



## Senate Counsel Treatises

## Use of Racial Data in Redistricting

by

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This paper provides background information on the use of racial data in redistricting in order to assist the Minnesota Legislature's Subcommittee on Geographic Information Systems in deciding how to deal with racial data in its redistricting computer system.

### I. The Voting Rights Act

Section 2 of the Voting Rights Act of 1965, as amended in 1982 and interpreted in a series of court decisions, prohibits a state from enacting a redistricting plan that "results in the denial or abridgement of the right of any citizen of the United States to vote on account of race or color"<sup>(1)</sup> or because a person is "a member of a language minority group."<sup>(2)</sup> A "language minority group" is defined as "American Indian, Asian American, Alaskan Natives or of Spanish heritage."<sup>(3)</sup>

Note that the law does not prohibit only plans whose drafters intended to discriminate based on race. It prohibits any plan that will result in discrimination. A violation is established if, "based on the totality of the circumstances," the members of a racial or language minority group "have less opportunity that other members of the electorate to . . . elect representatives of their choice."<sup>(4)</sup>

To prove a violation, a plaintiff must first prove that the minority is "sufficiently large and geographically compact to constitute a majority in a single-member district."<sup>(5)</sup> In other words, if the number of minority voters is less than needed to elect a representative if all were in the same district and all voted for the same candidate, the minority group can not prevail on a claim that the plan violates § 2. On the other hand, where plaintiffs can show that the members of a racial or language minority group are sufficiently numerous and geographically compact to constitute a majority in a single-member district, that the minority usually votes for the same candidates, that bloc voting by the White majority usually defeats the minority's preferred candidate, and that the state has a history of discriminating against that minority group, the minority group can demand that a district be drawn that the minority's preferred candidate has a fair chance to win. So, whether a "majority-minority district" is required depends first on a count of the racial and language minority population in the area where a district may be drawn.

Beyond determining whether the plan drafters must draw a majority-minority district, data on race is necessary in order to determine whether a proper majority-minority district has been drawn. In order to have a fair chance to win the district, the minority group must be given, by the plan drafters, an effective voting majority. How much of a majority that is depends again on "the totality of the circumstances." In an ordinary case, that may be a simple majority of the voting-age population in the district. Again, in order to know whether the minority population is a majority of the voting-age population, the plan drafters must be able to count the residents of the proposed district by race.

### II. The Office of Management and Budget

In order to facilitate enforcement of the Voting Rights Act, the Census Bureau asks each person counted to identify their race and whether they are of Spanish heritage. For the 1990 census, the racial categories were:

White, Black, American Indian, Asian or Pacific Islander, and Some Other Race. Persons of Spanish heritage might be of any race. For the 2000 census, the Office of Management and Budget required that persons be given the opportunity to select more than one race when answering the census. It also separated Native Hawaiians and other Pacific Islanders from the Asians, so there are now six race categories instead of five.

When we consider those who report being of more than one race, the categories multiply rapidly. The Census Bureau currently plans to report racial data in 63 categories, covering those who report being in up to all six racial groups. Double that for Spanish heritage and double it again for those under and over 18. Double it again if we receive both the raw head count and an adjusted count. That is 504 potential categories of population count *for each block!*

In order to reduce the categories of racial data to a manageable number, the Office of Management and Budget on March 9, 2000, issued [OMB Bulletin No. 00-02](#), "Guidance on Aggregation and Allocation of Data on Race for Use in Civil Rights Monitoring and Enforcement." The bulletin suggests that agencies track:

1. the five single-race categories;
2. the four most commonly reported combinations of two races: American Indian or Alaska Native *and* White; Asian *and* White; Black or African American *and* White; and American Indian or Alaska Native *and* Black or African American;
3. any other combinations of two or more races that represent more than one percent of the population in a jurisdiction; and
4. the balance reporting more than one race.

The bulletin also suggests rules for allocating multiple race responses when a claim is brought by one racial minority. The rules generally require that the complaining minority be allocated all those who have indicated they are any part of that racial minority.

To provide further guidance to states and local governments that must submit their redistricting plans for preclearance before they may take effect, the U.S. Department of Justice on January 18, 2001, issued a notice called "Guidance Concerning Redistricting and Retrogression Under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c." [66 Fed. Reg. 5412](#). The guidance says that, in most of the usual cases, the Department will analyze only eight categories of race data:

Hispanic

Non-Hispanic White

Non-Hispanic Black plus Non-Hispanic Black and White

Non-Hispanic Asian plus Non-Hispanic Asian and White

Non-Hispanic American Indian plus Non-Hispanic American Indian and White

Non-Hispanic Pacific Islander plus Non-Hispanic Pacific Islander and White

Non-Hispanic Some Other Race plus Non-Hispanic Some Other Race and White

Non-Hispanic Other multiple-race (where more than one minority race is listed)

The total of these racial groups will add to 100 percent. Where there is an unusual number of people checking multiple race categories, some additional categories may be needed. There may be circumstances in which the total population by race is important, but most redistricting decisions that consider race will be based on the voting age population, that is, persons age 18 and over.

### III. The Subcommittee's Redistricting System

The Subcommittee's redistricting system will include all 504 categories of racial and Spanish heritage data, actual and adjusted. A user will be able to select the combinations of data desired and to display that data on a map using numbers, thematic shading, or pie charts. The user will also be able to generate reports showing

population counts by race for any of the categories or combinations of categories, such as those required by the Justice Department.



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### **Endnotes**

1. [42 U.S.C. § 1973](#)(a).
2. [42 U.S.C. § 1973b](#)(f)(2).
3. [42 U.S.C. § 1973l](#)(c)(3).
4. [42 U.S.C. § 1973](#) (b).
5. *Thornburg v. Gingles*, [478 U.S. 30, 50](#) (1986).