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March 25, 2011

Mr. Mark Williams, School Board President
Members of the School Board
Austin Independent School District
1111 West 6th Street, Room A250
Austin, TX 78703-5399

RE: Initial Assessment considering 2010 Census data

Dear President and Members of the School Board:

This is the Initial Assessment letter for the Austin Independent School District. Our review of the recently released 2010 Census population and demographic data for the District shows that the trustee districts are sufficiently out of population balance that you should redistrict. At the first available opportunity, we are prepared to meet with the School Board to review the Initial Assessment and to advise the Board on how to proceed to redistrict the trustee districts to bring them into balance for use in the 2012 election cycle.

This letter presents a brief overview of basic redistricting principles to assist you in preparing for our presentation on the assessment, which presentation will include a presentation and discussion of the adoption of redistricting guidelines and criteria, scheduled for Board action April 25, 2011. These are matters that should be addressed early in the redistricting process to enable us to proceed efficiently. We will be working with you to develop the appropriate language for your adoption of redistricting criteria and guidelines.

There are four basic legal principles that govern the redistricting process: (i) the “one person-one vote” (equal population) principle; (ii) Section 5 of the Voting Rights Act, requiring preclearance and applying a “retrogression” standard to minority group populations in specific districts; (iii) the non-discrimination standard of Section 2 of the Voting Rights Act; and (iv) the *Shaw v. Reno* limitations on the use of race as a factor in redistricting. These principles are discussed in detail in the attachments to this letter, which we urge you to read and review carefully. In addition, we discuss the District’s obligation to review and adjust trustee districts.

The “One Person – One Vote” Requirement: Why You Should Redistrict

The “one person-one vote” requirement of the United States Constitution requires that members of an elected body be chosen from districts of substantially equal population and applies to single-member trustee districts of school boards. Exact equality of population is not required, but a “total maximum deviation” of no more than ten percent in total population between the most populated and the least populated trustee district based on the most recent census should be

achieved. This maximum deviation of ten percent constitutes a rebuttable presumption of compliance with the one person-one vote requirement. If a school district's trustee districts do not fall within the ten percent maximum deviation, the school district is at substantial risk of being sued for violation of one person-one vote standards, and it would have little if any defense to the suit.

The population and demographics of all of the current trustee districts are presented here and in Attachment A.

District	Persons	Deviation	Hispanic % of Total Population	Non- Hispanic Anglo % of Total Population	Non- Hispanic Black % of Total Population	Non- Hispanic Asian % of Total Population	Non- Hispanic Other % of Total Population
1	79,959	-11.98%	52.90%	18.86%	25.54%	1.05%	1.64%
2	89,056	-1.97%	68.81%	20.91%	7.32%	1.37%	1.59%
3	81,071	-10.76%	51.03%	32.71%	8.98%	5.32%	1.95%
4	79,935	-12.01%	12.03%	77.28%	2.27%	6.19%	2.23%
5	88,111	-3.01%	14.87%	69.43%	3.14%	9.96%	2.60%
6	101,670	11.91%	38.78%	52.53%	4.36%	2.11%	2.22%
7	116,129	27.83%	21.72%	67.10%	2.84%	5.93%	2.41%
Totals	635,931		36.53%	49.46%	7.32%	4.58%	2.11%
Ideal Size = 635,931 / 7 = 90,847 per district. Total Maximum Deviation = 27.83% - (-12.01%) = 39.84% The total population of the District was adjusted by removing 182 persons located in blocks identified as the Texas State Schools for the Deaf and Blind Some percentages may be subject to rounding error.							

The tables in Attachment A show that the total population of the entire District on April 1, 2010, was 635,931 persons. This represents an increase in population from 572,408 persons on April 1, 2000, or approximately 11.09 percent. The ideal trustee district should now contain 90,847 persons (total population / 7 districts).

Trustee District 7 has the largest population, which is approximately 27.83 percent above the size of the ideal district. District 4 has the smallest population, which is approximately 12.01 percent below the size of the ideal district. The total maximum deviation between the seven existing trustee districts, therefore, is 39.84 percent. This total maximum deviation exceeds the standard of ten percent that generally has been recognized by the courts as the maximum permissible deviation. Accordingly, the District should redistrict to bring its trustee districts within the ten percent range permitted by law.

Preclearance under Section 5 of the Voting Rights Act: The District's retrogression benchmark plan

The Voting Rights Act of 1965 has applied to Texas since November 1, 1972. It requires that all political subdivisions within the state, including Texas school districts submit any proposed voting changes to the Department of Justice ("DOJ") for preclearance prior to implementation by the District in any election. DOJ examines any submitted changes to ensure that the change does not have a "retrogressive" effect on protected minority voters in the political subdivision. Redistricting of trustee districts is a voting change requiring preclearance from DOJ.

In determining if a new plan is retrogressive under Section 5 of the Voting Rights Act (see Attachment C for a discussion of retrogression and Section 5 requirements), DOJ will compare the newly adopted plan to the current plan considered in the context of the 2010 Census data. This is the retrogression "benchmark," which is shown in Attachment A for the District. DOJ will review any changes made to the current plan by comparing minority voting strength under the proposed new plan as a whole to that under the benchmark current plan considered as a whole.

The tables identify several trustee districts in which a minority group population constitutes a numerical majority of that district's total population, or alternatively as districts in which no single racial or ethnic group has a numerical majority of the population, but in which Hispanic and African-American minority groups together constitute a numerical majority of the population of those districts. I will review these districts with the Board at the presentation on the Initial Assessment. Changes to these districts should be carefully considered in the context of their current racial and ethnic makeup to avoid retrogression.

Section 2 of the Voting Rights Act: Avoiding discrimination claims

The data in the Population Tables in Attachment A as well as the data in the maps in Attachment B, which show the geographic distribution of the primary minority groups in the District, will also be important in assessing the potential for Voting Rights Act Section 2 liability. (See Attachment C for a discussion of Section 2.)

In redistricting the trustee districts, the District will need to be aware of the legal standards that apply. We will review these principles in detail with the Board at the presentation on the Initial Assessment. The process we have outlined for the redistricting process and the policies and procedures that we are recommending the Board adopt will ensure that the Board adheres to these important legal principles and that the rights of protected minority voters in the political subdivision are accorded due weight and consideration.

Shaw v Reno: Additional equal protection considerations

In the past, local government redistricting had to satisfy both the Section 5 non-retrogression standard and the Section 2 non-discrimination standard, but, until the 2000 round of redistricting, the *Shaw v. Reno* standard had not come into play. In order to comply with sections 2 and 5, the Board must consider race when drawing districts. *Shaw*, however, limits how and when race can be a

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factor in the districting decisions. Thus, local governments must walk a legal tightrope, where the competing legal standards must all be met. The *Shaw v. Reno* standard requires that there be a showing that (1) the race-based factors were used in furtherance of a "compelling state interest" and (2) their application be "narrowly tailored," that is, they must be used only to the minimum extent necessary to accomplish the compelling state interest. We will guide the Board through proper application of this principle.

At the initial assessment presentation we will recommend certain guidelines that the Board may wish to adopt to ensure fair and adequate public participation in the redistricting process. We will also recommend certain criteria that the Board may require all redistricting plans to follow. These criteria generally track the legal principles that the courts and DOJ have found to be appropriate elements in sound redistricting plans. Once redistricting guidelines and criteria are adopted and the Board gives instructions about how it would like plans to be developed considering this Initial Assessment and the applicable legal standards, we can begin to assist the District in the development of plans for your consideration.

We hope this Initial Assessment discussion is helpful to you and that it will guide the District's Board as it executes the redistricting process. We look forward to meeting with the School Board to review the assessment and to answer any questions you may have concerning any aspect of that process. Please feel free to call me in the interim as we prepare for the presentation and let me know if there is any additional information you may require.

Sincerely,

A handwritten signature in dark ink, appearing to read 'D. Méndez', with a stylized flourish at the end.

David Méndez

Encl.

ATTACHMENT A
INITIAL ASSESSMENT POPULATION TABLES

Austin ISD

Initial Assessment - Benchmark

2010 Census Total and Voting Age Population

District	Persons	Deviation	Hispanic % of Total Population	Non-Hispanic Anglo % of Total Population	Non-Hispanic Black % of Total Population	Non-Hispanic Asian % of Total Population	Non-Hispanic Other % of Total Population
1	79,959	-11.98%	52.90%	18.86%	25.54%	1.05%	1.64%
2	89,056	-1.97%	68.81%	20.91%	7.32%	1.37%	1.59%
3	81,071	-10.76%	51.03%	32.71%	8.98%	5.32%	1.95%
4	79,935	-12.01%	12.03%	77.28%	2.27%	6.19%	2.23%
5	88,111	-3.01%	14.87%	69.43%	3.14%	9.96%	2.60%
6	101,670	11.91%	38.78%	52.53%	4.36%	2.11%	2.22%
7	116,129	27.83%	21.72%	67.10%	2.84%	5.93%	2.41%
Totals	635,931		36.53%	49.46%	7.32%	4.58%	2.11%

Ideal Size = 635,931 / 7 = 90,847 per district.

Total Maximum Deviation = 27.83% - (-12.01%) = 39.84%

The total population of the District was adjusted by removing 182 persons located in blocks identified as the Texas State Schools for the Deaf and Blind

Some percentages may be subject to rounding error.

District	Total VAP*		Hispanic % of Total VAP	Non-Hispanic Anglo % of Total VAP	Non-Hispanic Black % of Total VAP	Non-Hispanic Asian % of Total VAP	Non-Hispanic Other % of Total VAP
1	57,281		46.15%	24.07%	27.05%	1.23%	1.50%
2	64,458		62.91%	26.52%	7.45%	1.58%	1.54%
3	60,879		44.98%	38.65%	8.81%	5.81%	1.74%
4	66,980		11.16%	78.52%	2.24%	6.28%	1.80%
5	79,687		14.27%	69.62%	3.17%	10.55%	2.38%
6	81,753		33.66%	58.13%	4.04%	2.20%	1.97%
7	87,984		19.45%	70.22%	2.82%	5.72%	1.80%
Totals	499,022		31.63%	54.47%	7.11%	4.95%	1.84%

*Voting Age Population

The total population of the District was adjusted by removing 182 persons located in blocks identified as the Texas State Schools for the Deaf and Blind

Some percentages may be subject to rounding error.

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Austin ISD
Initial Assessment - Benchmark
 2010 Census Total and Voting Age Population

District	Persons	Ideal Size	Deviation	Hispanic	% of Total Hispanic Population	Anglo	% of Total Anglo Population	Black	% of Total Black Population	American Indian	% of Total American Indian Population	Asian	% of Total Asian Population	Hawaiian-Pacific Islander	% of Total Hawaiian-Pacific Islander Population	Other	% of Total Other Population	Two or More	% of Total Two or More Population
1	79,959	90,847	-11.98%	42,296	52.90%	15,082	18.86%	20,425	25.54%	152	0.19%	841	1.05%	37	0.05%	107	0.13%	1,019	1.27%
2	89,056	90,847	-1.97%	61,283	68.81%	18,619	20.91%	6,520	7.32%	242	0.27%	1,216	1.37%	44	0.05%	181	0.20%	951	1.07%
3	81,071	90,847	-10.76%	41,374	51.03%	26,520	32.71%	7,282	8.98%	161	0.20%	4,314	5.32%	31	0.04%	151	0.19%	1,238	1.53%
4	79,935	90,847	-12.01%	9,618	12.03%	61,771	77.28%	1,814	2.27%	199	0.25%	4,947	6.19%	34	0.04%	111	0.14%	1,441	1.80%
5	88,111	90,847	-3.01%	13,102	14.87%	61,177	69.43%	2,763	3.14%	205	0.23%	8,780	9.96%	34	0.04%	156	0.18%	1,894	2.15%
6	101,670	90,847	11.91%	39,425	38.78%	53,409	52.53%	4,433	4.36%	325	0.32%	2,147	2.11%	41	0.04%	178	0.18%	1,712	1.68%
7	116,129	90,847	27.83%	25,229	21.72%	77,923	67.10%	3,296	2.84%	333	0.29%	6,885	5.93%	93	0.08%	246	0.21%	2,124	1.83%
Totals	635,931			232,327	36.53%	314,501	49.46%	46,533	7.32%	1,617	0.25%	29,130	4.58%	314	0.05%	1,130	0.18%	10,379	1.63%

Ideal Size = 635,931 / 7 = 90,847 per district.

The total population of the District was adjusted by removing 182 persons located in blocks identified as the Texas State Schools for the Deaf and Blind

Some percentages may be subject to rounding error.

District	Total VAP*		Hispanic VAP	% of Total Hispanic VAP	Anglo VAP	% of Total Anglo VAP	Black VAP	% of Total Black VAP	American Indian VAP	% of Total American Indian VAP	Asian VAP	% of Total Asian VAP	Hawaiian-Pacific Islander VAP	% of Total Hawaiian-Pacific Islander VAP	Other VAP	% of Total Other VAP	Two or More VAP	% of Total Two or More VAP
1	57,281		26,435	46.15%	13,787	24.07%	15,493	27.05%	127	0.22%	707	1.23%	30	0.05%	71	0.12%	631	1.10%
2	64,458		40,549	62.91%	17,096	26.52%	4,801	7.45%	201	0.31%	1,020	1.58%	33	0.05%	106	0.16%	652	1.01%
3	60,879		27,381	44.98%	23,532	38.65%	5,365	8.81%	132	0.22%	3,540	5.81%	30	0.05%	100	0.16%	799	1.31%
4	66,980		7,475	11.16%	52,594	78.52%	1,503	2.24%	171	0.26%	4,204	6.28%	32	0.05%	85	0.13%	916	1.37%
5	79,687		11,375	14.27%	55,482	69.62%	2,530	3.17%	188	0.24%	8,406	10.55%	34	0.04%	130	0.16%	1,542	1.94%
6	81,753		27,517	33.66%	47,526	58.13%	3,300	4.04%	284	0.35%	1,801	2.20%	36	0.04%	139	0.17%	1,150	1.41%
7	87,984		17,110	19.45%	61,781	70.22%	2,482	2.82%	264	0.30%	5,029	5.72%	68	0.08%	149	0.17%	1,101	1.25%
Totals	499,022		157,842	31.63%	271,798	54.47%	35,474	7.11%	1,367	0.27%	24,707	4.95%	263	0.05%	780	0.16%	6,791	1.36%

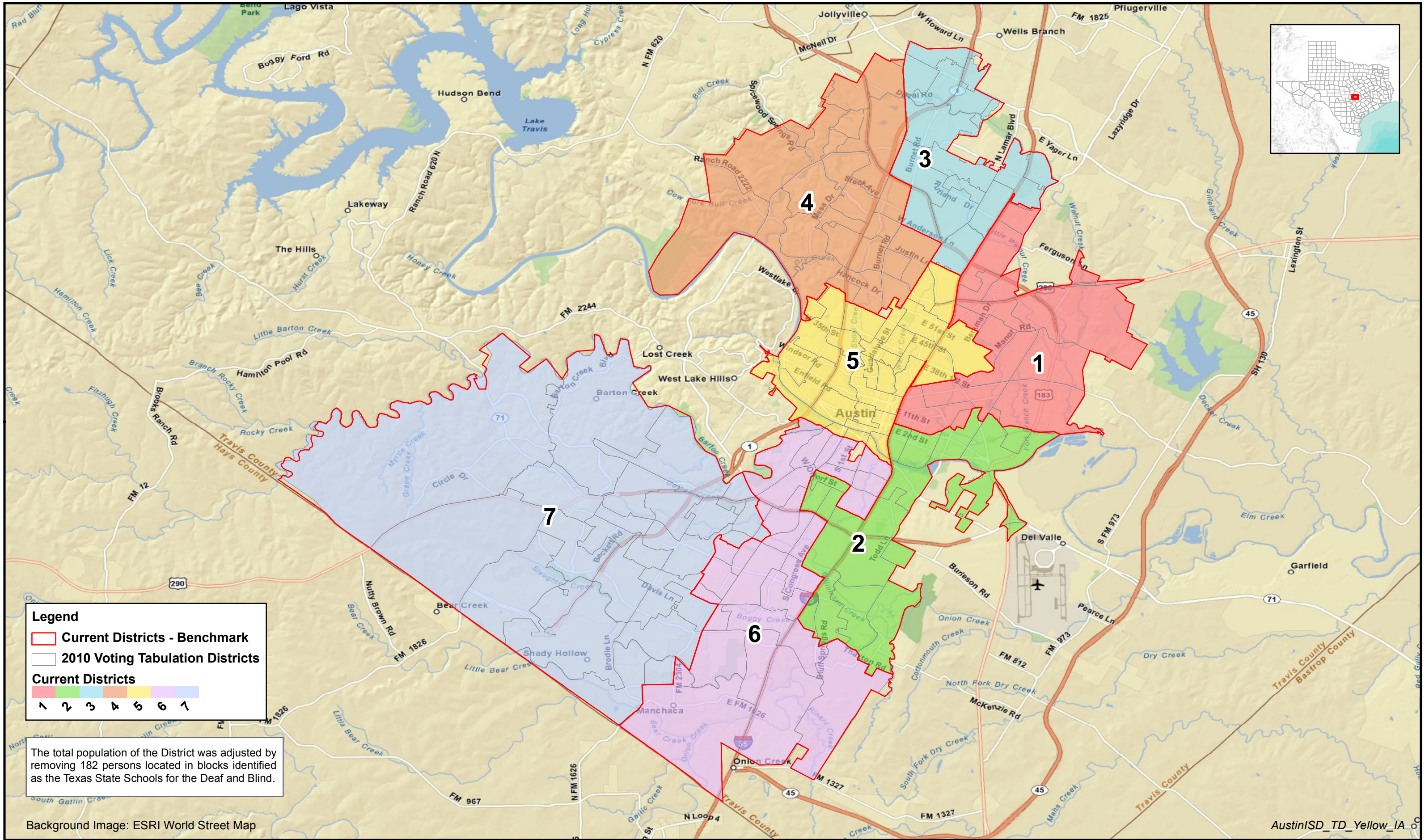
*Voting Age Population

The total population of the District was adjusted by removing 182 persons located in blocks identified as the Texas State Schools for the Deaf and Blind

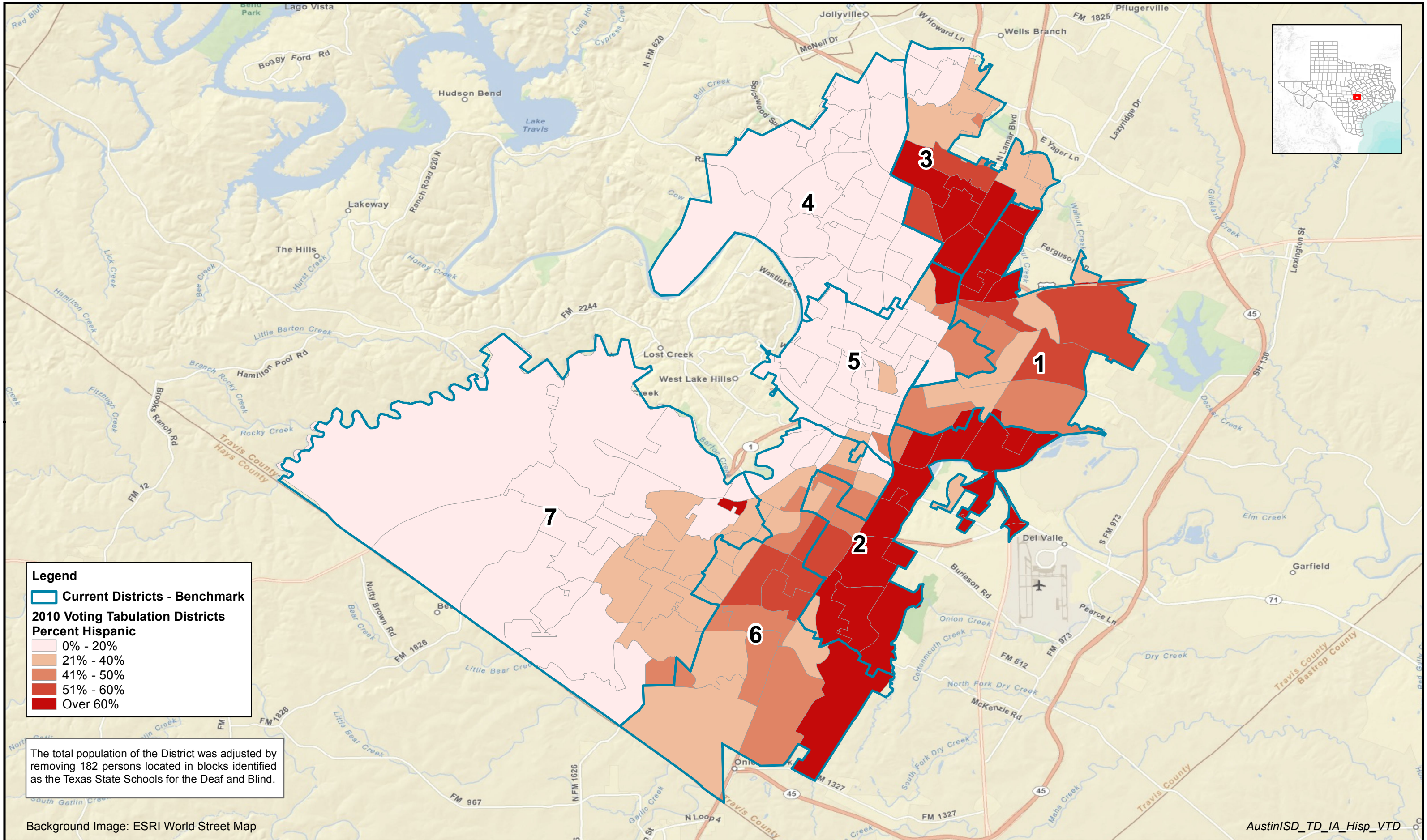
Some percentages may be subject to rounding error.

ATTACHMENT B

MAPS

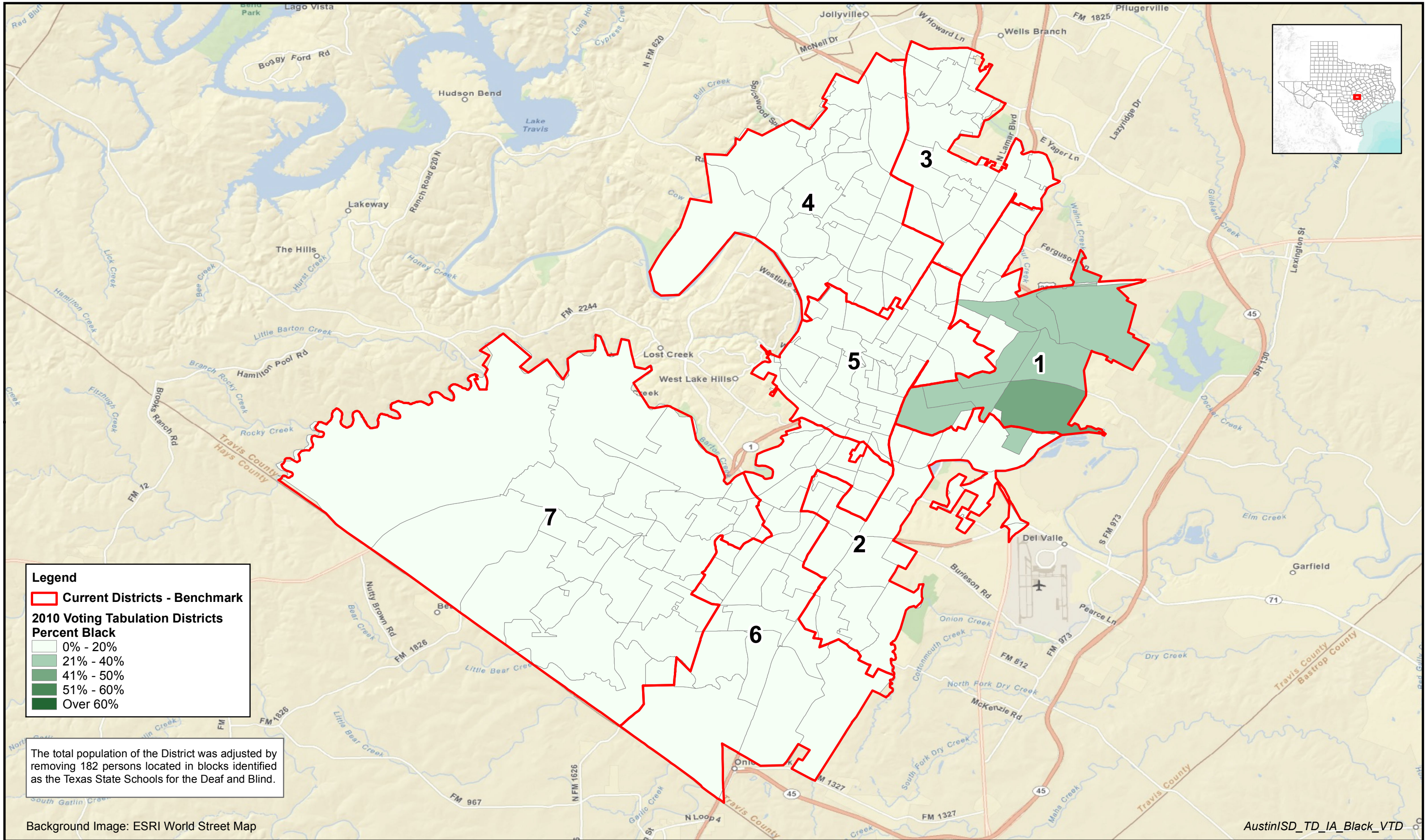


Austin ISD Current Districts



Austin ISD Current Districts Percent Hispanic by 2010 VTD





Austin ISD Current Districts Percent Black by 2010 VTD

ATTACHMENT C
LEGAL PRINCIPLES

LEGAL PRINCIPLES GOVERNING THE REDISTRICTING PROCESS

There are four basic legal principles that govern the redistricting process: (i) the “one person-one vote” (equal population) principle; (ii) Section 5 of the Voting Rights Act, requiring preclearance and applying a “retrogression” standard to minority group populations in specific districts; (iii) the non-discrimination standard of Section 2 of the Voting Rights Act; and (iv) the *Shaw v. Reno* limitations on the use of race as a factor in redistricting.

The terminology of redistricting is very specialized and includes terms that may not be familiar, so we have included as Attachment D to this Initial Assessment letter a brief glossary of many of the commonly-used redistricting terms.

The “One Person – One Vote” Requirement: Why You Redistrict

The “one person, one vote” requirement of the United States Constitution requires that members of an elected body be drawn from districts of substantially equal population. This Fourteenth Amendment Equal Protection Clause requirement applies to the single-member districts of “legislative” bodies such as school boards and other entities with single-member districts such as commissioners courts and city councils .

Exact equality of population is not required for local political subdivisions. However, they should strive to create districts that have a total population deviation of no more than 10 percent between their most populated district and the least populated district. This 10 percent deviation is usually referred to as the “total maximum deviation.” It is measured against the “ideal” or target population for the school district based on the most recent census. The 10% standard is a rebuttable presumption of compliance with the one person-one vote requirement.

A school board is therefore required to determine whether the populations of its single-member districts (including school board single-member trustee districts) are within this 10 percent balance based on 2010 Census population data. If the population deviation among the districts exceeds the permissible 10 percent total maximum deviation, the school district must redistrict, that is, redraw the boundaries of the individual districts so that the total populations of all the new districts are within the permissible 10 percent limit. A hypothetical example of how deviation is calculated is given in Attachment E.

The Department of Justice (DOJ) is the federal agency charged with reviewing and approving changes in election law, such as redistricting, under Section 5 of the Voting Rights Act. DOJ will use the Census Bureau’s recently released population data for the 2010 Census in its analysis of redistricting plans – the so-called “PL 94-171” data. Although several types of population data are provided in the PL 94-171 files, redistricting typically is based upon total population.

Official census data should be used unless the school district can show that better data exists. The court cases that have dealt with the question have made it clear that the showing

required to justify use of data other than census data is a very high one, impossibly high at a time so close to the release of new census data. As a practical matter, therefore, we recommend that school districts use the 2010 Census data in their redistricting processes. We have based the Initial Assessment on PL 94-171 total population data; the relevant data are summarized in Attachment A.

In the redistricting process, the school board will use a broad spectrum of demographic and administrative information to accomplish the rebalancing of population required by the one person-one vote principle. The charts provided with this report not only show the total population of the school district but also give breakdowns of population by various racial and ethnic categories for the entity as a whole and also for each single-member district.

Census geography

These district population data are themselves derived from population data based on smaller geographical units. The Census Bureau divides geography into much smaller units called "census blocks." In urban areas, these correspond roughly to city blocks. In more rural areas, census blocks may be quite large. Census blocks are also aggregated into larger sets called "voting tabulation districts" or "VTDs" which often correspond to county election precincts.

For reasons concerning reducing the potential for *Shaw v. Reno*-type liability, discussed below, we recommend using VTDs as the redistricting building blocks where and to the extent feasible. In many school districts this may not be feasible.

Census racial and ethnic categories

For the 2010 Census, the Census Bureau recognized 126 racial and ethnic categories and collected and reported data based on all of them. Many of these categories include very few persons, however, and will not therefore have a significant impact on the redistricting process. The charts that accompany this report include only eight racial and ethnic categories that were consolidated from the larger set. All of the population of the entity is represented in these charts. These eight categories are the ones most likely to be important in the redistricting process.

The 2010 Census listed six racial categories. Individuals were able to choose a single race or any combination of races that might apply. Thus, there are potentially 63 different racial combinations that might occur. Additionally, the Census asks persons to designate whether they are or are not Hispanic. When the Hispanic status response is overlaid on the different possible racial responses, there are 126 possible different combinations. The Census tabulates each one separately.

If this information is to be usable, it must be combined into a smaller number of categories (of course, having the same overall population total). For purposes of determining the preclearance retrogression benchmark, discussed below, DOJ indicated in a guidance

document issued on January 18, 2001, that it would use the following rules for determining Hispanic and race population numbers from the 2010 Census data, for purposes of performing the retrogression analysis:

- persons who selected “Hispanic” are categorized as Hispanic, no matter what race or races they have designated; all others will be classified as non-Hispanic of one or more races; *e.g.*, Hispanic-White and Hispanic-African-American are both classified as Hispanic;
- persons who did not select “Hispanic” and who designated a single race will be classified as members of that race; *e.g.*, White, African-American, Asian, etc.
- persons who did not select “Hispanic” and who designated themselves as belonging to a single minority race and as White will be classified as members of the minority race; *e.g.*, Asian+White will be classified as Asian; and
- persons who did not select “Hispanic” and who designated themselves as belonging to more than one minority race will be classified as “other multiple race;” *e.g.*, White+Asian+Hawaiian or African-American+Asian. This category is expected to be small.

We will also consider data called “voting age population” (or “VAP”) data. It is similarly classified in eight racial and ethnic categories. This information is provided for the limited purpose of addressing some of the specific legal inquiries under the Voting Rights Act that are discussed below. Voting age population is the Census Bureau’s count of persons who identified themselves as being eighteen years of age or older at the time the census was taken (*i.e.*, as of April 1, 2010).

In addition to this population and demographic data, the school district will have access to additional information that may bear on the redistricting process, such as facility locations, registered voter information, incumbent residence addresses, etc.

Section 5 Of The Voting Rights Act – Preclearance

Preclearance required

Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, requires all “covered jurisdictions” identified in the applicable Department of Justice (DOJ) regulations to “preclear” any changes to voting standards, practices, or procedures before they may become legally effective. Texas is a “covered jurisdiction,” so all local governments in the state, as well as the State itself, are required to preclear any voting change, including their redistricting plan. This includes changes to any single-member district lines (including school board trustee district lines). Section 5 applies not only to changes in district lines but also to changes in election precincts and in the location of polling places.

Preclearance may be accomplished in either of two ways: by submitting the redistricting plan to DOJ for its examination and preclearance, or by obtaining a declaratory judgment from a special three-judge federal district court in the District of Columbia. Submission to DOJ is by far the most common, and usually substantially faster and less expensive, method chosen for obtaining preclearance.

Discriminatory Purpose and Retrogressive Effect are the preclearance standards

Section 5 review involves a two-pronged analysis. DOJ must determine if the plan has either a discriminatory *purpose* or a retrogressive *effect*. In the 2001 round of redistricting, the purpose inquiry was limited to whether the plan had a retrogressive purpose. The 2006 amendments to the Voting Rights Act; however, expanded the analysis to reach *any* discriminatory purpose. In determining whether a plan was adopted with a discriminatory intent DOJ may look at evidence such as (1) the impact of the plan, (2) the historical background of the decision, (3) the sequence of events leading up to the decision, (4) whether the decision departs, either procedurally or substantively, from the normal practice, and (5) contemporaneous statements and viewpoints of the decision-makers.

The second prong of the analysis involves retrogressive effect. The issue there is whether the net effect of the plan would be to unduly reduce minority voters' ability to elect their preferred candidates when the new proposed plan is compared to the prior benchmark plan. In other words, does the new districting plan result in an unnecessarily large reduction of the minority group's ability to elect?

DOJ's retrogression benchmark

To determine if retrogression exists, it is necessary to compare a proposed plan against a benchmark. Typically, that benchmark is the local subdivision's *prior* district boundary plan, but considered using the *new* 2010 Census population and demographic data. DOJ will compare the proposed new redistricting plan as a whole to the benchmark plan as a whole in conducting its retrogression analysis.

Voting age population data ("VAP") is the Census Bureau's count of persons who identified themselves as being eighteen years of age or older at the time the census was taken (*i.e.*, as of April 1, 2010). It is a measure of the number of people old enough to vote if they are otherwise eligible to do so. Since the retrogression inquiry focuses on whether a minority group's overall voting strength has been reduced, and VAP is a more direct measure of voting strength than total population, VAP should be considered in the retrogression analysis, not just total population. Citizen voting age population ("CVAP") data may also be important but may need to be developed.

In combination with a balanced consideration of the other applicable redistricting criteria, the school board will need to consider the effects of any changes to the benchmark measures that its proposed plan produces.

Because of changes in population and the need to comply with one person-one vote principles, sometimes it may be impossible to avoid drawing a retrogressive plan. If an entity submits a retrogressive redistricting plan, the burden will be on the school district to show DOJ that a less retrogressive plan could not reasonably have been drawn. *Guidance Concerning Redistricting Under Section 5 of the Voting Rights Act*, 42 U.S.C. 1973c, 76 Fed. Reg. 7470 (2011). That should be a consideration in the redistricting process, while still considering the other redistricting criteria that are adopted.

Section 2 Of The Voting Rights Act – No Discrimination Against Minority Groups

Section 2 of the Voting Rights Act forbids a voting standard, practice or procedure from having the effect of reducing the opportunity of members of a covered minority to participate in the political process and to elect representatives of their choice. In practical terms, this non-discrimination provision prohibits districting practices that, among other things, result in “packing” minorities into a single district in an effort to limit their voting strength. Also, “fracturing” or “cracking” minority populations into small groups in a number of districts, so that their overall voting strength is diminished, can be discrimination under Section 2. There is no magic number that designates the threshold of packing or cracking. Each plan must be judged on a case-by-case basis.

Although the Supreme Court has recently made clear that the Department of Justice may not consider Section 2 standards in determining whether to preclear a redistricting plan under Section 5, that does not mean that the school board should ignore Section 2 requirements. They apply to the redistricting plan regardless of whether DOJ may legally consider them in the preclearance analysis. Failure to consider them adequately could risk litigation brought by a member of a protected minority group, or even by DOJ.

The Supreme Court has defined the minimum requirements for a minority plaintiff to bring a Section 2 lawsuit. There is a three-pronged legal test the minority plaintiff must satisfy: a showing that (1) the minority group’s voting age population is numerically large enough and geographically compact enough so that a district with a numerical majority of the minority group can be drawn (a “majority minority district”); (2) the minority group is politically cohesive, that is, it usually votes and acts politically in concert on major issues; and (3) there is “polarized voting” such that the Anglo majority usually votes to defeat candidates of the minority group’s preference. *Thornburg v. Gingles*, 478 U.S. 30 (1986). In the federal appellate Fifth Circuit, which includes Texas, the minority population to be considered is *citizen* voting age population. In certain cases, a minority group may assert that Section 2 requires that the school board draw a new majority minority district. The governing body must be sensitive to these Section 2 standards as it redistricts.

In considering changes to existing boundaries, a school district must be aware of the location of protected minority populations within its trustee districts for the purpose of ensuring that changes are not made that may be asserted to have resulted in “packing,” or in “fracturing” or “cracking” the minority population for purposes or having effects that are unlawful under Section 2. The thematic maps included in Attachment B depict the locations of Hispanic and African-American population concentrations by census block; they are

useful in addressing this issue. Voting age population (VAP) data is useful in measuring potential electoral strength of minority groups in individual districts.

**Shaw v. Reno Standards – Avoid Using Race
as the Predominant Redistricting Factor**

In the past, local government redistricting had to satisfy both the Section 5 non-retrogression standard and the Section 2 non-discrimination standard, but the *Shaw v. Reno* standard had not yet come into play. In this current round of redistricting, local governments have a harder task than they did in the past. The *Shaw* standard applies now as well as the Section 2 and Section 5 standards. While satisfying Section 5 and Section 2 standards require a local government to explicitly consider race to comply with these standards, *Shaw* places strict limits on the manner and degree in which race may be a factor. In effect, therefore, local governments must walk a legal tightrope, where the competing legal standards must all be met.

In the *Shaw v. Reno* line of cases that began in 1993, the Supreme Court applied the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution to redistricting plans. Where racial considerations predominate in the redistricting process to the subordination of traditional (non-race-based) factors, the use of race-based factors is subject to the “strict scrutiny” test. To pass this test requires that there be a showing that (1) the race-based factors were used in furtherance of a “compelling state interest” and (2) their application be “narrowly tailored,” that is, they must be used only to the minimum extent necessary to accomplish the compelling state interest.

Complying with sections 2 and 5 are compelling state interests. Thus, the following principles emerge in the post-*Shaw* environment to guide the redistricting process:

- race may be considered;
- but race may not be the predominant factor in the redistricting process to the subordination of traditional redistricting principles;
- bizarrely shaped districts are not unconstitutional per se, but the bizarre shape may be evidence that race was the predominant consideration in the redistricting process;
- if race is the predominant consideration, the plan may still be constitutional if it is “narrowly tailored” to address compelling governmental interest such as compliance with the Voting Rights Act; and
- if a plan is narrowly tailored, it will use race no more than is necessary to address the compelling governmental interest.

The better course, if possible under the circumstances, is that racial considerations not predominate to the subordination of traditional redistricting criteria, so that the difficult strict scrutiny test is avoided.

Adherence to the *Shaw v. Reno* standards will be an important consideration during the redistricting process. One way to minimize the potential for *Shaw v. Reno* liability is to adopt redistricting criteria that include traditional redistricting principles and that do not elevate race-based factors to predominance.

Adoption of Redistricting Criteria

Adoption of appropriate redistricting criteria – and adherence to them during the redistricting process – is potentially critical to the ultimate defensibility of an adopted redistricting plan. Traditional redistricting criteria that the governing body might wish to consider adopting include, for example:

- use of identifiable boundaries
- using whole voting precincts, where possible and feasible; or, where not feasible, being sure that the plan lends itself to the creation of reasonable and efficient voting precincts
- maintaining communities of interest (*e.g.*, traditional neighborhoods)
- basing the new plan on existing districts;
- adopting districts of approximately equal size;
- drawing districts that are compact and contiguous;
- keeping existing representatives in their districts; and
- narrow tailoring to comply with the Voting Rights Act.

There may be other criteria that are appropriate for an individual entity's situation, but all criteria adopted should be carefully considered and then be followed to the greatest degree possible. A copy of a sample criteria adoption resolution is provided as Attachment F. You may wish to include additional criteria, or determine that one or more on that list are not appropriate. We will discuss with you appropriate criteria for your situation.

Requirements for Plans Submitted by the Public

You should also consider imposing the following requirements on any plans proposed by the public for your consideration: (1) Any plan submitted for consideration must be a complete plan, that is, it must be a plan that includes configurations for all trustee districts and not just a selected one or several. This is important because, although it may be possible to draw a particular district in a particular way if it is considered only by itself, that configuration may have unacceptable consequences on other districts and make it difficult or

impossible for an overall plan to comply with the applicable legal standards. (2) Any plan submitted for consideration must follow the adopted redistricting criteria.

ATTACHMENT D

GLOSSARY

GLOSSARY

Census blocks, census block groups, census VTDs, census tracts – Geographic areas of various sizes recommended by the states and used by the Census Bureau for the collection and presentation of data.

Citizen voting age population (CVAP) - Persons 18 and above who are citizens. This is a better measure of voting strength than VAP; however, the relevant citizenship data will need to be developed.

Compactness - Having the minimum distance between all parts of a constituency.

Contiguity - All parts of a district being connected at some point with the rest of the district.

Cracking - The fragmentation of a minority group among different districts so that it is a majority in none. Also known as “fracturing.”

Fracturing - *See* “cracking.”

Homogeneous district – A voting district with at least 90 percent population being of one minority group or of Anglo population.

Ideal population – The population that an ideal sized district would have for a given jurisdiction. Numerically, the ideal size is calculated by dividing the total population of the political subdivision by the number of seats in the legislative body.

Majority minority district- Term used by the courts for seats where an ethnic minority constitutes a numerical majority of the population.

One person, one vote – U.S. Constitutional standard articulated by the U.S. Supreme Court requiring that all legislative districts should be approximately equal in size.

Packing – A term used when one particular minority group is consolidated into one or a small number of districts, thus reducing its electoral influence in surrounding districts.

Partisan gerrymandering – The deliberate drawing of district boundaries to secure an advantage for one political party.

PL 94-171 – The Public Law that requires the Census Bureau to release population data for redistricting. The data must be released by April 1, 2011, is reported at the block level, and contains information on:

- Total population
- Voting age population
- By Race
- By Hispanic origin

Racial gerrymandering – The deliberate drawing of district boundaries to secure an advantage for one race.

Section 2 of the Voting Rights Act – The part of the federal Voting Rights Act that protects racial and language minorities from discrimination in voting practices by a state or other political subdivision.

Section 5 of the Voting Rights Act – The part of the federal Voting Rights Act that requires certain states and localities (called “covered jurisdictions”) to preclear all election law changes with the U.S. Department of Justice (“DOJ”) or the federal district court for the District of Columbia before those laws may take effect.

Shaw v. Reno -- The first in a line of federal court cases in which the U.S. Supreme Court held that the use of race as a dominant factor in redistricting was subject to a “strict scrutiny” test under the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution. This case and the line of Supreme Court cases that follows it establishes that race should not be used as a predominant redistricting consideration, but if it is, it must be used only to further a “compelling state interest” recognized by the courts and even then must be used only as minimally necessary to give effect to that compelling state interest (“narrow tailoring”).

Spanish surnamed registered voters (SSRV) – The Texas Secretary of State publishes voter registration numbers that show the percentage of registered voters who have Spanish surnames. It is helpful to measure Hispanic potential voting strength, although it is not exact.

Total population – The total number of persons in a geographic area. Total population is generally the measure used to determine if districts are balanced for one person, one vote purposes.

Voting age population (VAP) - The number of persons aged 18 and above. DOJ requires this to be shown in section 5 submissions. It is used to measure potential voting strength. For example, a district may have 50 percent Hispanic total population but only 45 percent Hispanic voting age population.

Voter tabulation district (VTD) – A voting precinct drawn using census geography. In most instances, especially in urban areas, VTDs and voting precincts will be the same. In rural areas, it is more likely they will not be identical.

ATTACHMENT E

HYPOTHETICAL POPULATION DEVIATION CALCULATION

Hypothetical Population Deviation Calculation

Consider a hypothetical political subdivision with four districts and a total population of 40,000. The “ideal district” for this political subdivision would have a population of 10,000 (total population / number of districts). This is the target population for each district. The deviation of each district is measured against this ideal size.

Suppose the latest population data reveals that the largest district, District A, has 11,000 inhabitants. The deviation of District A from the ideal is thus 1000 persons, or 10 percent. Suppose also that the smallest district, District D, has 8000 inhabitants; it is underpopulated by 2000 persons compared to the ideal size. It thus has a deviation of –20 percent compared to the ideal size. The *maximum total deviation* is thus 30 percent. Since this is greater than the 10 percent range typically allowed by the courts for one person-one vote purposes, this hypothetical subdivision must redistrict in order to bring its maximum total deviation to within the legally permissible limits.

The following table illustrates this analysis:

<u>District</u>	<u>Ideal district</u>	<u>District total pop.</u>	<u>Difference</u>	<u>Deviation</u>
A	10,000	11,000	1000	+ 10.0 percent
B	10,000	10,750	750	+ 7.5 percent
C	10,000	10,250	250	+ 2.5 percent
D	10,000	8,000	- 2000	- 20.0 percent
Totals:	40,000	40,000	net= 0	net= 0 percent

Total maximum deviation = difference between most populous and least populous districts = 10 percent + 20 percent = 30 percent.

ATTACHMENT F

ILLUSTRATIVE REDISTRICTING CRITERIA RESOLUTION

BOARD RESOLUTION

THE STATE OF TEXAS §
 §
THE COUNTY OF TRAVIS §

GUIDELINES FOR PERSONS SUBMITTING SPECIFIC REDISTRICTING PROPOSALS AND PROVIDING COMMENTS

WHEREAS, the Austin Independent School District Board of Trustees (“Austin ISD” or “District”) has certain responsibilities for redistricting under federal and state law including but not limited to Amendments 14 and 15 to the United States Constitution, U.S.C.A. (West 2006) and the Voting Rights Act, 42 U.S.C.A. § 1973 c (West 2010); Article 5, Section 18 of the Texas Constitution (Vernon 2007); and Tex. Gov’t Code Ann. §§ 2058.001 and 2058.002 (Vernon 2008); and

WHEREAS, it is necessary to provide for the orderly consideration and evaluation of redistricting plans which may come before the District; and

WHEREAS, these guidelines relate to persons who have specific redistricting plans they wish the District to consider; and

WHEREAS, the District welcomes any comments relevant to the redistricting process;

NOW, THEREFORE, BE IT RESOLVED, that in order to make sure that any plan that might be submitted is of maximum assistance to the District in its decision making process, the District hereby sets the following guidelines to be followed by each person submitting a redistricting plan for consideration:

1. Proposed plans must be submitted in writing and be legible. If a plan is submitted orally, there is significant opportunity for misunderstanding, and it is possible that errors may be made in analyzing it. The District wants to be sure that all proposals are fully and accurately considered.
2. Any plan must show the total population and voting age population for Blacks, Hispanics, Asians, and Anglo/other for each proposed district based on the 2010 Census Data. If a plan is submitted without a population breakdown, the District may not have sufficient information to give it full consideration.
3. Plans should redistrict the entire District. The District, of course, will be considering the effect of any plan on the entire District. Also, the District is

subject to the Voting Rights Act, which protects various racial and language minorities. Thus, as a matter of federal law, the District will be required to consider the effect of any proposal on multiple racial and ethnic groups. If a plan does not redistrict the entire District, it may be impossible for the District to assess its impact on one or more protected minority groups.

4. Plans should conform to the criteria the District will be using in drawing the districts.
5. Comments must be submitted in writing and be legible, even if the person also makes the comments orally at a public hearing.
6. Persons providing comments and those submitting proposed plans must identify themselves by full name and home address and provide a phone number and, if available, an email address. The District may wish to follow up on such comments or obtain additional information about submitted plans.
7. All comments and proposed plans must be submitted to the District's Board of Trustees by the close of the public hearing.

BE IT SO ORDERED.

Adopted on this _____ day of _____, 2011.

AUSTIN INDEPENDENT SCHOOL DISTRICT
BOARD OF TRUSTEES

By: _____
Mark Williams
President of the Board

ATTEST:

Lori Moya
Board Secretary

BOARD RESOLUTION

THE STATE OF TEXAS §
§
THE COUNTY OF TRAVIS §

AUSTIN INDEPENDENT SCHOOL DISTRICT RESOLUTION ADOPTING CRITERIA FOR USE IN REDISTRICTING 2011 PROCESS

WHEREAS, the Austin Independent School District Board of Trustees (“Austin ISD” or “District”) has certain responsibilities for redistricting under federal and state law including but not limited to Amendments 14 and 15 to the United States Constitution, U.S.C.A. (West 2006) and the Voting Rights Act, 42 U.S.C.A. § 1973 c (West 2010); Article 5, Section 18 of the Texas Constitution (Vernon 2007); and Tex. Gov’t Code Ann. §§ 2058.001 and 2058.002 (Vernon 2008); and

WHEREAS, on review of the 2010 Census data, it appears that a population imbalance exists requiring redistricting of Austin ISD’s trustee districts; and

WHEREAS, it is the intent of the District to comply with the Voting Rights Act and with all other relevant law, including *Shaw v. Reno* jurisprudence; and

WHEREAS, a set of established redistricting criteria will serve as a framework to guide the District in the consideration of districting plans; and

WHEREAS, established criteria will provide the District a means by which to evaluate and measure proposed plans; and

WHEREAS, redistricting criteria will assist the District in its efforts to comply with all applicable federal and state laws;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED, that the Austin Independent School District, in its adoption of a redistricting plan for trustee districts, will adhere to the following criteria to the greatest extent possible when drawing district boundaries:

1. Where possible, easily identifiable geographic boundaries should be followed.
2. Communities of interest should be maintained in a single district, where possible, and attempts should be made to avoid splitting neighborhoods.
3. To the extent possible, districts should be composed of whole voting precincts.

4. Although it is recognized that existing districts will have to be altered to reflect new population distribution, any districting plan should, to the extent possible, be based on existing districts.
5. Districts must be configured so that they are relatively equal in total population according to the 2010 federal census. In no event should the total deviation between the largest and the smallest district exceed ten percent.
6. The districts should be compact and composed of contiguous territory. Compactness may contain a functional, as well as a geographical dimension.
7. Consideration may be given to the preservation of incumbent-constituency relations by recognition of the residence of incumbents and their history in representing certain areas.
8. The plan should be narrowly tailored to avoid retrogression in the position of racial minorities and language minorities as defined in the Voting Rights Act with respect to their effective exercise of the electoral franchise.
9. The plan should not fragment a geographically compact minority community or pack minority voters in the presence of polarized voting so as to create liability under section 2 of the Voting Rights Act, 42 U.S.C. § 1973.

The District will review all plans in light of these criteria and will evaluate how well each plan conforms to the criteria.

Any plan submitted to the District by a citizen for its consideration should be a complete plan—*i.e.*, it should show the full number of trustee districts and should redistrict the entire District. The District may decline to consider any plan that is not a complete plan.

All plans submitted by citizens, as well as plans submitted by staff, consultants, and members of the District's Board of Trustees should conform to these criteria.

BE IT SO ORDERED.

Adopted on this _____ day of _____, 2011.

AUSTIN INDEPENDENT SCHOOL DISTRICT
BOARD OF TRUSTEES

By: _____
Mark Williams
President of the Board

ATTEST:

Lori Moya
Board Secretary