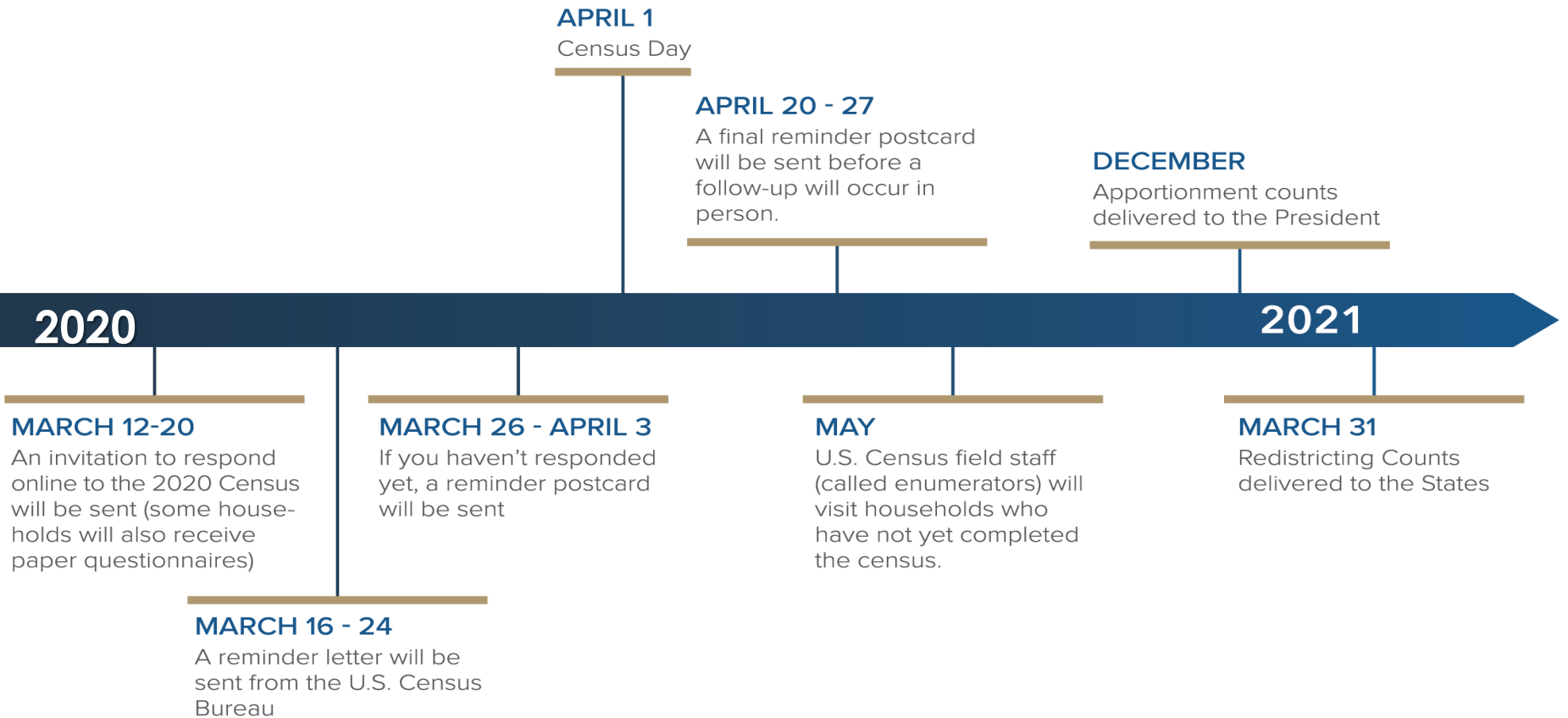


"OMG, He's Right
Behind Me,
Isn't He?"

kappit.com

- The census will count the US population as of April 1, 2020
- State totals will be reported to the president by December 31, 2020, and these numbers will be used to allocate congressional seats among the 50 states
- Detailed data that can be used for redistricting will be released by March 31, 2021.

2020 Census Scheduled Events



U.S. Census Bureau website

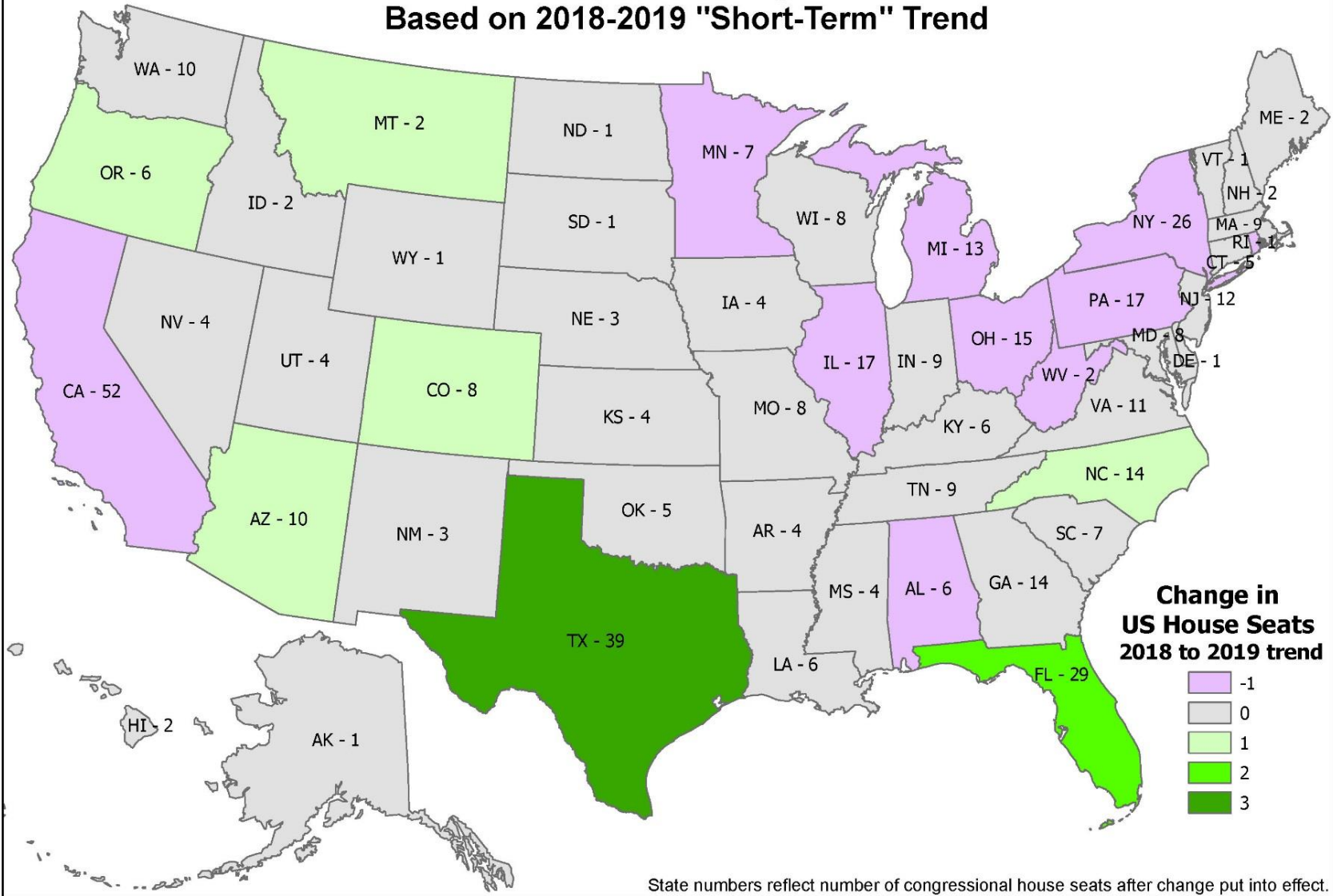
The Census and redistricting affects all cities

- Cities with single-member districts will likely have to redistrict to maintain population balance among the districts
- Even those cities that do not have single-member council districts and do not redistrict themselves will be affected by congressional, legislative, and county redistricting
- The population reported by the census often governs the distribution of federal dollars

- Texas will likely gain three congressional seats, Florida will gain two, and five states will gain one seat.
- Ten states will each lose a seat



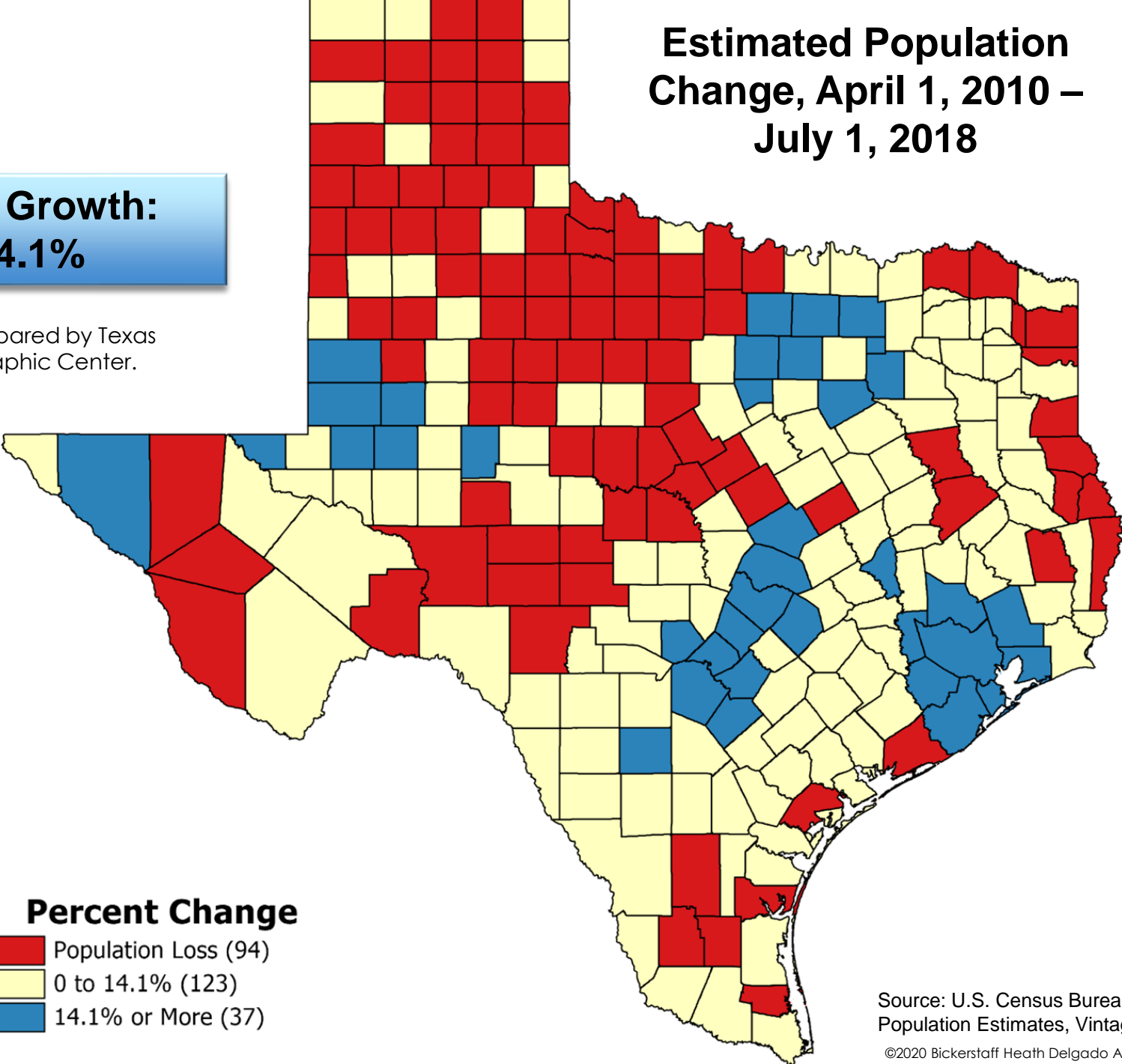
Anticipated Gains/Losses in Reapportionment 2020 Population Projections Based on 2018-2019 "Short-Term" Trend



Estimated Population Change, April 1, 2010 – July 1, 2018

**State Growth:
14.1%**

Map prepared by Texas Demographic Center.



Percent Change

- Population Loss (94)
- 0 to 14.1% (123)
- 14.1% or More (37)

Source: U.S. Census Bureau, Population Estimates, Vintage 2018.

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**Cities that have
single-member
districts will likely
need to conduct their
own redistricting
process**

When should your city redistrict?

- It depends on when the municipal elections are:
 - If the city's next regular election is in **May 2021**, there is not enough time to redistrict before that election.
 - There is sufficient time to redistrict for a **November 2021** election, a **May 2022** election, or a **November 2022** election.
 - The process typically takes about 4-5 months although shorter or longer schedules are possible.
 - Under state law (Tex. Elec. Code § 276.006) the redistricting plan must be adopted at least **three months** before election day.

Redistricting Law

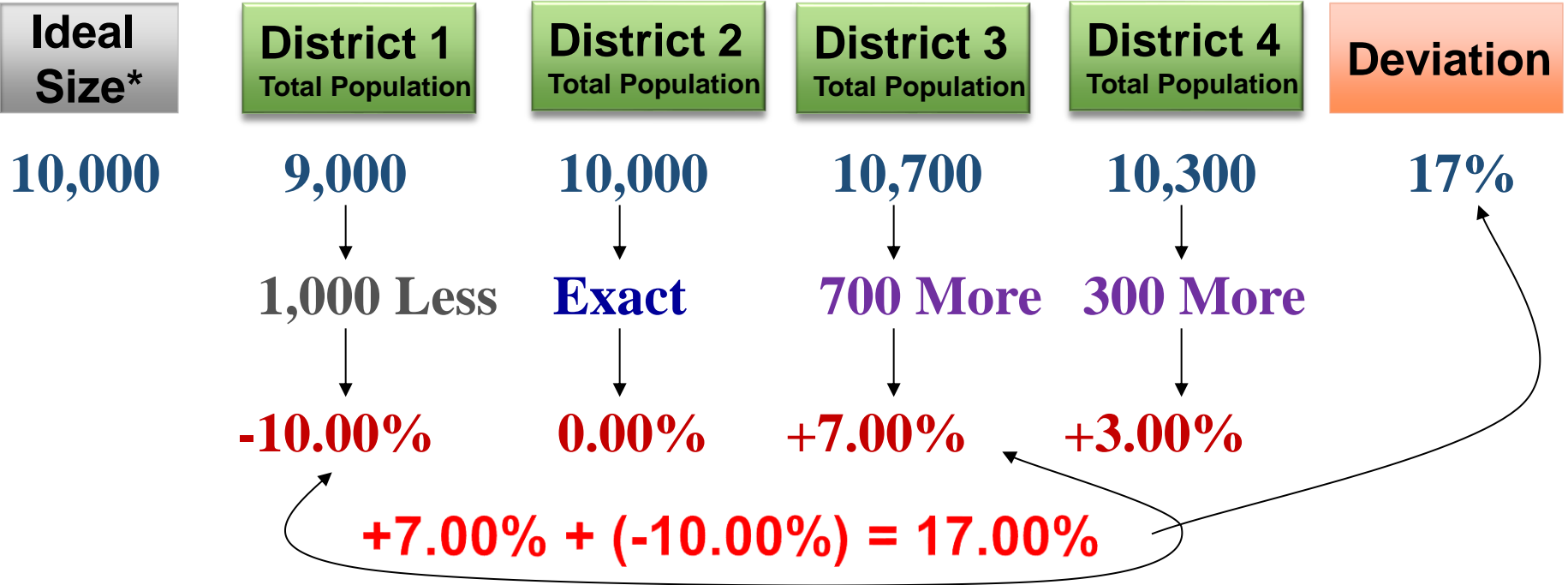
- Basic Legal Principles that apply:
 - One person – One vote
 - Voting Rights Act Section 2
 - Restrictions on Race-Based Redistricting (*Shaw v. Reno*)
 - State Election Law

One Person-One Vote

- **Districts Must Have Relatively Equal Population**
- While not a safe harbor, generally districts will meet constitutional requirements if they have no more than a ***10 percent deviation***.

Calculating the Overall Deviation

*Sum of total population for all 4 Districts Divided by 4



Highest Positive Percent + Highest Negative Percent = Maximum Deviation

$$[(\text{Total Population} - \text{Ideal Size}) / \text{Ideal Size}] * 100]$$

Section 2 of the Voting Rights Act

- Section 2 prohibits election practices that discriminate on the basis of race or language minority status.

Section 2 Threshold Test

1. The minority group must be sufficiently large and geographically compact to be able to constitute a majority in a single-member district.
2. The minority group must be politically cohesive.
3. The white majority must vote as a bloc usually to defeat the minority choice.

Ultimate Section 2 Test

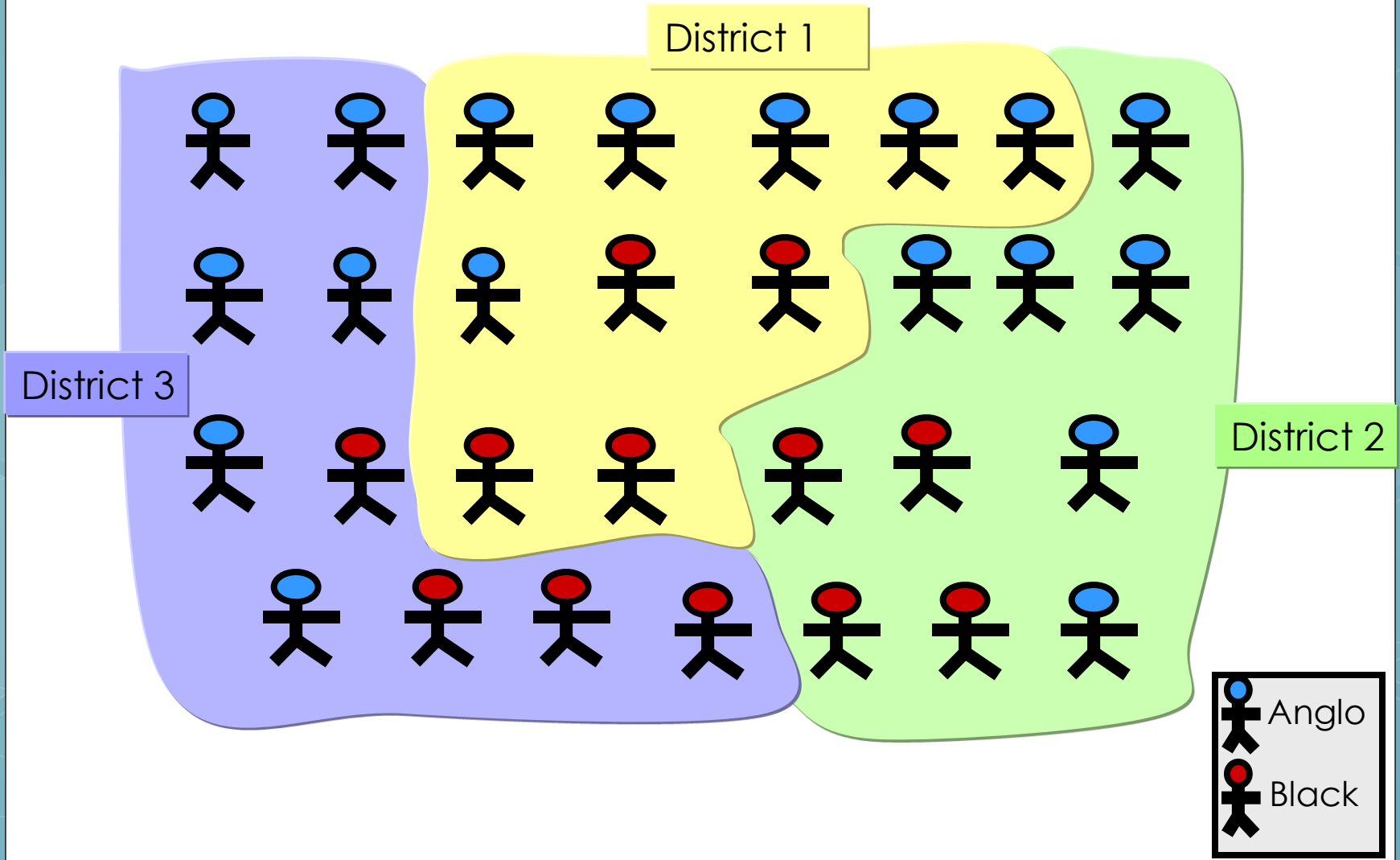
- If the threshold test is met, then the question becomes whether under the **totality of the circumstances** the challenged districting plan affords the protected minority group an opportunity to participate in the political process and to elect candidates of their choice that is equal to that enjoyed by other members of the electorate.

Section 2 of the Voting Rights Act

- Generally you need to avoid **cracking** or **packing**.
 - Cracking or fracturing is dividing a geographically compact group of minority voters to fragment their voting power.
 - Packing is concentrating minority voters in a single district when dividing them would permit the group to elect their candidates of choice in more than one district

Cracking Minority in District

District 1 = 40%
District 2 = 40%
District 3 = 40%

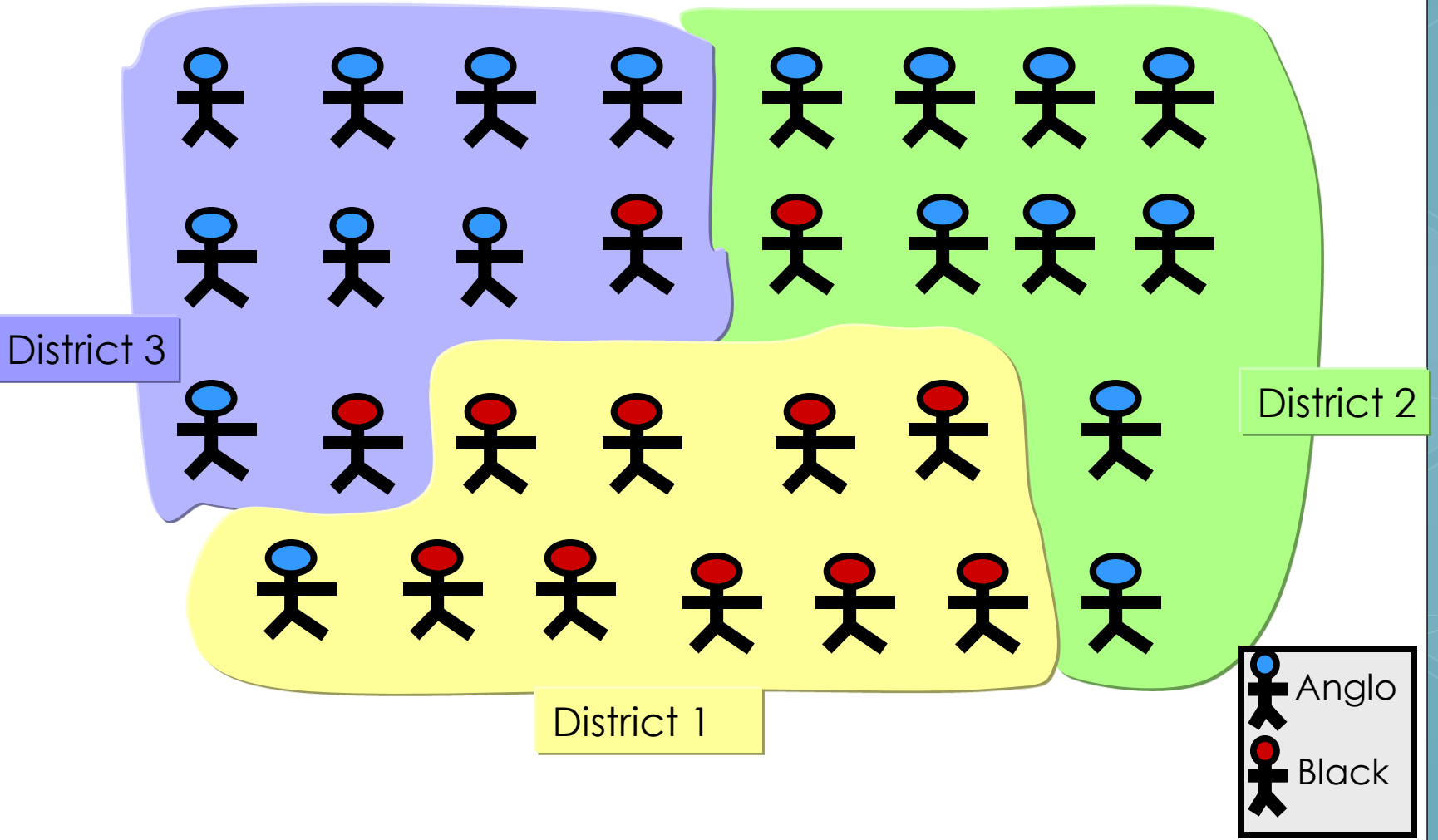


Packing Minority in District

District 1 = 90%

District 2 = 10%

District 3 = 20%

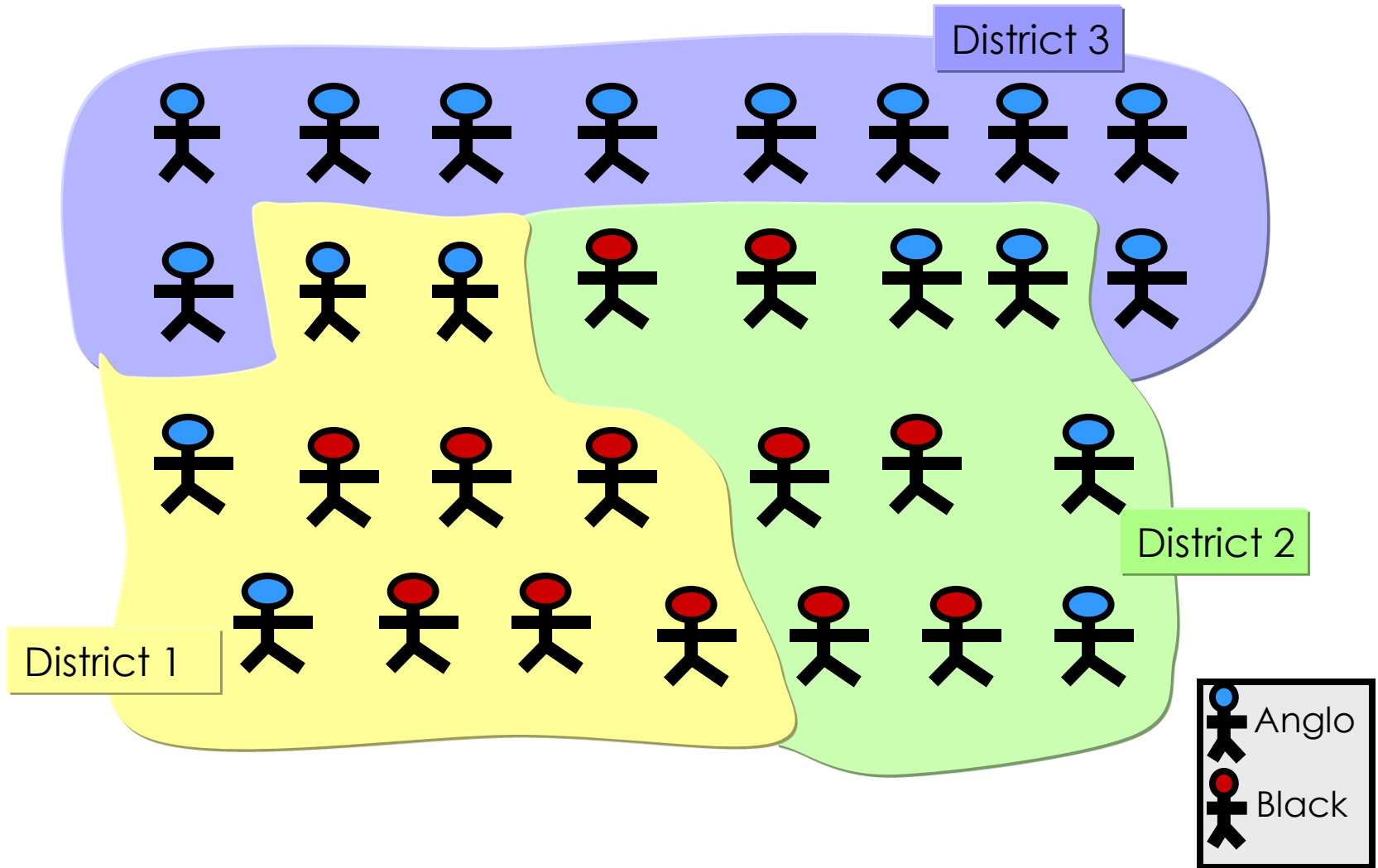


Preferred Minority in District

District 1 = 60%

District 2 = 60%

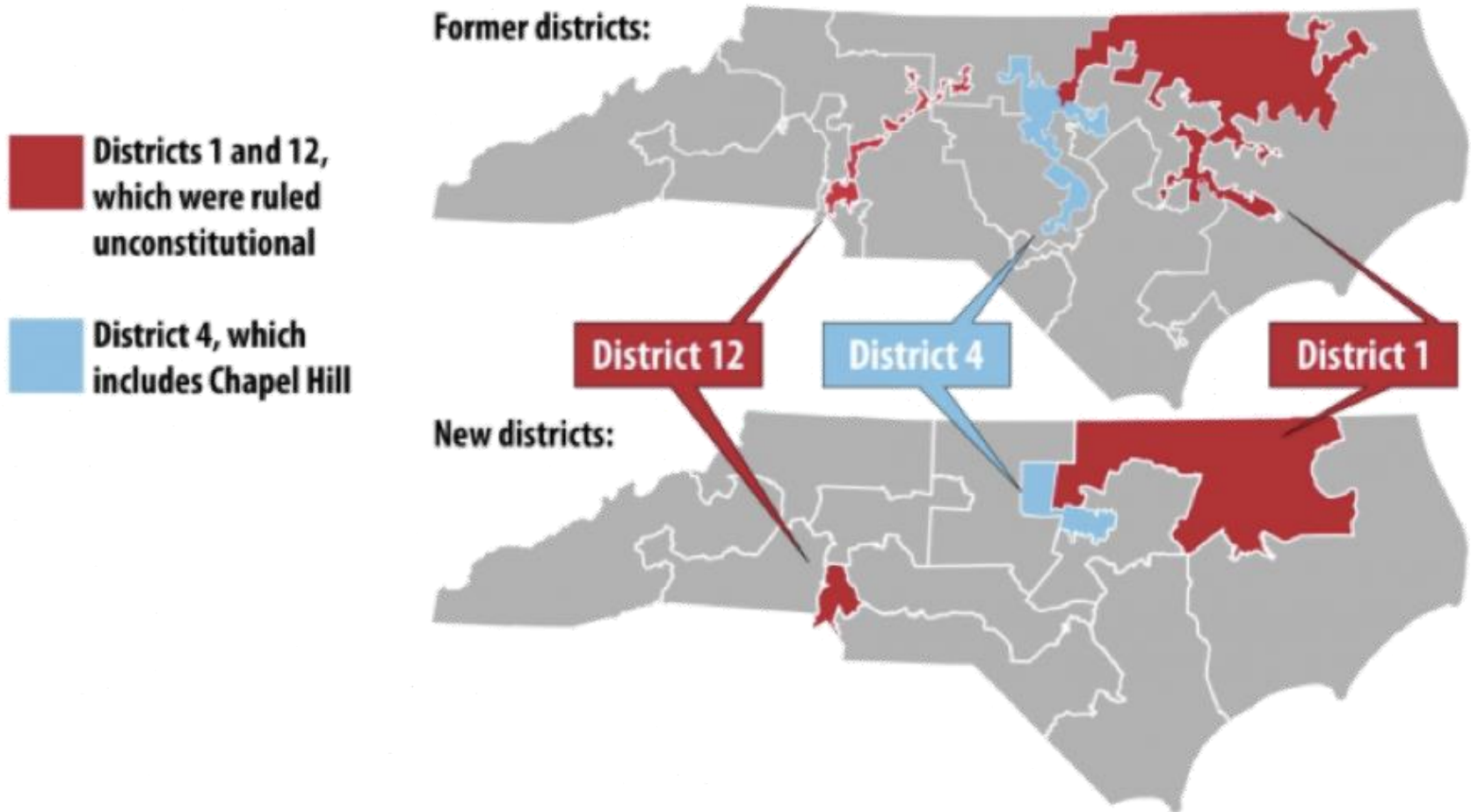
District 3 = 0%

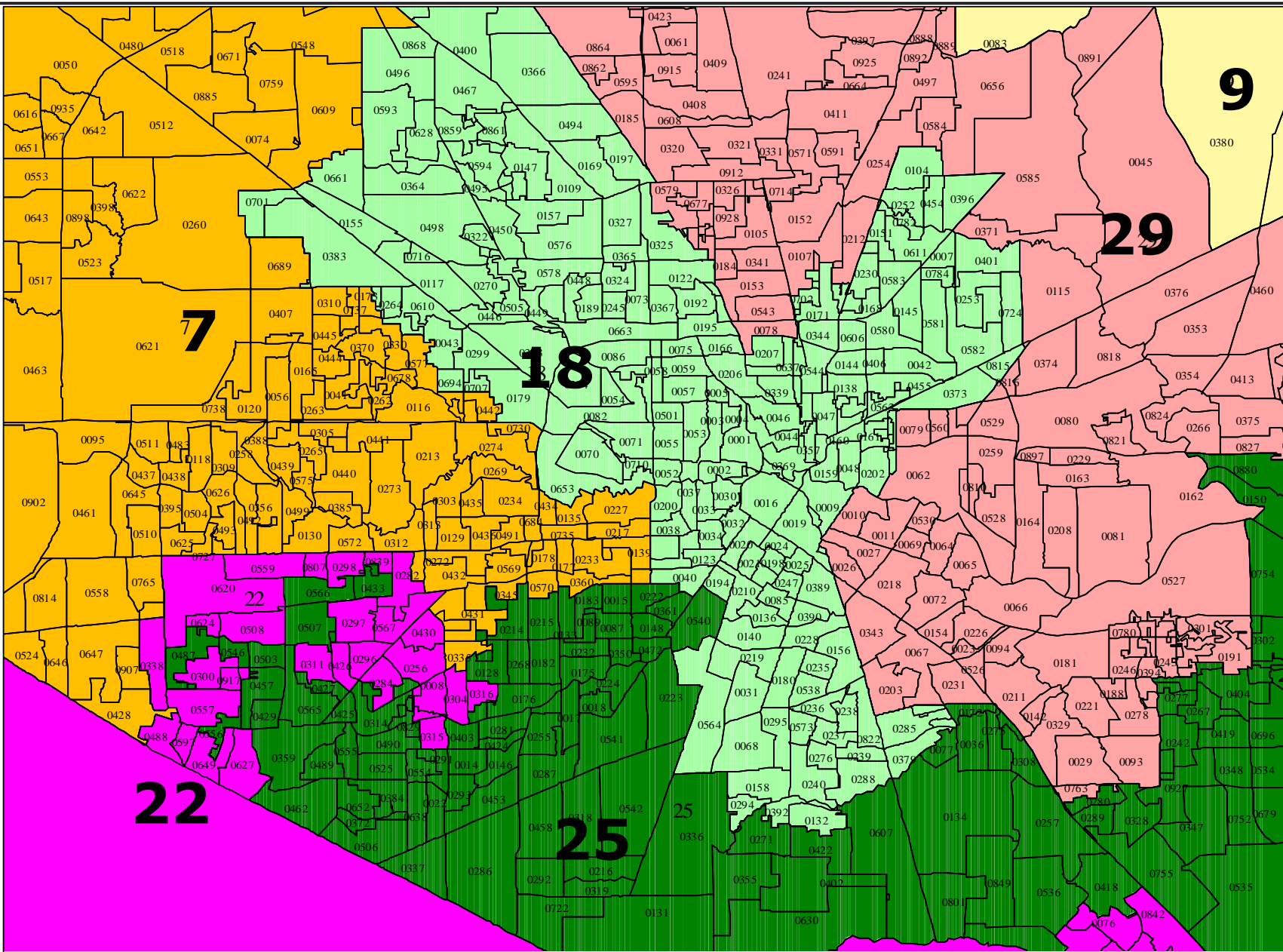


Shaw v. Reno

- Race cannot be the predominant factor in the redistricting process to the subordination of traditional districting principles.
- Districts with odd shapes are not necessarily unconstitutional; however, a bizarre shape may be evidence that strongly suggests that race was the predominant factor driving the redistricting decision.

Shaw v. Reno: North Carolina

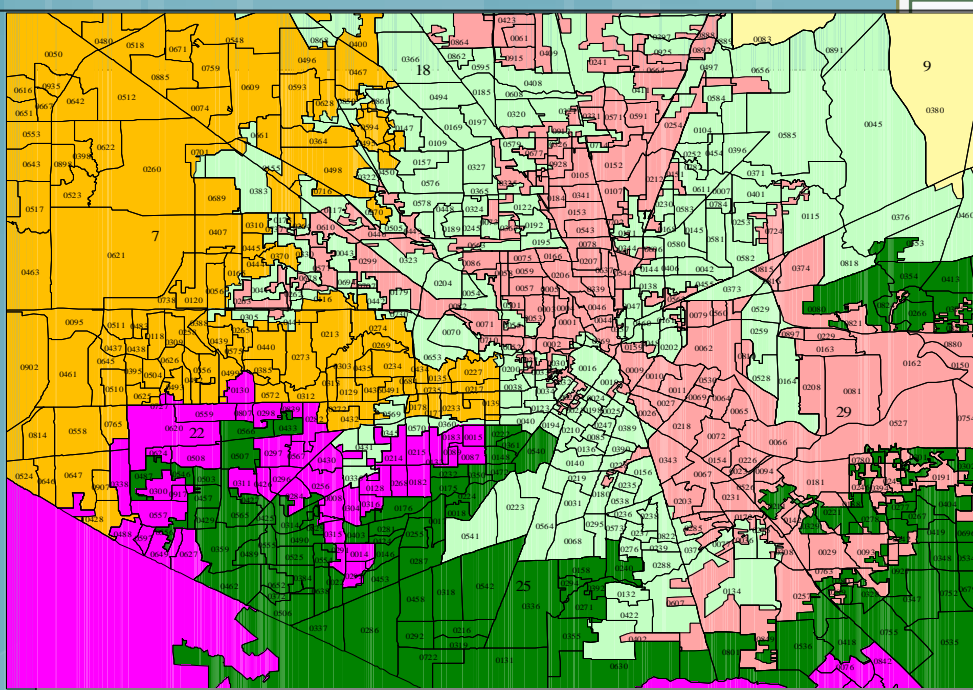




Central Harris County
 PLAN C746

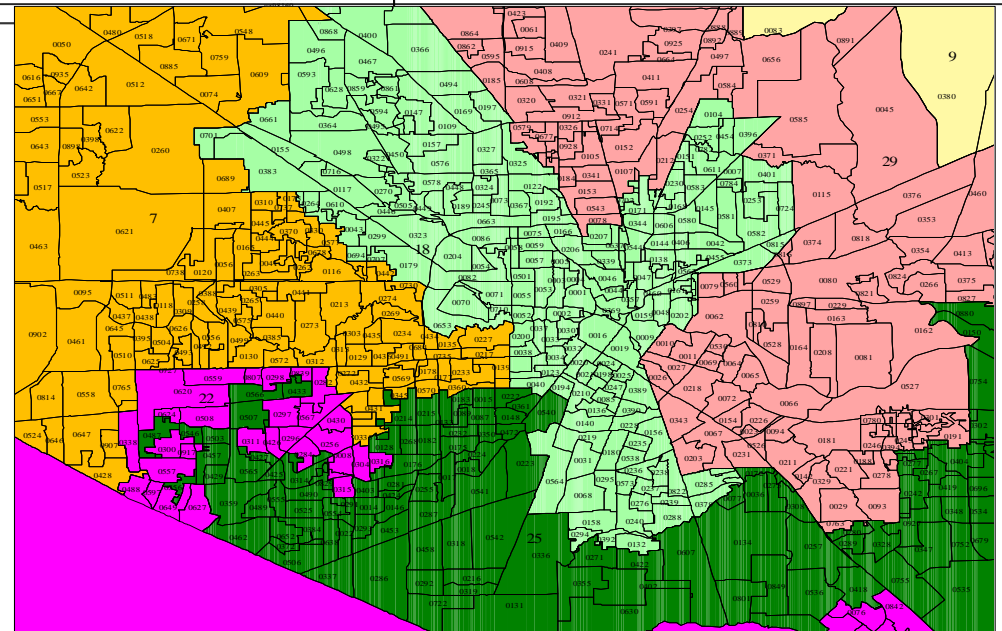
Texas Legislative Council
 11/13/98
 wf98160
 Source: TLC

Bush v. Vera Before & After



Central Harris County
PLANC657

Texas Legislative Council
11-13-98

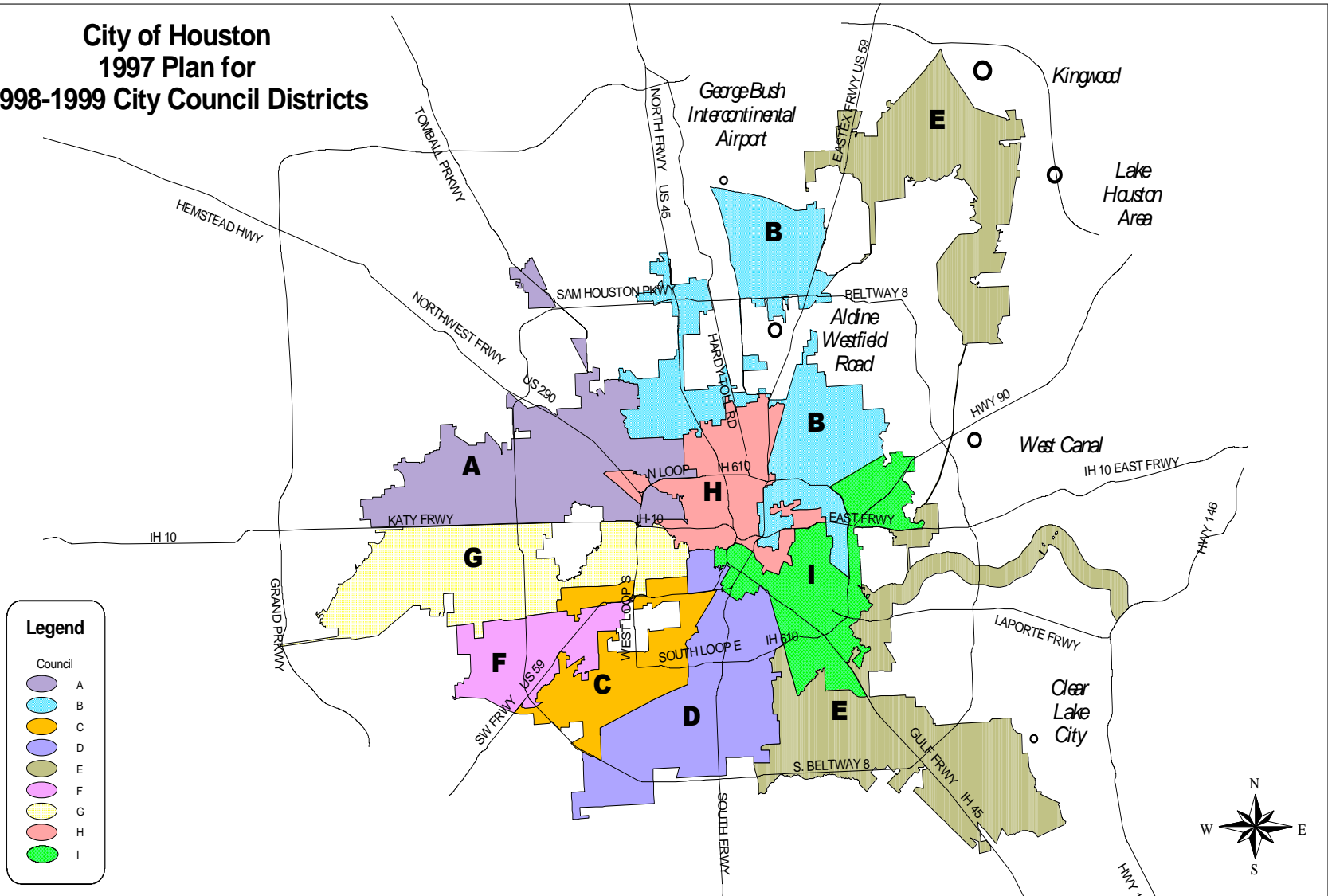


Central Harris County
PLANC746

Texas Legislative Council
11-13-98
Source: T.L.C.

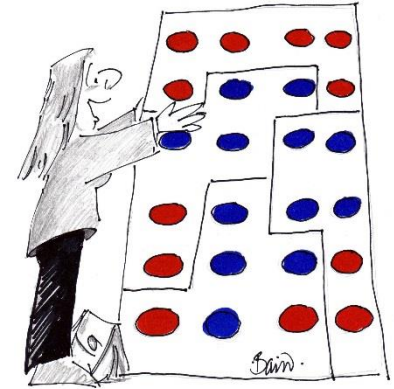
Chen v. City of Houston Districts: District E

City of Houston
1997 Plan for
1998-1999 City Council Districts



How to Redistrict - Steps

- Preparation of Local Data
- Initial Assessment
- Establishing Policies and Guidelines
- Traditional Districting Criteria
- Rebalancing to correct the population imbalance
- Develop Redistricting Plan(s)
- Present Illustrative Plans
- Public Participation
- Adopt New Plan



Preparation of Data Prior to Release of Census Redistricting Data

- Gather incumbent locations
 - Preserve the will of the voters
 - Provide consistency in the incumbent-constituent relationship
- Gather facilities, current election precincts, polling locations, existing boundaries and prison locations, if applicable
 - Determination of prison facilities; include or exclude

Initial Assessment

- Examine the 2021 census data summed within the existing boundaries
 - Review Census 2021 geography in comparison to client data
 - Determine whether districts are unbalanced
 - Identify basic minority population distribution
 - Prepare report on findings to initiate the process

Deviation

For a legislative plan (i.e., drawn by the governmental entity)

- Deviation of less than 10% is de minimis and fails to make out a prima facie claim of unconstitutionality
- Deviation exceeding 10% is prima facie invalid and must be justified
- Deviation is measured between the single member district with the **greatest population** and the district with the **least population**.

Establishing Criteria and Guidelines

- Identify and adopt practical and legal criteria to be followed during the redistricting process.
- Notify and coordinate with other jurisdictions regarding the process.

Adopt Criteria

- Identifiable boundaries
- Maintaining communities of interest & neighborhoods
- Using whole voting precincts, if possible
- Basing plan on existing districts
- Adopting districts of relatively equal size
- Drawing districts that are compact and contiguous
- Keeping existing representatives in their districts
- Narrowly tailoring plan to comply with the VRA

Redistricting Guidelines

Proposed Plans:

- Submitted in writing and be legible
- Show all demographic and racial categories based upon the 2020 Census
- Plans should redistrict the entire jurisdiction
- Plans should conform to the criteria
- Comments must be submitted in writing and be legible
- Comments and proposed plans must include person's full name and home address and provide a phone number and, if available, an email address
- All comments and proposed plans must be submitted to the governing body by the close of the public hearing

Rebalance Districts and Develop Redistricting Plans

- **Designation of Illustrative Plan(s)
and begin public review**

Designate one or more draft initial plans to become illustrative plans for the purposes of public review and solicitation of public comment.

Rebalance Districts and Develop Redistricting Plans

Public Participation

- **Post Illustrative Plan(s) to Website and Begin Citizen Plan Submission Period**
 - Post illustrative plan(s) to website and other media for the purpose of gathering public comment and accepting any citizen submitted alternative plans for review.
- **Conduct One or More Public Hearings**
 - Conduct one or more public hearings on an illustrative plan to gain further input from the public.

Rebalance Districts and Develop Redistricting Plans

Adopt Plan

- **Consider and Adopt Redistricting Plan**
 - Meet to consider plan(s) and adopt a redistricting plan for implementation.
 - Reflect public input
 - Reflect criteria identified by the City Council
- **Preparation for Plan Implementation and Election**
 - Establish transition process to new redistricting plan; prepare to call an election; notify all government entities of the redistricting plan; review any voter coding questions; prepare final maps for posting.

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