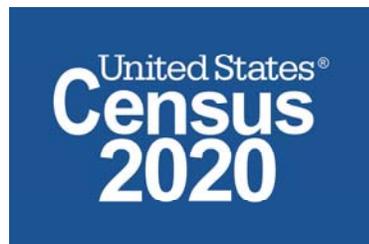


What You Need To Know Before, During, and Following Census

Professor Justin Levitt
LMU Loyola Law School

League of CA Cities
December 12, 2019

The Census is our picture of who we are



Representation

- Congress
- State legislature
- County comm'n
- City council
- School board

Funding

- \$115B federal funds to CA per year
- State

Information

- Polls / surveys
- Business location
- Economic trends

Controversy has people scared

2010 Census
This is the official form for all the people at this address.
It is quick and easy, and your answers are protected by law.

Start here
Use a blue or black pen.

The Census must count every person living in the United States on April 1, 2010. Before you answer Question 1, count the people living in this house, apartment, or mobile home using our guidelines.

The Census Bureau also conducts counts in institutions and other places, too.

The Census must also include people without a permanent place to live, too.

1. How many people were living or staying in this house, apartment, or mobile home on April 1, 2010?

2. Were there any additional people staying here, April 1, 2010 that you did not include in Question 1?

3. In this house, apartment, or mobile home —

4. What is your telephone number? Do not include an area code.

5. Please provide information for each person living here. Start with a person living here who owns or rents this house, apartment, or mobile home. If the owner or renter lives somewhere else, start with any adult living here. This will be Person 1.

6. What is Person 1's sex? Block J, ONE line.

7. What is Person 1's age and what is Person 1's date of birth?

8. Is Person 1 of Hispanic, Latino, or Spanish origin?

9. What is Person 1's race? Block J, one or more boxes.

10. Does Person 1 sometimes live or stay somewhere else?

- Phone number
- Own/rent home
- Name
- Sex
- Date of birth
- Hispanic origin
- Race

Citizenship



Loyola Law School
Loyola Marymount University
Los Angeles

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Citizenship

6-8% nationally,
10-14% in California



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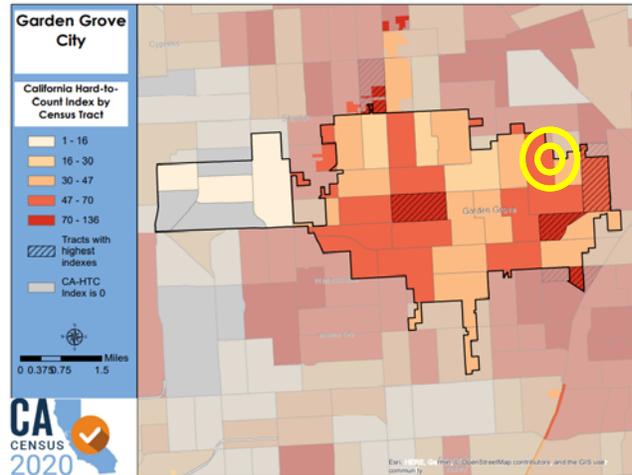


California invests heavily in outreach

\$187.2 million

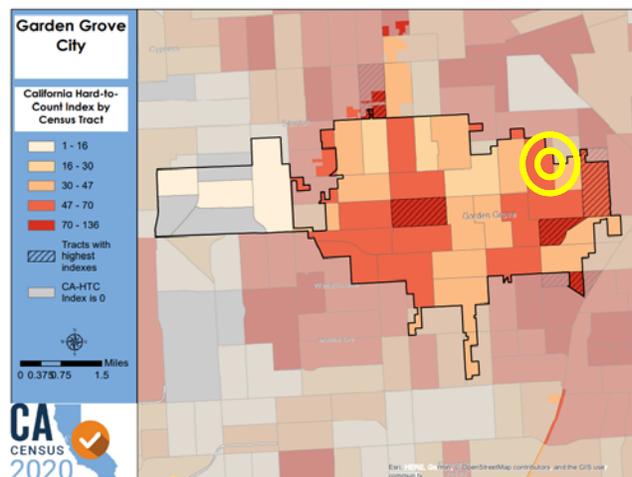


We know who's hard to count

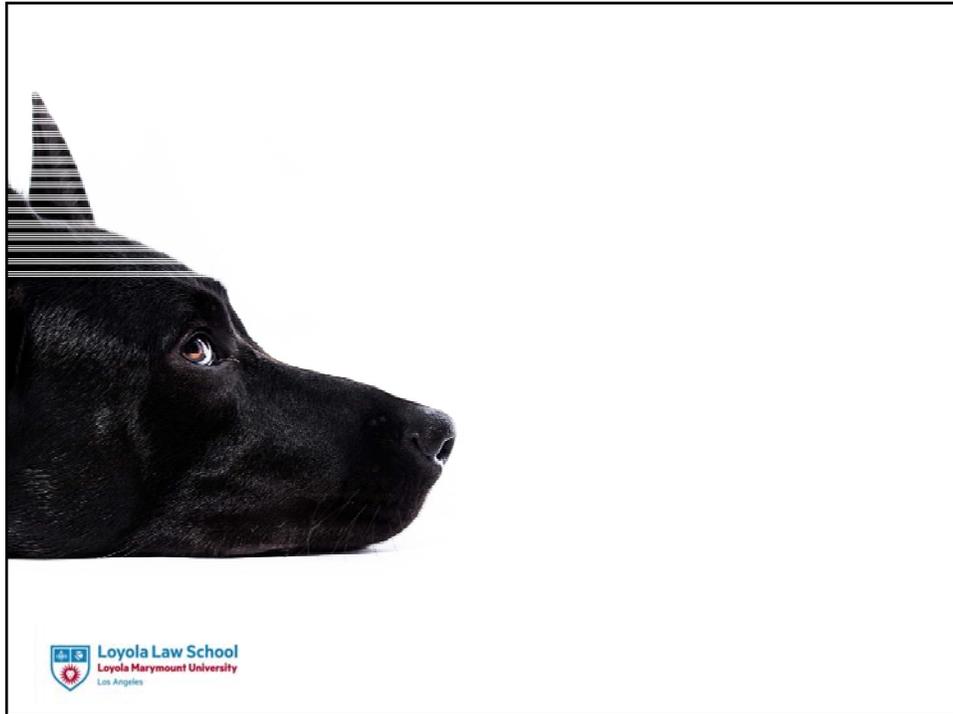


1. Foreign-born population
2. Multi-unit structures
3. Below 150% of poverty level

Support your Complete Count Committee



1. Foreign-born population
2. Multi-unit structures
3. Below 150% of poverty level



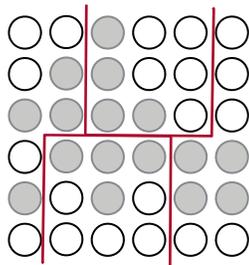
Redistricting follows the census

1990	Census
1991	Redistricting
2000	Census
2001	Redistricting
2010	Census
2011	Redistricting
2020	Census
2021	Redistricting

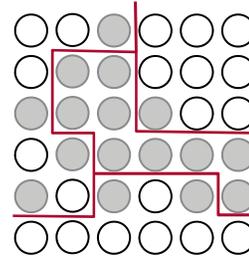
Race and ethnicity (federal rules)

Rule One

Don't set out to hurt voters based on their race or ethnicity



“Cracking”



“Packing”

- No matter if lines are “pretty”
- No matter the ultimate motive

Rule Two

Comply with the Voting Rights Act

Under certain conditions, jurisdictions may have the federal responsibility to ensure equitable electoral opportunity based on race or language minority status.

Voting Rights Act predicate

- Are there sizable, relatively concentrated minority communities?
- Do the minority communities have distinct electoral preferences?
- Did (or do) underrepresented minorities face discrimination?
- Can we design an electoral system to give minorities a fair shot?

Rule Three

Consider other factors at the same time

Race can only “predominate” in placing voters within or without a district if there’s a really good reason



Partisanship (federal rules)

Partisan gerrymandering in the U.S. Supreme Court

2004 “An excessive injection of politics” is unlawful



Litigation based on partisanship



MD Congress
MI all
NC all
OH Congress
WI State Assembly

FL all
PA Congress

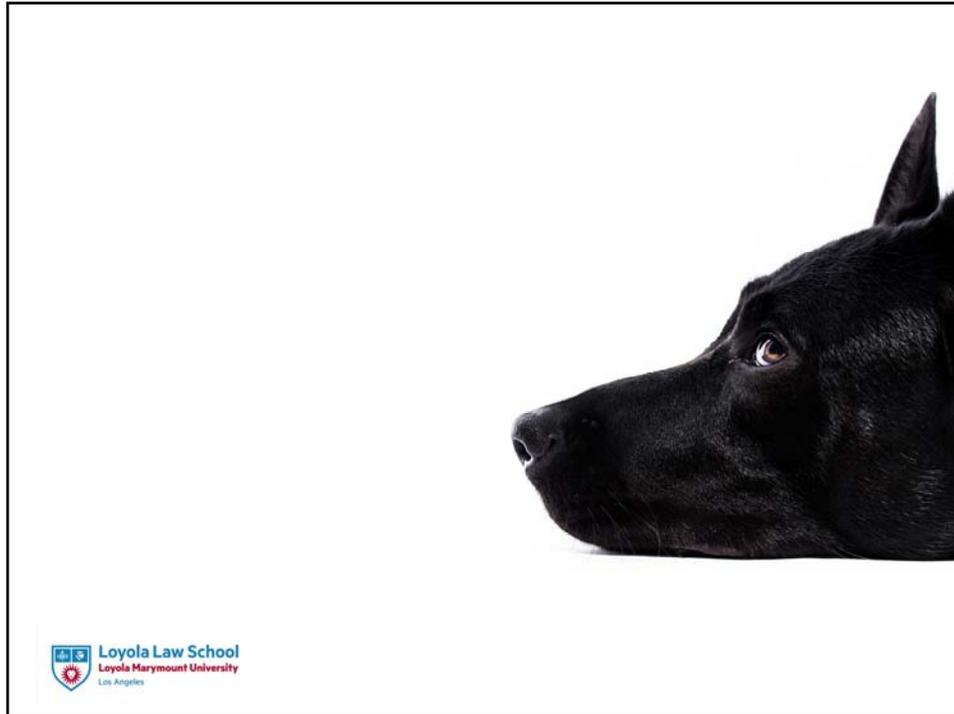
Rucho v. Common Cause
(U.S. Supreme Court, 2019)



(in the federal courts)

But ... AB849 creates a rule
under state law, for the state courts

“The council shall not adopt council district boundaries for the purpose of favoring or discriminating against a political party.”



Voting Rights Act predicate

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- Can we design an electoral system to give minorities a fair shot?

CVRA predicates

- ~~Are there sizable, relatively concentrated minority communities?~~
- Do the minority communities have distinct electoral preferences?
- Is the ability of minorities to elect or influence the outcome of an election impaired?

- Can we design an electoral system to give minorities a fair(er) shot?

No CVRA liability for districts

“An at-large method of election may not be imposed or applied in a manner that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution or the abridgment of the rights of voters who are members of a protected class”

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Many at-large jurisdictions moving to districts

There are alternatives

5 city council seats

- At-large plurality Each voter gets 5 votes to use on 5 candidates
- Districts Each voter gets 1 vote to use on 1 candidate

- Limited voting Each voter gets 1, 2, 3, or 4 votes
- Cumulative voting Each voter gets 5 votes, use 'em how you want
- Ranked-choice voting Each voter gets 1 vote, ranking all candidates

Considering the alternatives

- Size and growth rate of the minority community
- Dispersion or concentration of the minority community
- Relative rate of turnout (and likely persistence of those rates)
- Political organization of minority community
- Nature and cost of campaigning in the jurisdiction
- Capacity of the voting system to accommodate the change

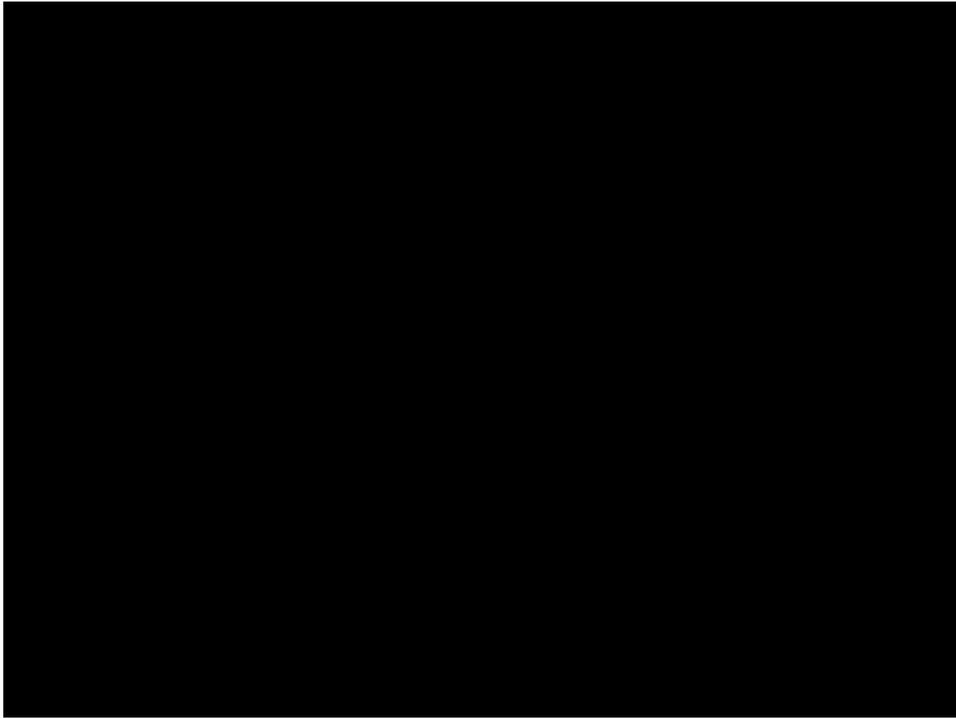
- Campaign incentives of the various systems

- Legal context for making the change



Justin Levitt

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Federal Voting Rights Act predicate – detail 1

Are there sizable, relatively concentrated minority communities?

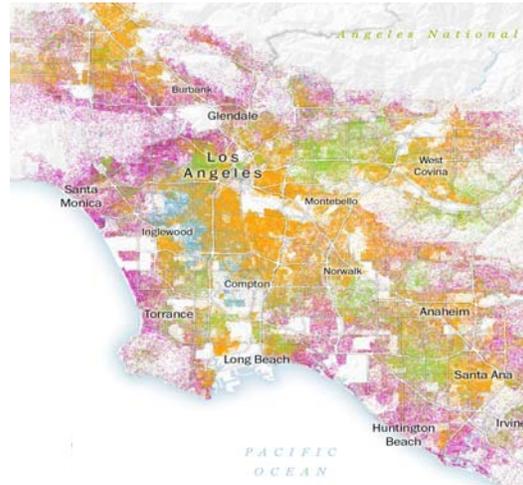
- > 50% of the electorate in a district-sized population

Federal Voting Rights Act predicate – detail 1

Are there sizable, relatively concentrated minority communities?

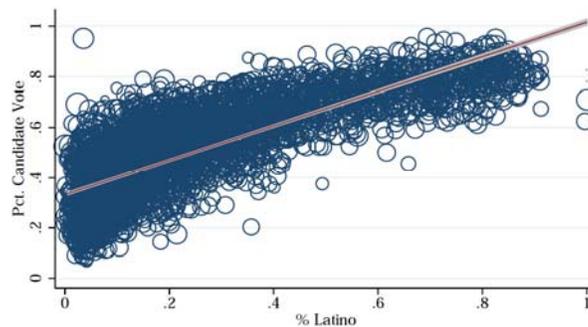
Los Angeles, 2016

NH White
Black
Hispanic
Asian



Federal Voting Rights Act predicate – detail 2

Do the minority communities have distinct electoral preferences?



Federal Voting Rights Act predicate – detail 3

Did (or do) underrepresented minorities face discrimination?

- rough overall proportionality in the jurisdiction
- history of voting-related discrimination
- extent of racially polarized voting
- extent of discriminatory voting practices or procedures
- exclusion of minorities from candidate slating
- extent to which minorities bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process
- extent to which minorities have been elected
- extent to which elected officials are unresponsive to the particularized needs of minorities
- etc.