



The Ins & Outs of Gerrymandering: A Two-Edged Sword

by John Patrick Quigley

Gerrymandering:

"The practice of dividing a geographical area into electoral districts, often of highly irregular shape, to give one political party an unfair advantage, by diluting an opposition's voting strength."

Black's Law Dictionary

Gerrymandering is often thought to be undemocratic, but it's not necessarily so. It can be used to give representation to a group of citizens, spread out geographically, that reflects their numbers. But it's a two-edged sword. Assume a voting district where a minority has a population percentage of only 40%, adjacent to a district where the same minority has a population percentage of 80%. If 20% of the latter population were moved into the former, it would give that population majority status in both districts. But moving that 20% out of the second district might weaken the group's voting strength in that district (and not increase its strength in the first district), if their voting didn't reflect their numbers. That could be the result of inhabitants who couldn't vote, such as children and felons, or those who just didn't bother to vote, particularly voters that were transferred into a more geographically remote district.

It's interesting to note that the above analysis would not apply to elections of the U.S. President and Senators, and state-wide offices, such as Governor. It would apply to U. S. and state Representatives. It appears that the Plaintiffs in a recent Supreme Court case initially alleged state-wide bias, which might impact elections for the former officers. (The ruling reflects an unusual 5-4 split in favor of the Progressive Justices, thanks to Justice Kennedy, arguably the most Progressive of the Conservative Justices, joining an opinion by Justice Breyer, arguably the most Conservative of the Progressive Justices).

In the referenced case, the Alabama Constitution had required the legislature to reapportion electoral districts after each decennial census. The reapportionment was challenged with separate actions in Federal District Court by the Alabama Legislative Black Caucus (the Black Caucus), and the Alabama Democratic Conference (the Democratic Conference), claiming that the reapportionment was made with unlawful racial bias.

The actions were consolidated by a three judge panel, ruling 2 to 1, that the Conference lacked standing to make its gerrymandering claims, and that both plaintiffs had failed to prove an unlawful racial bias. *Alabama Legislative Black Caucus v. Alabama and Alabama Democratic Conference v. Alabama*, 989 F.Supp.2d 1227 (2013), KF105.F452 & Westlaw

(Continued on page 2)

The One-Ring Cell Phone Scam by Elizabeth Harmon

The Federal Communications Commission, the Better Business Bureau, and various major wireless carriers, among others, have sent out warnings regarding a "one-ring" cell phone scam that is aimed at some cell phone customers. These scam artists use auto-dialers to call targeted wireless numbers around the country disconnecting after only one or two rings. The phone number that appears on the screen or in the "missed call" log resemble a normal domestic phone number but is actually international in origin. The calls often originate in the Caribbean in places such as Jamaica, the Dominican Republic, the British Virgin Islands, and Antigua but could also be based in Belarus, Latvia, or Canada.

Whether it is because the receiving party believes that a valid call has been ended prematurely or they simply want to know who is calling, the aim is to have the wireless owner call them back. Once a customer dials that missed number, they are connected to an international number and are charged international rates per minute, plus could also be billed extra for an international call fee just for making the connection. These fees may show up on the cell phone bill listed as premium services. A caller, who feels the need to return the call, may be able to protect themselves from getting swindled by using a



(Continued on page 3)

Gerrymandering*(Continued from page 1)*

That judgment was vacated by the U. S. Supreme Court, and the case was remanded for further proceedings consistent with its rulings, listed below in its Synopsis. *Alabama Legislative Black Caucus v. Alabama* and *Alabama Democratic Conference v. Alabama*, 135 S.Ct. 1257 (2015), Westlaw.

Racial Gerrymandering Claims Must Be Made and Judged on a District-by-District Basis

All Justices were in agreement on this, and that Plaintiffs could have presented district-specific claims more clearly (*Id.*, p. 1267). But the majority (Justice Breyer, joined by Justices Kennedy, Ginsburg, Sotomayor, and Kagan) ruled that state-wide evidence could be used to support district-specific claims, and doing so did not waive rights to make said claims.

The dissent (Justice Scalia, joined by Chief Justice Roberts, and Justices Thomas and Alito), felt that Plaintiffs should not be allowed to reform their claims. The dissent cites the Appellants opening brief: "Appellants challenge Alabama's race-based statewide redistricting policy, not the design of any one particular election district.", and its reply brief: "[I]f the Court were to apply a predominant motive and narrow-tailoring analysis, that analysis should be applied to the state's policy, not to the design of each particular district one-by-one." The dissent then asks: "How could anything be clearer?" (*Id.* p. 1278.).

The District Court Should Have Allowed the Conference to Present Evidence of Its Associational Standing

"At the very least, the Conference reasonably believed that, in the absence of a state challenge or court request for more detailed information, it need not provide additional information such as a specific membership list" (*Id.*, p. 1260).

An Equal Population Goal in Reapportionment of Voting Districts Does not Disprove Racial Bias

"In other words, if the legislature must place 1,000 or so additional voters in a particular district in order to achieve an equal population goal, the "preponderance" question concerns which voters the legislature decides to choose, and specifically whether the legislature predominantly uses race as opposed to other "traditional" factors when doing so." (*Id.*, p. 1271). [Note: Other traditional factors that can be used to disprove a preponderance of racial bias include compactness, contiguity, respect for political subdivisions or communities defined by actual shared interests, ...incumbency protection, and political affiliation (*Id.*, p. 1270). In other words, only Gerrymandering on a racial basis is unconstitutional?]

The Voting Rights Act Does Not Require Maintaining a Particular Numerical Percentage of Minorities when Redistricting

As an alternative rationale, the state argued that the reapportioned districts would satisfy strict scrutiny because they are narrowly tailored to satisfy a compelling state interest to satisfy the Voting Rights Act, by maintaining existing minority percentages in the election districts. But that Act only prohibits diminutions of a minority group's proportionate strength to elect its candidates of choice.


Conclusion

Perhaps we can summarize as follows. Given a goal of maintaining equal populations in voting districts during redistricting, the question is whether racial classifications predominate over other factors (such as protecting incumbents). If they do, legislatures must have a strong basis in evidence and good cause to believe that racial classifications are required to satisfy the requirement of Section 5 of the Voting Rights Act, which "prohibits only those diminutions of a minority groups proportionate strength that strip the group within a district of its existing ability to elect its candidates of choice." (*Id.*, p. 1272-1273).

However, the majority acknowledged that the standards are complex, often requiring evaluation of voting behavior, and that judges may disagree about the proper outcome. The law cannot trap legislatures by condemning (1) unconstitutional racial gerrymandering for too many minorities in a district, or (2) violation of the Voting Act for too few. Further, the law only requires that legislatures have a strong basis in evidence, and good reasons to believe racial classifications are required to comply with a statute, even if a court does not find that the classifications are necessary. Finally, the Court did not decide whether continued compliance with Section 5 of the Voting Rights Act remains a continuing state interest, given this Court's decision in *Shelby County v. Holder*, 133 S.Ct.2612 (reported in our September 2013 Transcript: "The Voting Rights Act " www.ocpl.org/transcript/transcript_2013_09.pdf). The foregoing comments in this paragraph are mostly dicta and may represent concessions for Justice Kennedy joining the Progressives.


In a separate dissent, Justice Thomas noted that the U. S. Department of Justice had originally approved Alabama's reapportionment, and observed that: "These consolidated cases are yet another installment in the Court's disastrous misadventure of the Court's voting rights jurisprudence." (*Id.*, p. 1281).

Additional References

For further adventures (or misadventures) of voting rights, from an Equal Protection perspective, see *Evenwel v. Abbott*, recently accepted for review by the Court. The issue is whether States, in apportioning state legislative districts, can use total populations, or must use voter populations. 

One-Ring Cell Phone Scam*(Continued from page 1)*

reverse-number or code-lookup website - such as mrnumber.com, whocalled.us, pipl.com or 800notes.com - that might be able to tell where the call originated from or provide other information.

If a caller has already fallen victim to one of these scams, the Federal Communications Commission suggests that the person contact their wireless carrier first and explain what has happened. However, if they cannot resolve the problem with the carrier, they can file a complaint with the FCC at www.fcc.gov/complaints. A complaint may also be filed by calling 1-888-225-5322 or faxing to 1-866-418-0232. 

Looking at the Web



by Mora Prestinary

Redistricting in California

en.wikipedia.org/wiki/Redistricting_in_California

The Redistricting Majority Project

www.redistrictingmajorityproject.com/?page_id=136

National Consumer Law Center

www.nclc.org/for-consumers/for-consumers.html

State Water Resources Control Board, Laws & Regulation

www.waterboards.ca.gov/laws_regulations/

Executive Order B-29-15: Proclamation of a State of Emergency to exist due to severe drought conditions.
gov.ca.gov/docs/4.1.15_Executive_Order.pdf

National Do Not Call Registry

www.donotcall.gov/

Cell Phones and the Do Not Call Registry

consumer.ftc.gov/articles/0133-cell-phones-and-do-not-call-registry

Telephone Consumer Protection Act 47 U.S.C. § 227

transition.fcc.gov/cgb/policy/TCPA-Rules.pdf

Intelius-Reverse Phone Lookup

www.intelius.com/

PeopleFinders- Reverse Phone Lookup

www.peoplefinders.com/

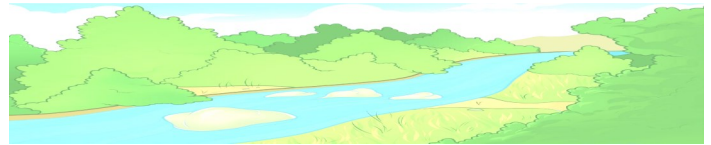
And:

The Redistricting Game, from USC Annenberg Center
redistrictinggame.org/

"Designed to educate, engage, and empower citizens around the issue of political redistricting"



On Display, Floor 3:



by Elizabeth Harmon

Some old, some new, some borrowed (*Cadillac Desert* DVD on loan from CSUF), and definitely some blue, the new book display features a variety of topics all about California water. From the Colorado River Compact (*Water and the West*), U.S. Government documents on water conditions in California, legal issues and water law, to the story of William Mulholland's aqueduct and the rapid growth of Los Angeles there is "water, water everywhere" in the library resources on display.



WHAT'S GOING ON

Expanded Database



The Library's Public Computer Network has full-text publications from the National Consumer Law Center through their database.

The publications include the subject areas of Consumer Litigation (Collection Actions: Defending Consumers & Their Assets), Credit & Banking (Mortgage Lending: Loan Origination, Preemption, & Litigation), Debtor Rights (Repossessions, Student Loan Law), and Deception & Warranties (Automobile Fraud: Odometer, Salvage, & Lemon Laundering Fraud, Title Abuses, & Yo-Yo Sales). Results can be printed/downloaded to a flash drive.

There is also a free bibliography for all NCLC publications titles, print or digital, in the Library

The Library in the News!



We were pleased to see a mention of the Library in the article by Alyssa Duranty, Orange County Register writer, from the May 23, 2015 issue of the OC Register.

In the article titled "La Habra man gets a pardon after fighting for two decades" (www.ocregister.com/articles/-662880-.html) it is reported that a Mr. Irvin of La Habra used the resources of this Library to research how to apply for a pardon from the Governor of California. Mr. Irvin received that pardon in April of this year.

The legal resources available in the Orange County Public Law Library are not available at any other single location that is open to the public within the County of Orange. We congratulate Mr. Irvin and, as always, we're happy to help people access legal information..



Where can I obtain copies of vital records?



There are several sources:

California Dept. of Public Health:
Birth, Death, Fetal Death, Still Birth & Marriage Certificates
www.cdph.ca.gov/certlic/birthdeathmar/Pages/default.aspx

USA.gov: Replace Your Vital Documents
www.usa.gov/Citizen/Topics/Family-Issues/Vital-Docs.shtml

Centers for Disease Control: Where to Write for Vital Records - Covers all 50 states, District of Columbia, American Territories, and Foreign or High Seas Events:
www.cdc.gov/nchs/w2w.htm

Orange County Public Law Library

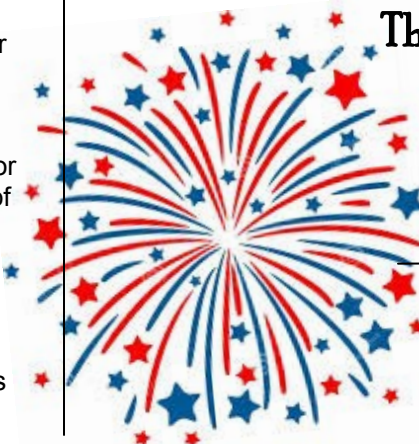
Monday-Thursday	8 am - 6 pm
Friday	8 am - 5 pm
Saturday	9 am - 5 pm

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www.ocpll.org

The Library is Closed:

Friday July 3
Saturday July 4
Saturday September 5
Monday September 7



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