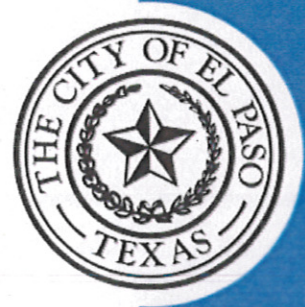


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DISTRICTING COMMISSION

Wednesday, November 30, 2011, 4:00 P.M.

City Council Chambers, 2nd Floor

City Hall Building, 2 Civic Center Plaza

AGENDA

1. Call to Order
2. Establish Quorum
3. Discussion and Action on:
 - a. Approval of Minutes: November 2, 2011 Meeting
 - b. Drafting and selection of Districting Plans
 - c. January 2012 meeting schedule
4. Discussion and Information:
 - a. Guidance Concerning Redistricting Under Section 5 Voting Rights Act
5. Call for Public Comment
6. Adjournment

EXECUTIVE SESSION

The Districting Commission of the City of El Paso may retire into EXECUTIVE SESSION pursuant to Section 3.5A of the El Paso City Charter and the Texas Government Code, Chapter 551, Subchapter D, to discuss any of the items on this agenda, consistent with the terms of the Open Meetings Act. The Districting Commission will return to open session to take any final action.

Section 551.071

CONSULTATION WITH ATTORNEY

Posted this 23rd day of November, 2011 at 9:00
Basement Bulletin Board, City Hall, 2 Civic Center Plaza, by David A. Coronado, Planning and Economic Development

Mayor
John F. Cook

City Council

District 1
Ann Morgan Lilly

District 2
Susie Byrd

District 3
Emma Acosta

District 4
Carl L. Robinson

District 5
Dr. Michiel R. Noe

District 6
Eddie Holguin Jr.

District 7
Steve Ortega

District 8
Courtney Carlisle Niland

City Manager
Joyce A. Wilson



Planning & Economic Development

2 Civic Center Plaza • El Paso, Texas 79901 • (915) 541-4670

WEDNESDAY, NOVEMBER 2, 2011, 5:30 P.M.
CITY COUNCIL CHAMBERS, 2ND FLOOR
CITY HALL BUILDING, 2 CIVIC CENTER PLAZA

Members Present: 8

Gene Finke (Chair), John Karlsruher, Gilbert A. Mendez, Jr., David Thackston, Oscar Silva, Rodolfo Troncoso, James L. Graham, Alisa Jorgensen

Members Absent: 1

Francisco X. Dominguez (Vice-Chair)

Vacancies: 0

Planning and Economic Development Staff:

David Coronado, Executive Secretary, Lead Planner; Todd Taylor, Planner; Mariano Soto, Planner, GIS; Marissa Monroy, Economic Development Coordinator

Other Staff Present:

Marie Taylor, Assistant City Attorney, City Attorney's Office; Sylvia Borunda-Firth, Assistant City Attorney, City Attorney's Office

1. Meeting Called to Order

Chair Finke called the meeting to order at 5:32 p.m.

2. Establish Quorum

Quorum established.

3. Discussion and action on:

a. Approval of Minutes: October 19, 2011 Meeting

Commissioner Jorgensen noted the designation of Vice-Chair belonged to Commissioner Dominguez. She requested Staff correct the minutes from *David Thackston* ~~(Vice-Chair)~~ to *Francisco X. Dominguez* (Vice-Chair).

Throughout the minutes, Chair Finke requested Staff correct the spelling of his name from "Fink" to "Finke".

MOTION:

Motion made by Commissioner Jorgensen, seconded by Commissioner Thackston and UNANIMOUSLY CARRIED TO APPROVE THE OCTOBER 19, 2011 MEETING MINUTES, AS CORRECTED.

NOT PRESENT FOR THE VOTE:

Commissioners Mendez, Troncoso and Graham

b. Drafting and selection of Districting Plans

Late arrivals:

Commissioner Troncoso, 5:41 p.m.

Commissioner Graham, 5:43 p.m.

Commissioner Mendez, 5:44 p.m.

Early departure:

Commissioner Karlsruher, 5:53 p.m.

Based on Commissioner's comments from the previous Districting Commission meeting, Chair Finke noted, Staff had prepared a new map, SD-4.

Mr. Coronado explained Staff and Commissioners discussed and commented on the SD-1 (Staff Draft), SD-2 and SD-3 At the previous meeting. From those comments, Staff prepared the SD-4 map. Mr. Coronado noted the deviation for SD-4 map is 15.5%, which is over the maximum allowed 10%.

COMMISSION COMMENTS

Chair Finke stated that District 8 had received the entire Five Points neighborhood. Commissioner Jorgensen stated that she agreed with the change in order to give the neighborhood one strong advocate.

Commissioner Mendez stated that he didn't initially see any problems with the eastern boundary of District 3. He then stated that he was concerned that the shift of District 3 to the east does have a significant effect and may not work. Commissioner Jorgensen pointed out that shift of boundaries unites the San Juan neighborhood, which had been split, into District 8, so it is a good shift.

Commissioner Thackston stated that the overall layout of the three eastern Districts looked better compared to the old plans that had a more north-south configuration and would be a better geographically for the Tigua. He also stated that the State Representative boundaries did cause a change in the Precinct that was discussed at the last meeting.

Chair Finke reminded the Commission that the deviation of SD-4 exceeded the maximum allowable.

Commissioner Thackston asked if the ethnic makeup of District 7 becoming 95% Hispanic is a problem. Commission Jorgensen also asked if that would be a problem. Ms. Taylor responded that it may be a concentration issue but that she did not think it was an

issue. Chair Finke stated that District 4 had the lowest Hispanic population. Commissioner Thackston stated that it still had a Hispanic majority to which Commissioner Graham asked Ms. Taylor if maintaining a Hispanic majority was okay. Ms. Taylor responded that any change will need to be analyzed and that an analysis will not be done until the next round if the plan does not exceed the maximum allowable deviation.

Ms. Taylor stated that overall District 1 needs to lose population and District 8 needs to take Precincts from District 1.

Chair Finke asked why SD-3 could not be adopted if it was under the maximum allowable deviation. Commissioner Graham responded that SD-3 cut up District 5, 6 and 7 in a way that was unacceptable and did not allow for eastward expansion. He then voiced his pleasure regarding the eastern configuration of SD-4.

Commissioner Graham stated that District 3, as a center District, will be forced to give and take based upon the City's growth and that the real problem was with District 1 and District 8. He then asked to hear from Commissioners Troncoso and Silva about the configuration of their Districts in SD-4 because the population was close to optimal.

Commissioner Silva stated that he would like District 3 to ensure it would place an importance on maintaining Eastwood Park if removed from District 5. He stated that he sees George Dieter as division and requested that Precincts 118 and 117 be added to District 5 and that Precincts 105 and 106 be moved to District 7 or 3. Commissioner Jorgensen stated that they should be given to District 3 in order to increase its population. Commissioner Mendez agreed with adding the Precincts to District 3.

Commissioner Jorgensen stated that District 8 may have to give Precincts back to District 3 and that District 1 needed to give to Districts 2 and 8. Commissioner Silva suggested that the Kern neighborhood be given to District 8. Commissioner Thackston asked if a Representative who no longer lived in their District would be able to serve out the remainder of their term to which Ms. Taylor responded in the affirmative.

Commissioner Graham asked to hear from Commissioner Troncoso about the eastern configuration. Commissioner Troncoso responded that District 6 was generally pleased with the configuration of SD-4 because it addressed the issues in regards to the Tigua. Commissioner Mendez requested that the Commission be open to changing some of the borders between District 3 and Districts 5, 6 and 7.

Commissioner Graham stated that the Commission needed to focus on the west. Chair Finke responded that District 1 and 8 are the most difficult. Commissioner Graham distributed copies of "Suggested Study (SD-5)" and elaborated on his ideas (copy attached to the minutes).

Chair Finke directed Staff to prepare a new map based on Commissioner Graham's handout and suggested Staff post the new map to the Districting Commission website. Staff will notify Commissioners when the map has been posted to the website.

4. **Call for Public Comment**

Ms. Taylor explained the City Attorney's Office had received a letter from a Mr. Artalejo and that Staff distributed copies of the letter in the Commissioner's packets. Chair Finke requested Staff attach Mr. Artalejo's letter to the minutes (copy of letter attached). Commissioner Thackston requested Staff contact Mr. Artalejo and invite him to come speak to the Commission at the next meeting.

The following members of the public commented:

1. Mr. Ray Rojas, citizen, gave a PowerPoint presentation and responded to comments and/or questions from Commissioners (copy of PowerPoint presentation attached); and
2. Mr. Ray Mancera, representing LULAC (League of United Latin American Citizens)

CANCELATION OF THE NOVEMBER 16TH DISTRICTING COMMISSION MEETING

Commissioner Graham noted he would not be available to attend the November 16th meeting. Commissioner Jorgensen reminded Commissioners that Commissioner Karlsruher had stated he also would not be able to attend that meeting.

Chair Finke suggested Commissioners cancel the November 16th Districting Commission meeting. Commissioner Thackston suggested convening the November 30th meeting at an earlier time. Staff will research whether or not the Council Chambers are available for the November 30th meeting, at an earlier time.

MOTION:

Motion made by Commissioner Graham, seconded by Commissioner Thackston and **UNANIMOUSLY CARRIED THAT COMMISSIONERS NOT MEET ON THE 16TH AND CONSIDER A MORE IN-DEPTH MEETING ON NOVEMBER 30TH. THE NOVEMBER 30TH MEETING TENTATIVELY SCHEDULED TO BEGIN AT 4:00 P.M.**

NOT PRESENT FOR THE VOTE:

Commissioner Karlsruher

5. **Adjournment**

MOTION:

Motion made by Commissioner Thackston, seconded by Commissioner Graham and
UNANIMOUSLY CARRIED TO ADJOURN.

NOT PRESENT FOR THE VOTE:

Commissioner Karlsruher

Suggested Study (SD-5)

- (1) DISTRICT #1 gives up precincts 32, 33 and 35 to District #8. This transfers a population of 8,474 to District #8 leaving Dist. #1 with a population of 82,258 (+1,118 of optimum). This brings Dist. 8 up to 77,881 (still -3259 of optimum).
- (2) DISTRICT #8 gets precincts 79 & 81 from District #3. This gives Dist.# 8 an additional population gain of 1,841 (Pct. 79) + 902 (Pct. 81) added to 77,881 (result of change 1 above) = 80,624 (now -516 of optimum).
- (3) DISTRICT #3 as a result of change 2 (above) now is at 63,667 (-17,473 of optimum). District # 3 now picks up precinct 87 from Dist. #2 (3,398) and is blended into Districts 5,6 & 7 to the east to conform as closely as possible with SD-3.
- (4) DISTRICT # 2 as a result of change 3 above losses 3,398 to Dist. # 3 but now picks up Precinct # 60 from District # 4 (as per SD-3) for a gain of 5,126 population (and retains Pct. 73 contrary to SD-4) This results in District #2 population of 79,630 (-1510 of optimum)
- (5) DISTRICTS # 5, 6 and 7 are maintained as closely as possible to SD-4 with blending into District 3, to the west, and with open east facing boundaries.

October 5, 2011

Jorge Artalejo
513 W San Antonio, 6
El Paso, TX 79901

United States Attorney General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Attorney General Holder:

I am writing this letter to you, so that your office will channel it to the division to which it ought to properly go. El Paso is currently undergoing the revision of its municipal divisions that create the voting districts in its municipal elections. It has eight districts previously divided by population, but divided by ethnic considerations. El Paso has had a history of the suppression of one of the major national minorities through voter disfranchisement through segregation of it in the division of it in its representation by allowing previously for the voting of its members of City Council at large, but currently providing for its representation through the eight districts. This letter is written to call your attention to one of those districts that the Department of Justice will be call to attest to its validity under rules established to provide for equal representation for the members of a community notwithstanding ethnic considerations.

The district of concern is its eighth. The city has cleverly found a means to circumvent the spirit of the rules through a practical application of them. Here the city has taken the upper portion of the Rio Grande valley and attached it to a lower portion of it, the upper portion being the richer of the two; thus, the unequal representation of the poorer results with its attachment to the richer because the richer doesn't have the same interests as the poorer. However, the city has sought to ignore this reality by indulging in the opposite truth, that the interests of the richer and poorer are in every circumstance the same. Thus, it has combined the two separate interests through a corridor that runs from the richer to the poorer, along a freeway, segregating the poorer from interests that are in fact similar. It has divided a neighborhood of similarity to qualify to its narrow interpretation of what is required by court interpretation to what has occurred elsewhere. It has ingeniously conveyed to the Department of Justice its compliance with the courts by demonstrating that these minorities interests are adequately ensure with this combination.

My appeal to the Department of Justice is for a thorough review of the city's proposal of its compliance of the rule of one man, one vote irrespective of the result to the two different economic sectors in the eighth.

Jorge

Community of Interest

District 8 & Community of Interest

The Isthmus

- Currently a Isthmus-like piece of land connects the poorer and more monolingual parts of El Paso with El Paso's Westside and Upper Valley
- Isthmus - a narrow strip of land connecting two larger land areas

Looking at District 8

- Currently the Westside of El Paso is connected Downtown El Paso, Segundo Barrio, Chamizal, the land just north of Interstate 10 by this Isthmus
- This Isthmus is largely uninhabited from Sunset Heights to Buena Vista

Lack of Contiguity

- Though lines can be drawn to connect these areas, some creativity was involved.
- This district use to end at Sunland Park Dr.
- A district is contiguous if all of the lines that create it are connected.
- The degree to which all districts in a particular map are contiguous can be limited by natural boundaries

Poorest Parts of El Paso with Richest

- Several communities lie in this area Isthmus area. They include:
- La Calavera, Buena Vista, Harts Mill
- These communities as well as those in South El Paso have substantially lower income per family than the Country Club area

Poorest Parts of El Paso

- Furthermore, South El Paso is also high in poverty

No Community of Interest

- We hold that no Community of Interest exists here
- A Community Interest is defined several ways;
 - 1. A neighborhood or community that would benefit from being maintained in a single district because of shared interests, views, or characteristics. *LULAC v. Perry*, 548 U.S. 399, 435 (2006).

No Community of Interest

- A Community of Interest is;
 - 2. Racial and multi-racial communities

No Community of Interest

- Relevant social and economic characteristics to think about in looking at this district include:
 - Income Levels
 - Educational Backgrounds
 - Housing patterns and living conditions
 - Cultural and Language Characteristics
 - Employment and economic patterns
 - Health and environmental conditions
 - Policy issues raised with local representatives
 -

Disparities

- Currently there are huge income disparities between District 8's precincts that are along Upper Mesa area and the Upper Valley in comparison with South El Paso
- Several Reports, including one by the Federal Reserve and the Brookings Institution rank the Chamizal Neighborhood as one of the poorest in the nation

Education, Housing, Lang. Disparities

- Lack of high school completion in South El Paso (see Segundo Barrio and Chamizal Revitalization Strategies, Parks & Recreation)
- Large tenant housing patters in South El Paso and the neighborhoods just north of I-10 (see Segundo Barrio and Chamizal Revitalization Strategies, Parks & Recreation)
- Large monolingual Spanish-speaking areas of South El Paso (see Modern Language Association)

Last District 8 Election

- Winner out-fundraised her next opponents by almost \$29,000

Ethnic and Language Repercussions

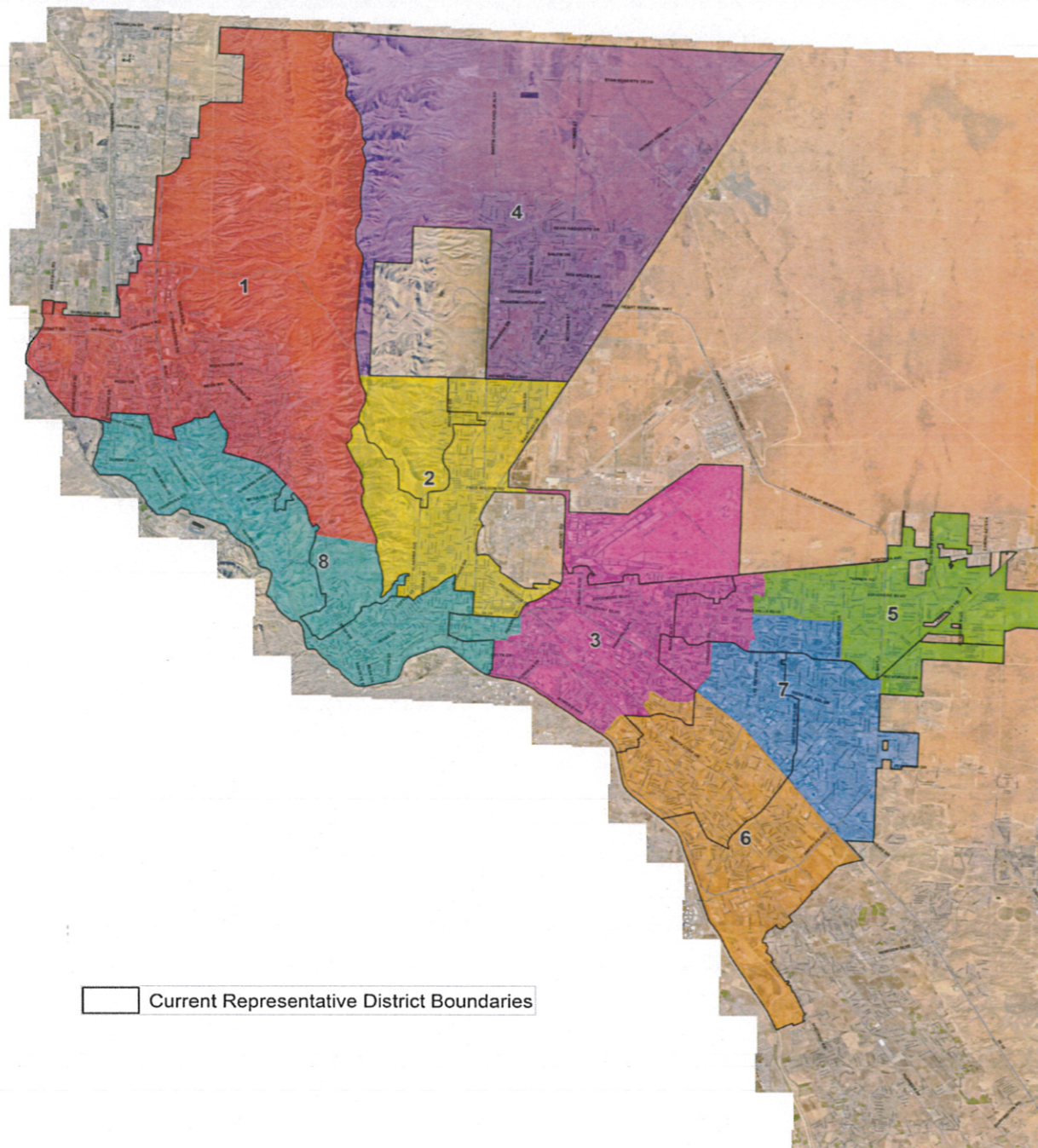
- Make it almost impossible residents of Downtown, Segundo Barrio, Union Plaza, Chamizal, and other parts of South El Paso to run their own candidates
- They can be outspent and out voted by just a couple of precincts on the Westside and Country Club ares
- Minority vote dilution

Language

- These South El Paso neighborhoods have been unable to elect a candidates who speak Spanish
- Most community forums have had to use a translator
- Cannot elect a candidate of their own ethnicity

Consideration

- If District 1 needs to shrink, why not expand District 8 northward
- If District 3 needs to grow, why not expand district 3 westward
- South El Paso is more of a community of interest with District 3 South-of-Interstate 10 neighborhoods than the Country Club and Westside



CD-1a

City of El Paso Districting Commission



Draft Plan
CD-1a

November 30, 2011

Alternative Plan - CD-1a				
Council District	2010 Population	2011 Redistricting Optimal	Deviation	
1	81,179	81,140	39	0.0%
2	76,802	81,140	(4,338)	-5.3%
3	87,077	81,140	5,937	7.3%
4	78,232	81,140	(2,908)	-3.6%
5	81,091	81,140	(49)	-0.1%
6	81,355	81,140	215	0.3%
7	81,682	81,140	542	0.7%
8	81,703	81,140	563	0.7%
Total	649,121	649,121		12.7%

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Total	649,121	649,121		12.7%

Council District	2010 Total Population									2010 Voting Age Population								
	Total Population	Hispanic/ Latino	Not Hispanic/ Latino							Total Voting Age Population	Hispanic/ Latino	Not Hispanic/ Latino						
			One Race									One Race						
			White	Black/ African American	American Indian/ Alaskan Native	Asian	Native Hawaiian/ Other Pacific Islander	Some Other Race				Two or More	White	Black/ African American	American Indian/ Alaskan Native	Asian	Native Hawaiian/ Other Pacific Islander	
1	81,179	55,180	21,732	1,294	131	1,998	62	72	710	57,822	37,275	17,490	954	105	1,505	45	42	406
2	76,802	61,159	10,847	2,788	268	575	211	64	890	54,284	42,784	8,445	1,821	183	481	125	39	406
3	87,077	71,990	11,240	2,416	184	583	93	91	480	65,794	52,785	9,926	1,936	152	511	84	62	338
4	78,232	51,242	17,479	6,153	302	1,434	208	87	1,327	54,505	33,253	14,373	4,470	226	1,272	151	60	700
5	81,091	69,904	7,288	2,445	122	715	68	69	480	52,616	44,364	5,551	1,754	85	547	40	39	236
6	81,355	78,048	2,414	309	358	43	20	54	109	57,325	54,722	1,966	230	254	40	13	27	73
7	81,682	69,313	9,238	1,691	132	791	51	37	429	57,751	47,716	7,701	1,262	103	629	42	27	271
8	81,703	66,885	12,188	1,059	136	953	24	69	389	60,030	47,353	10,472	902	115	813	23	52	300
Total	649,121	523,721	92,426	18,155	1,633	7,092	737	543	4,814	460,127	360,252	75,924	13,329	1,223	5,798	523	348	2,730

Council District	2010 Total Population									2010 Voting Age Population								
	Total	Hispanic/ Latino	Not Hispanic/ Latino							Total Voting Age Population	Hispanic/ Latino	Not Hispanic/ Latino						
			One Race						Two or More			One Race						Two or More
			White	Black/ African American	American Indian/ Alaskan Native	Asian	Native Hawaiian/ Other Pacific Islander	Some Other Race				White	Black/ African American	American Indian/ Alaskan Native	Asian	Native Hawaiian/ Other Pacific Islander	Some Other Race	
1	100%	68.0%	26.77%	1.59%	0.16%	2.46%	0.08%	0.09%	0.87%	100%	64.47%	30.25%	1.65%	0.18%	2.60%	0.08%	0.07%	0.70%
2	100%	79.6%	14.12%	3.63%	0.35%	0.75%	0.27%	0.08%	1.16%	100%	78.82%	15.56%	3.35%	0.34%	0.89%	0.23%	0.07%	0.75%
3	100%	82.7%	12.91%	2.77%	0.21%	0.67%	0.11%	0.10%	0.55%	100%	80.23%	15.09%	2.94%	0.23%	0.78%	0.13%	0.09%	0.51%
4	100%	65.5%	22.34%	7.87%	0.39%	1.83%	0.27%	0.11%	1.70%	100%	61.01%	26.37%	8.20%	0.41%	2.33%	0.28%	0.11%	1.28%
5	100%	86.2%	8.99%	3.02%	0.15%	0.88%	0.08%	0.09%	0.59%	100%	84.32%	10.55%	3.33%	0.16%	1.04%	0.08%	0.07%	0.45%
6	100%	95.9%	2.97%	0.38%	0.44%	0.05%	0.02%	0.07%	0.13%	100%	95.46%	3.43%	0.40%	0.44%	0.07%	0.02%	0.05%	0.13%
7	100%	84.9%	11.31%	2.07%	0.16%	0.97%	0.06%	0.05%	0.53%	100%	82.62%	13.33%	2.19%	0.18%	1.09%	0.07%	0.05%	0.47%
8	100%	81.9%	14.92%	1.30%	0.17%	1.17%	0.03%	0.08%	0.48%	100%	78.88%	17.44%	1.50%	0.19%	1.35%	0.04%	0.09%	0.50%
Total	100%	80.68%	14.24%	2.80%	0.25%	1.09%	0.11%	0.08%	0.74%	100%	78.29%	16.50%	2.90%	0.27%	1.26%	0.11%	0.08%	0.59%

City	Hispanic/ Latino	White	Black/African American	American Indian/Alaskan Native	Asian	Native Hawaiian/Other Pacific Islander	Some Other Race	Two or More Races
2000	76.6%	18.3%	2.8%	0.3%	1.0%	0.1%	0.1%	0.8%
2010	80.7%	14.2%	2.8%	0.3%	1.1%	0.1%	0.1%	0.7%
CD-1a	80.7%	14.2%	2.8%	0.3%	1.1%	0.1%	0.1%	0.7%

D1	Hispanic/ Latino	White	Black/African American	American Indian/Alaskan Native	Asian	Native Hawaiian/Other Pacific Islander	Some Other Race	Two or More Races
2000	56.5%	38.5%	1.5%	0.2%	2.3%	0.0%	0.1%	0.9%
2010	67.9%	26.8%	1.7%	0.2%	2.4%	0.1%	0.1%	0.9%
CD-1a	68.0%	26.8%	1.6%	0.2%	2.5%	0.1%	0.1%	0.9%

D2	Hispanic/ Latino	White	Black/African American	American Indian/Alaskan Native	Asian	Native Hawaiian/Other Pacific Islander	Some Other Race	Two or More Races
2000	81.6%	13.1%	3.4%	0.2%	0.6%	0.1%	0.1%	0.8%
2010	79.6%	13.9%	3.9%	0.3%	0.7%	0.3%	0.1%	1.2%
CD-1a	79.6%	14.1%	3.6%	0.3%	0.7%	0.3%	0.1%	1.2%

D3	Hispanic/ Latino	White	Black/African American	American Indian/Alaskan Native	Asian	Native Hawaiian/Other Pacific Islander	Some Other Race	Two or More Races
2000	86.0%	10.7%	2.1%	0.3%	0.5%	0.0%	0.1%	0.4%
2010	88.6%	8.3%	2.0%	0.2%	0.5%	0.1%	0.1%	0.3%
CD-1a	82.7%	12.9%	2.8%	0.2%	0.7%	0.1%	0.1%	0.6%

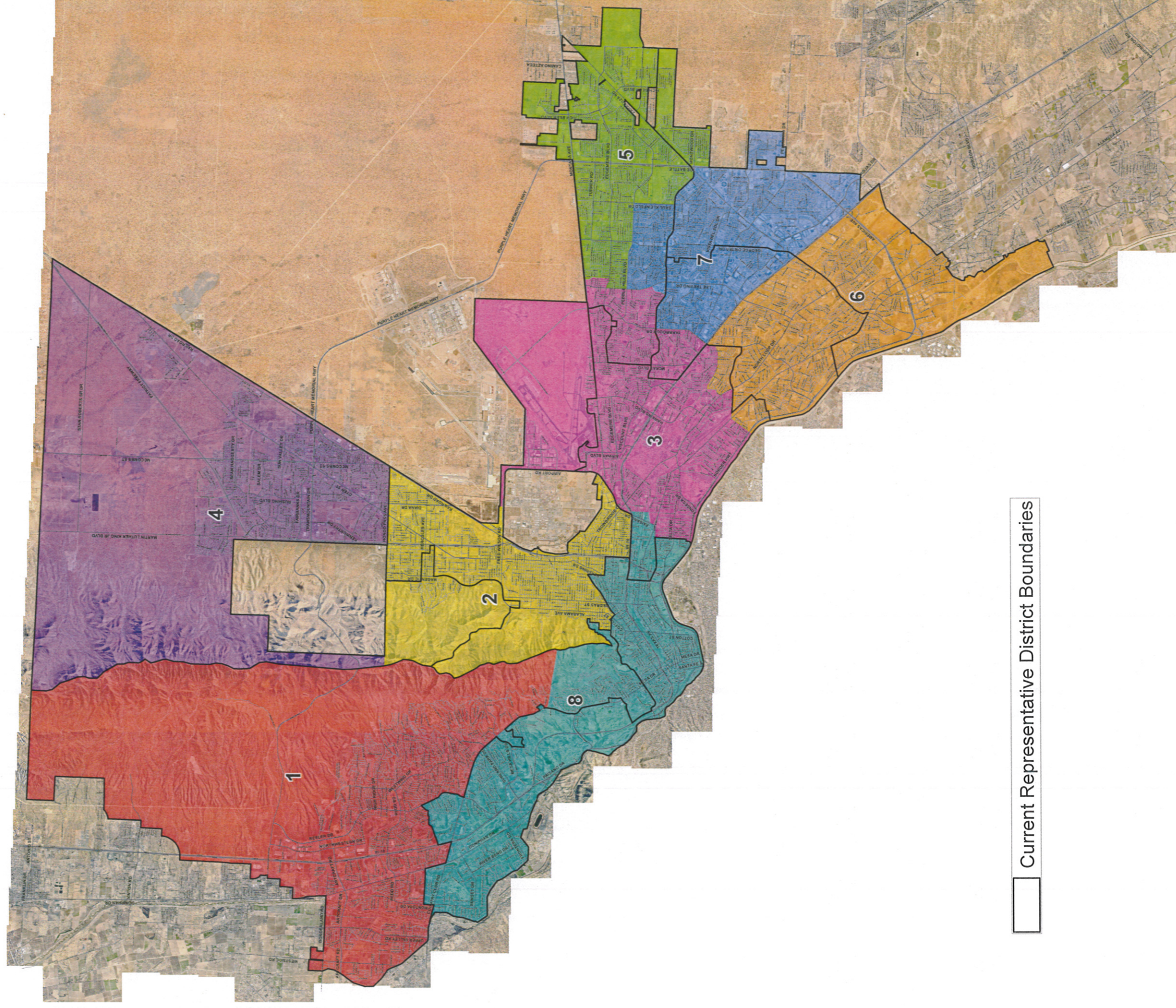
D4	Hispanic/ Latino	White	Black/African American	American Indian/Alaskan Native	Asian	Native Hawaiian/Other Pacific Islander	Some Other Race	Two or More Races
2000	56.1%	30.1%	9.0%	0.4%	2.3%	0.2%	0.2%	1.8%
2010	64.6%	23.2%	7.8%	0.4%	1.9%	0.3%	0.1%	1.7%
CD-1a	65.5%	22.3%	7.9%	0.4%	1.8%	0.3%	0.1%	1.7%

D5	Hispanic/ Latino	White	Black/African American	American Indian/Alaskan Native	Asian	Native Hawaiian/Other Pacific Islander	Some Other Race	Two or More Races
2000	78.3%	17.1%	2.7%	0.2%	0.8%	0.1%	0.1%	0.8%
2010	84.5%	11.0%	2.8%	0.1%	0.8%	0.1%	0.1%	0.6%
CD-1a	86.2%	9.0%	3.0%	0.2%	0.9%	0.1%	0.1%	0.6%

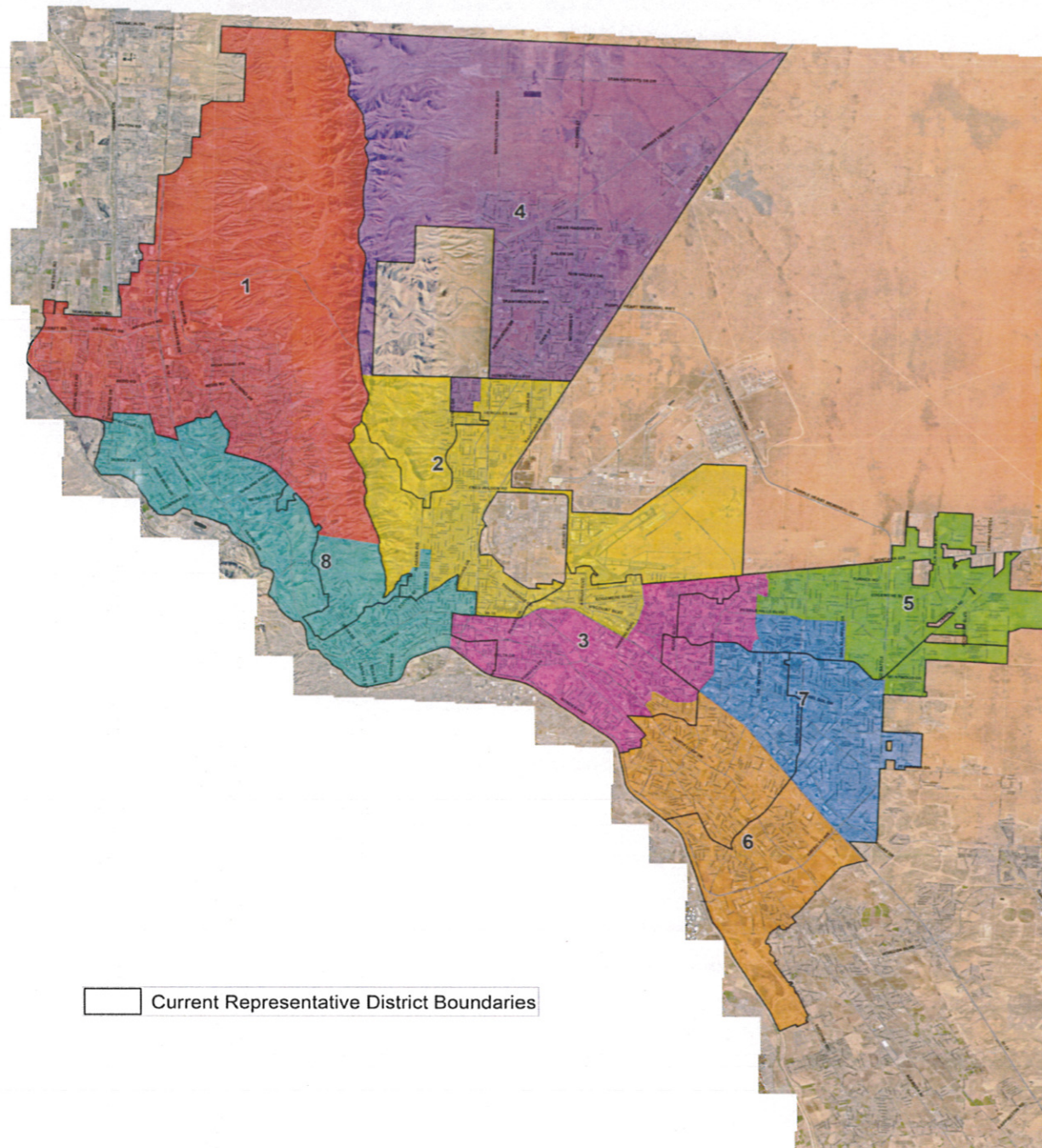
D6	Hispanic/ Latino	White	Black/African American	American Indian/Alaskan Native	Asian	Native Hawaiian/Other Pacific Islander	Some Other Race	Two or More Races
2000	89.4%	7.7%	1.2%	0.6%	0.6%	0.0%	0.0%	0.4%
2010	91.1%	6.0%	1.3%	0.4%	0.7%	0.1%	0.0%	0.3%
CD-1a	95.9%	3.0%	0.4%	0.4%	0.1%	0.0%	0.1%	0.1%

D7	Hispanic/ Latino	White	Black/African American	American Indian/Alaskan Native	Asian	Native Hawaiian/Other Pacific Islander	Some Other Race	Two or More Races
2000	85.5%	12.1%	1.3%	0.3%	0.4%	0.0%	0.0%	0.4%
2010	89.0%	8.8%	1.2%	0.2%	0.4%	0.0%	0.0%	0.4%
CD-1a	84.9%	11.3%	2.1%	0.2%	1.0%	0.1%	0.0%	0.5%

D8	Hispanic/ Latino	White	Black/African American	American Indian/Alaskan Native	Asian	Native Hawaiian/Other Pacific Islander	Some Other Race	Two or More Races
2000	80.6%	16.7%	1.1%	0.2%	0.8%	0.0%	0.0%	0.5%
2010	83.3%	13.7%	1.1%	0.2%	1.1%	0.0%	0.1%	0.4%
CD-1a	81.9%	14.9%	1.3%	0.2%	1.2%	0.0%	0.1%	0.5%



Current Representative District Boundaries



City of El Paso Districting Commission



Draft Plan
CD-1b

November 30, 2011

Alternative Plan - CD-1b				
Council District	2010 Population	2011 Redistricting Optimal	Deviation	
1	81,179	81,140	39	0.0%
2	82,265	81,140	1,125	1.4%
3	81,605	81,140	465	0.6%
4	81,525	81,140	385	0.5%
5	81,091	81,140	(49)	-0.1%
6	79,428	81,140	(1,712)	-2.1%
7	81,682	81,140	542	0.7%
8	80,346	81,140	(794)	-1.0%
Total	649,121	649,121		3.5%

Alternative Plan - CD-1b				
Council District	2010 Population	2011 Redistricting Optimal	Deviation	
1	81,179	81,140	39	0.0%
2	82,265	81,140	1,125	1.4%
3	81,605	81,140	465	0.6%
4	81,525	81,140	385	0.5%
5	81,091	81,140	(49)	-0.1%
6	79,428	81,140	(1,712)	-2.1%
7	81,682	81,140	542	0.7%
8	80,346	81,140	(794)	-1.0%
Total	649,121	649,121		3.5%

Council District	2010 Total Population									2010 Voting Age Population								
	Total Population	Hispanic/ Latino	Not Hispanic/ Latino							Total Voting Age Population	Hispanic/ Latino	Not Hispanic/ Latino						
			One Race									One Race						
			White	Black/ African American	American Indian/ Alaskan Native	Asian	Native Hawaiian/ Other Pacific Islander	Some Other Race				Two or More	White	Black/ African American	American Indian/ Alaskan Native	Asian	Native Hawaiian/ Other Pacific Islander	
1	81,179	55,180	21,732	1,294	131	1,998	62	72	710	57,822	37,275	17,490	954	105	1,505	45	42	406
2	82,265	63,905	12,753	3,368	294	663	237	79	966	59,071	45,153	10,162	2,305	203	567	154	45	482
3	81,605	70,764	8,172	1,656	150	407	54	72	330	60,840	51,507	7,208	1,331	121	349	47	55	222
4	81,525	53,237	18,424	6,330	316	1,514	220	91	1,393	56,926	34,615	15,179	4,591	239	1,344	158	62	738
5	81,091	69,904	7,288	2,445	122	715	68	69	480	52,616	44,364	5,551	1,754	85	547	40	39	236
6	79,428	76,157	2,384	307	358	43	19	52	108	55,788	53,216	1,939	229	254	40	12	26	72
7	81,682	69,313	9,238	1,691	132	791	51	37	429	57,751	47,716	7,701	1,262	103	629	42	27	271
8	80,346	65,261	12,435	1,064	130	961	26	71	398	59,313	46,406	10,694	903	113	817	25	52	303
Total	649,121	523,721	92,426	18,155	1,633	7,092	737	543	4,814	460,127	360,252	75,924	13,329	1,223	5,798	523	348	2,730

Council District	2010 Total Population									2010 Voting Age Population								
	Total	Hispanic/ Latino	Not Hispanic/ Latino							Total Voting Age Population	Hispanic/ Latino	Not Hispanic/ Latino						
			One Race						Two or More			One Race						Two or More
			White	Black/ African American	American Indian/ Alaskan Native	Asian	Native Hawaiian/ Other Pacific Islander	Some Other Race				White	Black/ African American	American Indian/ Alaskan Native	Asian	Native Hawaiian/ Other Pacific Islander	Some Other Race	
1	100%	68.0%	26.77%	1.59%	0.16%	2.46%	0.08%	0.09%	0.87%	100%	64.47%	30.25%	1.65%	0.18%	2.60%	0.08%	0.07%	0.70%
2	100%	77.7%	15.50%	4.09%	0.36%	0.81%	0.29%	0.10%	1.17%	100%	76.44%	17.20%	3.90%	0.34%	0.96%	0.26%	0.08%	0.82%
3	100%	86.7%	10.01%	2.03%	0.18%	0.50%	0.07%	0.09%	0.40%	100%	84.66%	11.85%	2.19%	0.20%	0.57%	0.08%	0.09%	0.36%
4	100%	65.3%	22.60%	7.76%	0.39%	1.86%	0.27%	0.11%	1.71%	100%	60.81%	26.66%	8.06%	0.42%	2.36%	0.28%	0.11%	1.30%
5	100%	86.2%	8.99%	3.02%	0.15%	0.88%	0.08%	0.09%	0.59%	100%	84.32%	10.55%	3.33%	0.16%	1.04%	0.08%	0.07%	0.45%
6	100%	95.9%	3.00%	0.39%	0.45%	0.05%	0.02%	0.07%	0.14%	100%	95.39%	3.48%	0.41%	0.46%	0.07%	0.02%	0.05%	0.13%
7	100%	84.9%	11.31%	2.07%	0.16%	0.97%	0.06%	0.05%	0.53%	100%	82.62%	13.33%	2.19%	0.18%	1.09%	0.07%	0.05%	0.47%
8	100%	81.2%	15.48%	1.32%	0.16%	1.20%	0.03%	0.09%	0.50%	100%	78.24%	18.03%	1.52%	0.19%	1.38%	0.04%	0.09%	0.51%
Total	100%	80.68%	14.24%	2.80%	0.25%	1.09%	0.11%	0.08%	0.74%	100%	78.29%	16.50%	2.90%	0.27%	1.26%	0.11%	0.08%	0.59%

City	Hispanic/ Latino	White	Black/African American	American Indian/Alaskan Native	Asian	Native Hawaiian/Other Pacific Islander	Some Other Race	Two or More Races
2000	76.6%	18.3%	2.8%	0.3%	1.0%	0.1%	0.1%	0.8%
2010	80.7%	14.2%	2.8%	0.3%	1.1%	0.1%	0.1%	0.7%
CD-1b	80.7%	14.2%	2.8%	0.3%	1.1%	0.1%	0.1%	0.7%

D1	Hispanic/ Latino	White	Black/African American	American Indian/Alaskan Native	Asian	Native Hawaiian/Other Pacific Islander	Some Other Race	Two or More Races
2000	56.5%	38.5%	1.5%	0.2%	2.3%	0.0%	0.1%	0.9%
2010	67.9%	26.8%	1.7%	0.2%	2.4%	0.1%	0.1%	0.9%
CD-1b	68.0%	26.8%	1.6%	0.2%	2.5%	0.1%	0.1%	0.9%

D2	Hispanic/ Latino	White	Black/African American	American Indian/Alaskan Native	Asian	Native Hawaiian/Other Pacific Islander	Some Other Race	Two or More Races
2000	81.6%	13.1%	3.4%	0.2%	0.6%	0.1%	0.1%	0.8%
2010	79.6%	13.9%	3.9%	0.3%	0.7%	0.3%	0.1%	1.2%
CD-1b	77.7%	15.5%	4.1%	0.4%	0.8%	0.3%	0.1%	1.2%

D3	Hispanic/ Latino	White	Black/African American	American Indian/Alaskan Native	Asian	Native Hawaiian/Other Pacific Islander	Some Other Race	Two or More Races
2000	86.0%	10.7%	2.1%	0.3%	0.5%	0.0%	0.1%	0.4%
2010	88.6%	8.3%	2.0%	0.2%	0.5%	0.1%	0.1%	0.3%
CD-1b	86.7%	10.0%	2.0%	0.2%	0.5%	0.1%	0.1%	0.4%

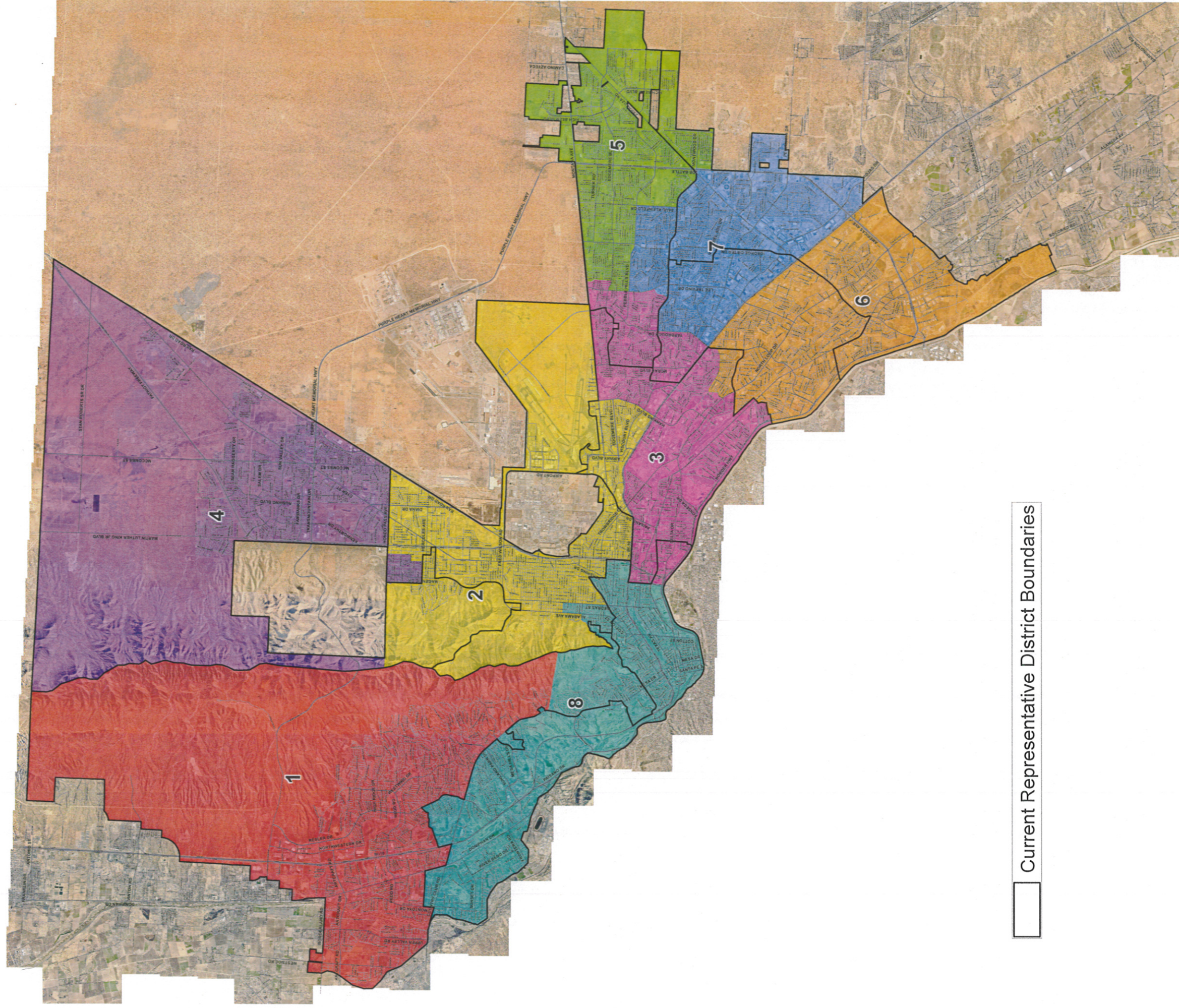
D4	Hispanic/ Latino	White	Black/African American	American Indian/Alaskan Native	Asian	Native Hawaiian/Other Pacific Islander	Some Other Race	Two or More Races
2000	56.1%	30.1%	9.0%	0.4%	2.3%	0.2%	0.2%	1.8%
2010	64.6%	23.2%	7.8%	0.4%	1.9%	0.3%	0.1%	1.7%
CD-1b	65.3%	22.6%	7.8%	0.4%	1.9%	0.3%	0.1%	1.7%

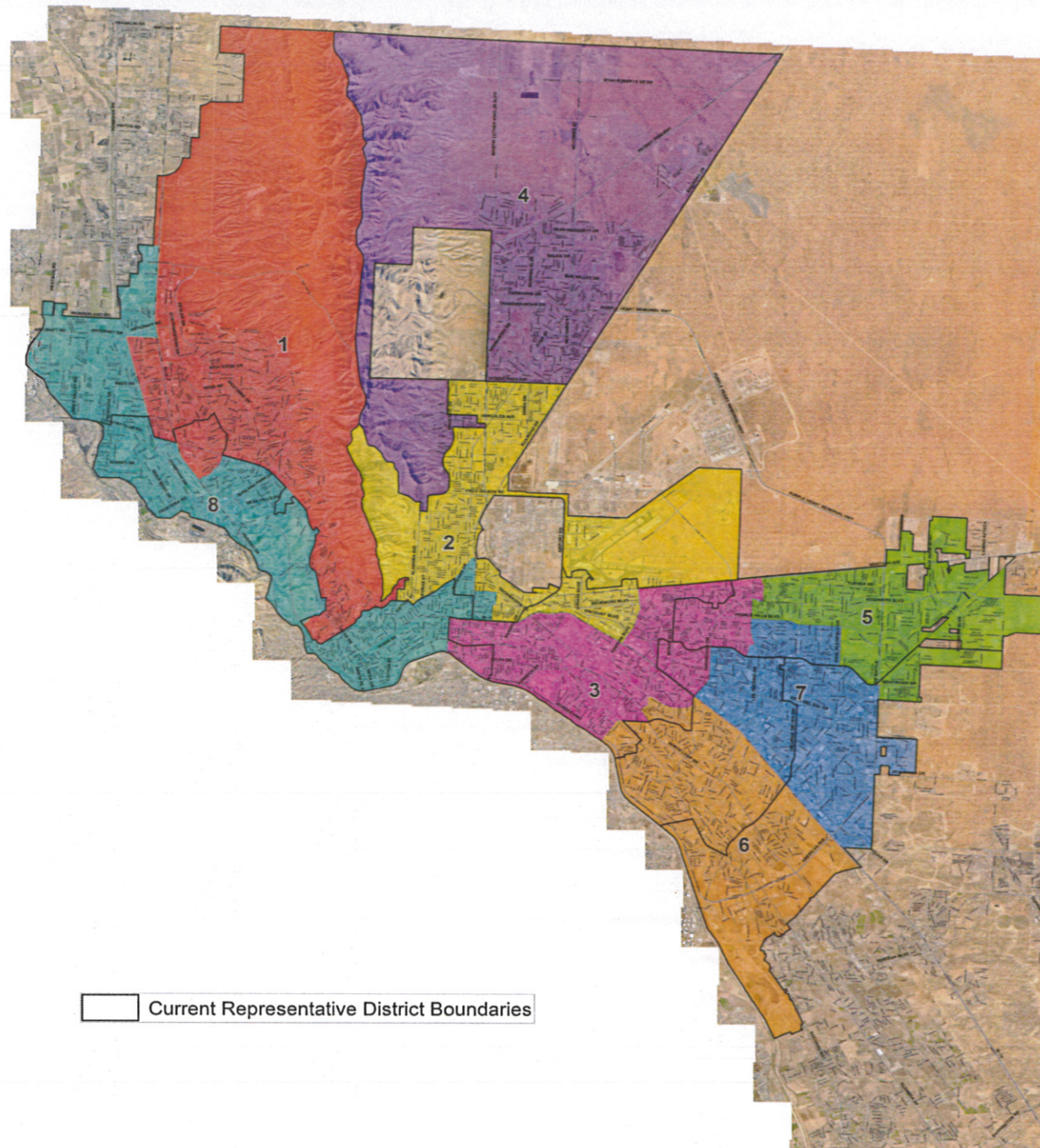
D5	Hispanic/ Latino	White	Black/African American	American Indian/Alaskan Native	Asian	Native Hawaiian/Other Pacific Islander	Some Other Race	Two or More Races
2000	78.3%	17.1%	2.7%	0.2%	0.8%	0.1%	0.1%	0.8%
2010	84.5%	11.0%	2.8%	0.1%	0.8%	0.1%	0.1%	0.6%
CD-1b	86.2%	9.0%	3.0%	0.2%	0.9%	0.1%	0.1%	0.6%

D6	Hispanic/ Latino	White	Black/African American	American Indian/Alaskan Native	Asian	Native Hawaiian/Other Pacific Islander	Some Other Race	Two or More Races
2000	89.4%	7.7%	1.2%	0.6%	0.6%	0.0%	0.0%	0.4%
2010	91.1%	6.0%	1.3%	0.4%	0.7%	0.1%	0.0%	0.3%
CD-1b	95.9%	3.0%	0.4%	0.5%	0.1%	0.0%	0.1%	0.1%

D7	Hispanic/ Latino	White	Black/African American	American Indian/Alaskan Native	Asian	Native Hawaiian/Other Pacific Islander	Some Other Race	Two or More Races
2000	85.5%	12.1%	1.3%	0.3%	0.4%	0.0%	0.0%	0.4%
2010	89.0%	8.8%	1.2%	0.2%	0.4%	0.0%	0.0%	0.4%
CD-1b	84.9%	11.3%	2.1%	0.2%	1.0%	0.1%	0.0%	0.5%

D8	Hispanic/ Latino	White	Black/African American	American Indian/Alaskan Native	Asian	Native Hawaiian/Other Pacific Islander	Some Other Race	Two or More Races
2000	80.6%	16.7%	1.1%	0.2%	0.8%	0.0%	0.0%	0.5%
2010	83.3%	13.7%	1.1%	0.2%	1.1%	0.0%	0.1%	0.4%
CD-1b	81.2%	15.5%	1.3%	0.2%	1.2%	0.0%	0.1%	0.5%





City of El Paso Districting Commission



Draft Plan
SD-5

November 30, 2011

Alternative Plan - SD-5				
Council District	2010 Population	2011 Redistricting Optimal	Deviation	
1	80,800	81,140	(340)	-0.4%
2	80,502	81,140	(638)	-0.8%
3	79,678	81,140	(1,462)	-1.8%
4	83,358	81,140	2,218	2.7%
5	81,091	81,140	(49)	-0.1%
6	81,355	81,140	215	0.3%
7	81,682	81,140	542	0.7%
8	80,655	81,140	(485)	-0.6%
Total	649,121	649,121		4.5%

Alternative Plan - SD-5				
Council District	2010 Population	2011 Redistricting Optimal	Deviation	
1	80,800	81,140	(340)	-0.4%
2	80,502	81,140	(638)	-0.8%
3	79,678	81,140	(1,462)	-1.8%
4	83,358	81,140	2,218	2.7%
5	81,091	81,140	(49)	-0.1%
6	81,355	81,140	215	0.3%
7	81,682	81,140	542	0.7%
8	80,655	81,140	(485)	-0.6%
Total	649,121	649,121		4.5%

Council District	2010 Total Population									2010 Voting Age Population								
	Total Population	Hispanic/ Latino	Not Hispanic/ Latino							Total Voting Age Population	Hispanic/ Latino	Not Hispanic/ Latino						
			One Race						Two or More			One Race						Two or More
			White	Black/ African American	American Indian/ Alaskan Native	Asian	Native Hawaiian/ Other Pacific Islander	Some Other Race				White	Black/ African American	American Indian/ Alaskan Native	Asian	Native Hawaiian/ Other Pacific Islander	Some Other Race	
1	80,800	53,802	22,301	1,512	141	2,153	60	86	745	59,007	37,221	18,295	1,165	117	1,658	44	56	451
2	80,502	63,256	11,916	3,193	287	630	225	76	919	57,530	44,567	9,429	2,151	201	532	147	40	463
3	79,678	68,873	8,142	1,654	150	407	53	70	329	59,303	50,001	7,181	1,330	121	349	46	54	221
4	83,358	53,871	19,345	6,494	324	1,546	234	94	1,450	58,403	35,084	15,974	4,731	244	1,375	167	65	763
5	81,091	69,904	7,288	2,445	122	715	68	69	480	52,616	44,364	5,551	1,754	85	547	40	39	236
6	81,355	78,048	2,414	309	358	43	20	54	109	57,325	54,722	1,966	230	254	40	13	27	73
7	81,682	69,313	9,238	1,691	132	791	51	37	429	57,751	47,716	7,701	1,262	103	629	42	27	271
8	80,655	66,654	11,782	857	119	807	26	57	353	58,192	46,577	9,827	706	98	668	24	40	252
Total	649,121	523,721	92,426	18,155	1,633	7,092	737	543	4,814	460,127	360,252	75,924	13,329	1,223	5,798	523	348	2,730

Council District	2010 Total Population									2010 Voting Age Population								
	Total	Hispanic/ Latino	Not Hispanic/ Latino							Total Voting Age Population	Hispanic/ Latino	Not Hispanic/ Latino						
			One Race						Two or More			One Race						Two or More
			White	Black/ African American	American Indian/ Alaskan Native	Asian	Native Hawaiian/ Other Pacific Islander	Some Other Race				White	Black/ African American	American Indian/ Alaskan Native	Asian	Native Hawaiian/ Other Pacific Islander	Some Other Race	
1	100%	66.59%	27.60%	1.87%	0.17%	2.66%	0.07%	0.11%	0.92%	100%	63.08%	31.00%	1.97%	0.20%	2.81%	0.07%	0.09%	0.76%
2	100%	78.58%	14.80%	3.97%	0.36%	0.78%	0.28%	0.09%	1.14%	100%	77.47%	16.39%	3.74%	0.35%	0.92%	0.26%	0.07%	0.80%
3	100%	86.44%	10.22%	2.08%	0.19%	0.51%	0.07%	0.09%	0.41%	100%	84.31%	12.11%	2.24%	0.20%	0.59%	0.08%	0.09%	0.37%
4	100%	64.63%	23.21%	7.79%	0.39%	1.85%	0.28%	0.11%	1.74%	100%	60.07%	27.35%	8.10%	0.42%	2.35%	0.29%	0.11%	1.31%
5	100%	86.20%	8.99%	3.02%	0.15%	0.88%	0.08%	0.09%	0.59%	100%	84.32%	10.55%	3.33%	0.16%	1.04%	0.08%	0.07%	0.45%
6	100%	95.94%	2.97%	0.38%	0.44%	0.05%	0.02%	0.07%	0.13%	100%	95.46%	3.43%	0.40%	0.44%	0.07%	0.02%	0.05%	0.13%
7	100%	84.86%	11.31%	2.07%	0.16%	0.97%	0.06%	0.05%	0.53%	100%	82.62%	13.33%	2.19%	0.18%	1.09%	0.07%	0.05%	0.47%
8	100%	82.64%	14.61%	1.06%	0.15%	1.00%	0.03%	0.07%	0.44%	100%	80.04%	16.89%	1.21%	0.17%	1.15%	0.04%	0.07%	0.43%
Total	100%	80.68%	14.24%	2.80%	0.25%	1.09%	0.11%	0.08%	0.74%	100%	78.29%	16.50%	2.90%	0.27%	1.26%	0.11%	0.08%	0.59%

City	Hispanic/ Latino	White	Black/African American	American Indian/Alaskan Native	Asian	Native Hawaiian/Other Pacific Islander	Some Other Race	Two or More Races
2000	76.6%	18.3%	2.8%	0.3%	1.0%	0.1%	0.1%	0.8%
2010	80.7%	14.2%	2.8%	0.3%	1.1%	0.1%	0.1%	0.7%
SD-5	80.7%	14.2%	2.8%	0.3%	1.1%	0.1%	0.1%	0.7%

D1	Hispanic/ Latino	White	Black/African American	American Indian/Alaskan Native	Asian	Native Hawaiian/Other Pacific Islander	Some Other Race	Two or More Races
2000	56.5%	38.5%	1.5%	0.2%	2.3%	0.0%	0.1%	0.9%
2010	67.9%	26.8%	1.7%	0.2%	2.4%	0.1%	0.1%	0.9%
SD-5	66.6%	27.6%	1.9%	0.2%	2.7%	0.1%	0.1%	0.9%

D2	Hispanic/ Latino	White	Black/African American	American Indian/Alaskan Native	Asian	Native Hawaiian/Other Pacific Islander	Some Other Race	Two or More Races
2000	81.6%	13.1%	3.4%	0.2%	0.6%	0.1%	0.1%	0.8%
2010	79.6%	13.9%	3.9%	0.3%	0.7%	0.3%	0.1%	1.2%
SD-5	78.6%	14.8%	4.0%	0.4%	0.8%	0.3%	0.1%	1.1%

D3	Hispanic/ Latino	White	Black/African American	American Indian/Alaskan Native	Asian	Native Hawaiian/Other Pacific Islander	Some Other Race	Two or More Races
2000	86.0%	10.7%	2.1%	0.3%	0.5%	0.0%	0.1%	0.4%
2010	88.6%	8.3%	2.0%	0.2%	0.5%	0.1%	0.1%	0.3%
SD-5	86.4%	10.2%	2.1%	0.2%	0.5%	0.1%	0.1%	0.4%

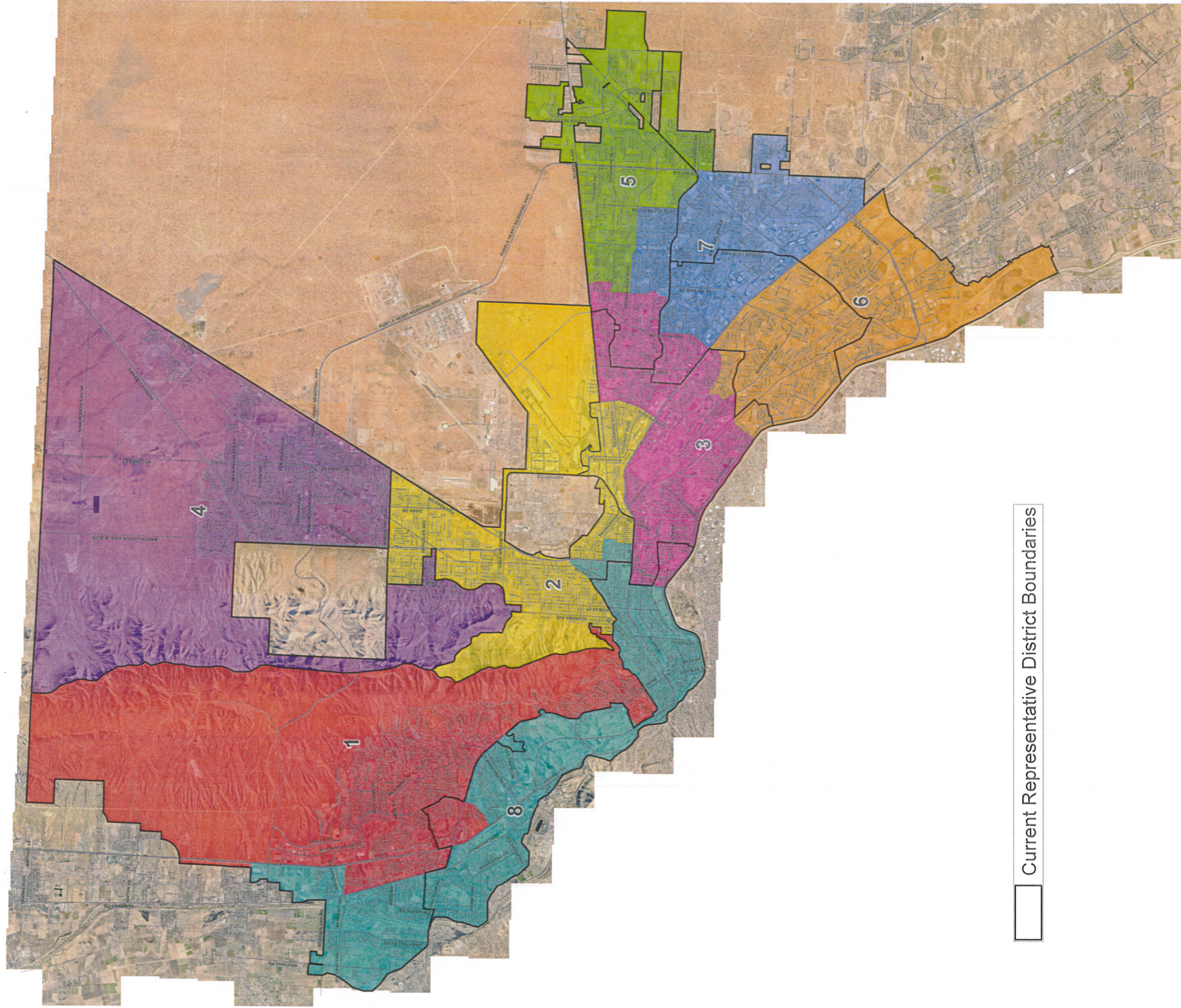
D4	Hispanic/ Latino	White	Black/African American	American Indian/Alaskan Native	Asian	Native Hawaiian/Other Pacific Islander	Some Other Race	Two or More Races
2000	56.1%	30.1%	9.0%	0.4%	2.3%	0.2%	0.2%	1.8%
2010	64.6%	23.2%	7.8%	0.4%	1.9%	0.3%	0.1%	1.7%
SD-5	64.6%	23.2%	7.8%	0.4%	1.9%	0.3%	0.1%	1.7%

D5	Hispanic/ Latino	White	Black/African American	American Indian/Alaskan Native	Asian	Native Hawaiian/Other Pacific Islander	Some Other Race	Two or More Races
2000	78.3%	17.1%	2.7%	0.2%	0.8%	0.1%	0.1%	0.8%
2010	84.5%	11.0%	2.8%	0.1%	0.8%	0.1%	0.1%	0.6%
SD-5	86.2%	9.0%	3.0%	0.2%	0.9%	0.1%	0.1%	0.6%

D6	Hispanic/ Latino	White	Black/African American	American Indian/Alaskan Native	Asian	Native Hawaiian/Other Pacific Islander	Some Other Race	Two or More Races
2000	89.4%	7.7%	1.2%	0.6%	0.6%	0.0%	0.0%	0.4%
2010	91.1%	6.0%	1.3%	0.4%	0.7%	0.1%	0.0%	0.3%
SD-5	95.9%	3.0%	0.4%	0.4%	0.1%	0.0%	0.1%	0.1%

D7	Hispanic/ Latino	White	Black/African American	American Indian/Alaskan Native	Asian	Native Hawaiian/Other Pacific Islander	Some Other Race	Two or More Races
2000	85.5%	12.1%	1.3%	0.3%	0.4%	0.0%	0.0%	0.4%
2010	89.0%	8.8%	1.2%	0.2%	0.4%	0.0%	0.0%	0.4%
SD-5	84.9%	11.3%	2.1%	0.2%	1.0%	0.1%	0.0%	0.5%

D8	Hispanic/ Latino	White	Black/African American	American Indian/Alaskan Native	Asian	Native Hawaiian/Other Pacific Islander	Some Other Race	Two or More Races
2000	80.6%	16.7%	1.1%	0.2%	0.8%	0.0%	0.0%	0.5%
2010	83.3%	13.7%	1.1%	0.2%	1.1%	0.0%	0.1%	0.4%
SD-5	82.6%	14.6%	1.1%	0.1%	1.0%	0.0%	0.1%	0.4%



Current Representative District Boundaries



FEDERAL REGISTER

Vol. 76

Wednesday,

No. 27

February 9, 2011

Part III

Department of Justice

Guidance Concerning Redistricting Under Section 5 of the Voting Rights Act; Notice

DEPARTMENT OF JUSTICE

Guidance Concerning Redistricting Under Section 5 of the Voting Rights Act; Notice

AGENCY: Office of the Assistant Attorney General, Civil Rights Division, Department of Justice.

ACTION: Notice.

SUMMARY: The Attorney General has delegated responsibility and authority for determinations under Section 5 of the Voting Rights Act to the Assistant Attorney General, Civil Rights Division, who finds that, in view of recent legislation and judicial decisions, it is appropriate to issue guidance concerning the review of redistricting plans submitted to the Attorney General for review pursuant to Section 5 of the Voting Rights Act.

FOR FURTHER INFORMATION CONTACT: T. Christian Herren, Jr., Chief, Voting Section, Civil Rights Division, United States Department of Justice, Washington, DC 20530, (202) 514-1416.

SUPPLEMENTARY INFORMATION: Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, requires jurisdictions identified in Section 4 of the Act to obtain a determination from either the Attorney General or the United States District Court for the District of Columbia that any change affecting voting which they seek to enforce does not have a discriminatory purpose and will not have a discriminatory effect.

Beginning in 2011, these covered jurisdictions will begin to seek review under Section 5 of the Voting Rights Act of redistricting plans based on the 2010 Census. Based on past experience, the overwhelming majority of the covered jurisdictions will submit their redistricting plans to the Attorney General. This guidance is not legally binding; rather, it is intended only to provide assistance to jurisdictions covered by the preclearance requirements of Section 5.

Guidance Concerning Redistricting Under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c

Following release of the 2010 Census data, the Department of Justice expects to receive several thousand submissions of redistricting plans for review pursuant to Section 5 of the Voting Rights Act. The Civil Rights Division has received numerous requests for guidance similar to that it issued prior to the 2000 Census redistricting cycle concerning the procedures and standards that will be applied during review of these redistricting plans. 67 FR 5411 (January 18, 2001). In addition,

in 2006, Congress reauthorized the Section 5 review requirement and refined its definition of some substantive standards for compliance with Section 5. In view of these developments, issuing revised guidance is appropriate.

The "Procedures for the Administration of Section 5 of the Voting Rights Act," 28 CFR Part 51, provide detailed information about the Section 5 review process. Copies of these Procedures are available upon request and through the Voting Section Web site (<http://www.usdoj.gov/crt/voting>). This document is meant to provide additional guidance with regard to current issues of interest. Citations to judicial decisions are provided to assist the reader but are not intended to be comprehensive. The following discussion provides supplemental guidance concerning the following topics:

- The Scope of Section 5 Review;
- The Section 5 Benchmark;
- Analysis of Plans (discriminatory purpose and retrogressive effect);
- Alternatives to Retrogressive Plans; and
- Use of 2010 Census Data.

The Scope of Section 5 Review

Under Section 5, a covered jurisdiction has the burden of establishing that a proposed redistricting plan "neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in [Section 4(f)(2) of the Act]" (i.e., membership in a language minority group defined in the Act). 42 U.S.C. 1973c(a). A plan has a discriminatory effect under the statute if, when compared to the benchmark plan, the submitting jurisdiction cannot establish that it does not result in a "retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." *Beer v. United States*, 425 U.S. 125, 141 (1976).

If the proposed redistricting plan is submitted to the Department of Justice for administrative review, and the Attorney General determines that the jurisdiction has failed to show the absence of any discriminatory purpose or retrogressive effect of denying or abridging the right to vote on account of race, color or membership in a language minority group defined in the Act, the Attorney General will interpose an objection. If, in the alternative, the jurisdiction seeks a declaratory judgment from the United States District Court for the District of Columbia, that court will utilize the identical standard

to determine whether to grant the request; i.e., whether the jurisdiction has established that the plan is free from discriminatory purpose or retrogressive effect. Absent administrative preclearance from the Attorney General or a successful declaratory judgment action in the district court, the jurisdiction may not implement its proposed redistricting plan.

The Attorney General may not interpose an objection to a redistricting plan on the grounds that it violates the one-person one-vote principle, on the grounds that it violates *Shaw v. Reno*, 509 U.S. 630 (1993), or on the grounds that it violates Section 2 of the Voting Rights Act. The same standard applies in a declaratory judgment action. Therefore, jurisdictions should not regard a determination of compliance with Section 5 as preventing subsequent legal challenges to that plan under other statutes by the Department of Justice or by private plaintiffs. 42 U.S.C. 1973c(a); 28 CFR 51.49.

The Section 5 "Benchmark"

As noted, under Section 5, a jurisdiction's proposed redistricting plan is compared to the "benchmark" plan to determine whether the use of the new plan would result in a retrogressive effect. The "benchmark" against which a new plan is compared is the last legally enforceable redistricting plan in force or effect. *Riley v. Kennedy*, 553 U.S. 406 (2008); 28 CFR 51.54(b)(1). Generally, the most recent plan to have received Section 5 preclearance or to have been drawn by a Federal court is the last legally enforceable redistricting plan for Section 5 purposes. When a jurisdiction has received Section 5 preclearance for a new redistricting plan, or a Federal court has drawn a new plan and ordered it into effect, that plan replaces the last legally enforceable plan as the Section 5 benchmark. *McDaniel v. Sanchez*, 452 U.S. 130 (1981); *Texas v. United States*, 785 F. Supp. 201 (D.D.C. 1992); *Mississippi v. Smith*, 541 F. Supp. 1329, 1333 (D.D.C. 1982), appeal dismissed, 461 U.S. 912 (1983).

A plan found to be unconstitutional by a Federal court under the principles of *Shaw v. Reno* and its progeny cannot serve as the Section 5 benchmark, *Abrams v. Johnson*, 521 U.S. 74 (1997), and in such circumstances, the benchmark for Section 5 purposes will be the last legally enforceable plan predating the unconstitutional plan. Absent such a finding of unconstitutionality under *Shaw* by a Federal court, the last legally enforceable plan will serve as the benchmark for Section 5 review. Therefore, the question of whether the

benchmark plan is constitutional will not be considered during the Department's Section 5 review.

Analysis of Plans

As noted above, there are two necessary components to the analysis of whether a proposed redistricting plan meets the Section 5 standard. The first is a determination that the jurisdiction has met its burden of establishing that the plan was adopted free of any discriminatory purpose. The second is a determination that the jurisdiction has met its burden of establishing that the proposed plan will not have a retrogressive effect.

Discriminatory Purpose

Section 5 precludes implementation of a change affecting voting that has the purpose of denying or abridging the right to vote on account of race or color, or membership in a language minority group defined in the Act. The 2006 amendments provide that the term "purpose" in Section 5 includes "any discriminatory purpose," and is not limited to a purpose to retrogress, as was the case after the Supreme Court's decision in *Reno v. Bossier Parish* ("Bossier II"), 528 U.S. 320 (2000). The Department will examine the circumstances surrounding the submitting authority's adoption of a submitted voting change, such as a redistricting plan, to determine whether direct or circumstantial evidence exists of any discriminatory purpose of denying or abridging the right to vote on account of race or color, or membership in a language minority group defined in the Act.

Direct evidence detailing a discriminatory purpose may be gleaned from the public statements of members of the adopting body or others who may have played a significant role in the process. *Busbee v. Smith*, 549 F. Supp. 494, 508 (D.D.C. 1982), *aff'd*, 459 U.S. 1166 (1983). The Department will also evaluate whether there are instances where the invidious element may be missing, but the underlying motivation is nonetheless intentionally discriminatory. In the *Garza* case, Judge Kozinski provided the clearest example:

Assume you are an anglo homeowner who lives in an all-white neighborhood. Suppose, also, that you harbor no ill feelings toward minorities. Suppose further, however, that some of your neighbors persuade you that having an integrated neighborhood would lower property values and that you stand to lose a lot of money on your home. On the basis of that belief, you join a pact not to sell your house to minorities. Have you engaged in intentional racial and ethnic discrimination? Of course you have. Your personal feelings toward minorities don't

matter; what matters is that you intentionally took actions calculated to keep them out of your neighborhood.

Garza and United States v. County of Los Angeles, 918 F.2d 763, 778 n.1 (9th Cir. 1990) (Kozinski, J., concurring and dissenting in part), *cert. denied*, 498 U.S. 1028 (1991).

In determining whether there is sufficient circumstantial evidence to conclude that the jurisdiction has not established the absence of the prohibited discriminatory purpose, the Attorney General will be guided by the Supreme Court's illustrative, but not exhaustive, list of those "subjects for proper inquiry in determining whether racially discriminatory intent existed," outlined in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 268 (1977). In that case, the Court, noting that such an undertaking presupposes a "sensitive inquiry," identified certain areas to be reviewed in making this determination: (1) The impact of the decision; (2) the historical background of the decision, particularly if it reveals a series of decisions undertaken with discriminatory intent; (3) the sequence of events leading up to the decision; (4) whether the challenged decision departs, either procedurally or substantively, from the normal practice; and (5) contemporaneous statements and viewpoints held by the decision-makers. *Id.* at 266–68.

The single fact that a jurisdiction's proposed redistricting plan does not contain the maximum possible number of districts in which minority group members are a majority of the population or have the ability to elect candidates of choice to office, does not mandate that the Attorney General interpose an objection based on a failure to demonstrate the absence of a discriminatory purpose. Rather, the Attorney General will base the determination on a review of the plan in its entirety.

Retrogressive Effect

An analysis of whether the jurisdiction has met its burden of establishing that the proposed plan would not result in a discriminatory or "retrogressive" effect starts with a basic comparison of the benchmark and proposed plans at issue, using updated census data in each. Thus, the Voting Section staff loads the boundaries of the benchmark and proposed plans into the Civil Rights Division's geographic information system [GIS]. Population data are then calculated for each district in the benchmark and the proposed plans using the most recent decennial census data.

A proposed plan is retrogressive under Section 5 if its net effect would be to reduce minority voters' "effective exercise of the electoral franchise" when compared to the benchmark plan. *Beer v. United States* at 141. In 2006, Congress clarified that this means the jurisdiction must establish that its proposed redistricting plan will not have the effect of "diminishing the ability of any citizens of the United States" because of race, color, or membership in a language minority group defined in the Act, "to elect their preferred candidate of choice." 42 U.S.C. 1973c(b) & (d). In analyzing redistricting plans, the Department will follow the congressional directive of ensuring that the ability of such citizens to elect their preferred candidates of choice is protected. That ability to elect either exists or it does not in any particular circumstance.

In determining whether the ability to elect exists in the benchmark plan and whether it continues in the proposed plan, the Attorney General does not rely on any predetermined or fixed demographic percentages at any point in the assessment. Rather, in the Department's view, this determination requires a functional analysis of the electoral behavior within the particular jurisdiction or election district. As noted above, census data alone may not provide sufficient indicia of electoral behavior to make the requisite determination. Circumstances, such as differing rates of electoral participation within discrete portions of a population, may impact on the ability of voters to elect candidates of choice, even if the overall demographic data show no significant change.

Although comparison of the census population of districts in the benchmark and proposed plans is the important starting point of any Section 5 analysis, additional demographic and election data in the submission is often helpful in making the requisite Section 5 determination. 28 CFR 51.28(a). For example, census population data may not reflect significant differences in group voting behavior. Therefore, election history and voting patterns within the jurisdiction, voter registration and turnout information, and other similar information are very important to an assessment of the actual effect of a redistricting plan.

The Section 5 Procedures contain the factors that the courts have considered in deciding whether or not a redistricting plan complies with Section 5. These factors include whether minority voting strength is reduced by the proposed redistricting; whether minority concentrations are fragmented

among different districts; whether minorities are overconcentrated in one or more districts; whether alternative plans satisfying the jurisdiction's legitimate governmental interests exist, and whether they were considered; whether the proposed plan departs from objective redistricting criteria set by the submitting jurisdiction, ignores other relevant factors such as compactness and contiguity, or displays a configuration that inexplicably disregards available natural or artificial boundaries; and, whether the plan is inconsistent with the jurisdiction's stated redistricting standards. 28 CFR 51.56–59.

Alternatives to Retrogressive Plans

There may be circumstances in which the jurisdiction asserts that, because of shifts in population or other significant changes since the last redistricting (e.g., residential segregation and demographic distribution of the population within the jurisdiction, the physical geography of the jurisdiction, the jurisdiction's historical redistricting practices, political boundaries, such as cities or counties, and/or state redistricting requirements), retrogression is unavoidable. In those circumstances, the submitting jurisdiction seeking preclearance of such a plan bears the burden of demonstrating that a less-retrogressive plan cannot reasonably be drawn.

In considering whether less-retrogressive alternative plans are available, the Department of Justice looks to plans that were actually considered or drawn by the submitting jurisdiction, as well as alternative plans presented or made known to the submitting jurisdiction by interested citizens or others. In addition, the Department may develop illustrative alternative plans for use in its analysis, taking into consideration the jurisdiction's redistricting principles. If it is determined that a reasonable alternative plan exists that is non-retrogressive or less retrogressive than the submitted plan, the Attorney General will interpose an objection.

Preventing retrogression under Section 5 does not require jurisdictions to violate the one-person, one-vote principle. 52 FR 488 (Jan. 6, 1987). Similarly, preventing retrogression under Section 5 does not require jurisdictions to violate *Shaw v. Reno* and related cases.

The one-person, one-vote issue arises most commonly where substantial demographic changes have occurred in some, but not all, parts of a jurisdiction. Generally, a plan for congressional redistricting that would require a greater

overall population deviation than the submitted plan is not considered a reasonable alternative by the Department. For state legislative and local redistricting, a plan that would require significantly greater overall population deviations is not considered a reasonable alternative.

In assessing whether a less retrogressive plan can reasonably be drawn, the geographic compactness of a jurisdiction's minority population will be a factor in the Department's analysis. This analysis will include a review of the submitting jurisdiction's historical redistricting practices and district configurations to determine whether the alternative plan would (a) abandon those practices and (b) require highly unusual features to link together widely separated minority concentrations.

At the same time, compliance with Section 5 of the Voting Rights Act may require the jurisdiction to depart from strict adherence to certain of its redistricting criteria. For example, criteria that require the jurisdiction to make the least possible change to existing district boundaries, to follow county, city, or precinct boundaries, protect incumbents, preserve partisan balance, or in some cases, require a certain level of compactness of district boundaries may need to give way to some degree to avoid retrogression. In evaluating alternative or illustrative plans, the Department of Justice relies upon plans that make the least departure from a jurisdiction's stated redistricting criteria needed to prevent retrogression.

The Use of 2010 Census Data

The most current population data are used to measure both the benchmark plan and the proposed redistricting plan. 28 CFR 51.54(b)(2) (Department of Justice considers "the conditions existing at the time of the submission."); *City of Rome v. United States*, 446 U.S. 156, 186 (1980) ("most current available population data" to be used for measuring effect of annexations); *Reno v. Bossier Parish School Board*, 528 U.S. 320, 334 (2000) ("the baseline is the status quo that is proposed to be changed: If the change 'abridges the right to vote' relative to the status quo, preclearance is denied * * *").

For redistricting after the 2010 Census, the Department of Justice will, consistent with past practice, evaluate redistricting submissions using the 2010 Census population data released by the Bureau of the Census for redistricting pursuant to Public Law 94–171, 13 U.S.C. 141(c). Thus, our analysis of the proposed redistricting plans includes a review and assessment of the Public

Law 94–171 population data, even if those data are not included in the submission or were not used by the jurisdiction in drawing the plan. The failure to use the Public Law 94–171 population data in redistricting does not, by itself, constitute a reason for interposing an objection. However, unless other population data used can be shown to be more accurate and reliable than the Public Law 94–171 data, the Attorney General will consider the Public Law 94–171 data to measure the total population and voting age population within a jurisdiction for purposes of its Section 5 analysis.

As in 2000, the 2010 Census Public Law 94–171 data will include counts of persons who have identified themselves as members of more than one racial category. This reflects the October 30, 1997, decision by the Office of Management and Budget [OMB] to incorporate multiple-race reporting into the Federal statistical system. 62 FR 58782–58790. Likewise, on March 9, 2000, OMB issued Bulletin No. 00–02 addressing "Guidance on Aggregation and Allocation of Data on Race for Use in Civil Rights Enforcement." Part II of that Bulletin describes how such census responses will be allocated by Federal executive agencies for use in civil rights monitoring and enforcement.

The Department will follow both aggregation methods defined in Part II of the Bulletin. The Department's initial review of a plan will be based upon allocating any multiple-item response that includes white and one of the five other race categories identified in the response. Thus, the total numbers for "Black/African American," "Asian," "American Indian/Alaska Native," "Native Hawaiian or Other Pacific Islander" and "Some other race" reflect the total of the single-race responses and the multiple responses in which an individual selected a minority race and white race.

The Department will then move to the second step in its application of the census data to the plan by reviewing the other multiple-race category, which is comprised of all multiple-race responses consisting of more than one minority race. Where there are significant numbers of such responses, we will, as required by both the OMB guidance and judicial opinions, allocate these responses on an iterative basis to each of the component single-race categories for analysis. *Georgia v. Ashcroft*, 539 U.S. 461, 473, n.1 (2003).

As in the past, the Department will analyze Latino voters as a separate group for purposes of enforcement of the Voting Rights Act. If there are significant numbers of responses which

report Latino and one or more minority races (for example, Latinos who list their race as Black/African-American), those responses will be allocated

alternatively to the Latino category and the minority race category.

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