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Redistricting and Reapportionment

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III. CENSUS ISSUES

B. Who Is Counted in the Decennial Census

2. [16S.11] Undocumented Persons

The last paragraph is revised:

Because no plaintiff has successfully passed the hurdle of showing that legislative seats would have been apportioned differently had undocumented persons not been counted, the constitutionality of including undocumented persons in the census enumeration has not been resolved.

IV. THE REDISTRICTING PROCESS

A. Constitutional and Legislative Requirements for Redistricting

1. Mandatory Considerations

d. Fairness to Minorities

- (1) [16S.20] Protection against vote dilution

Add at the end of the second paragraph on p. 16-27:

Section 5 has been challenged, most recently in *Northwest Austin Municipal Utility District Number One v. Holder*, ___ U.S. ___, 174 L.Ed.2d 140, 129 S.Ct. 2504 (2009). The Northwest Austin Municipal Utility District (NAMUDNO) is a small political subdivision outside Austin, Texas and was created in 1987 for the purpose of authorizing the financing of infrastructure projects. After holding elections in a private garage for a number of years, NAMUDNO moved elections to a local elementary school. However, NAMUDNO needed preclearance for such a change as it is in Texas, a state covered by §5's preclearance requirements. The district sued, asserting that because NAMUDNO was created after the Voting Rights Act took effect, it should be exempt from federal oversight. NAMUDNO further argued that Congress did not have the power to extend §5 in 2006 because changes in American society since passage of the Voting Rights Act made the Act unnecessary. The Court declined to address the necessity of extending §5 but overturned the district court and ruled that NAMUDNO was eligible for an exemption to the preclearance requirements.

- (2) [16S.21] Improper use of racial considerations

The Abrams citation sentence is replaced:

See also Abrams v. Johnson, 521 U.S. 74, 138 L.Ed.2d 285, 117 S.Ct. 1925 (1997) (district court's remedial map eliminating two of three majority-minority districts did not disregard §5 of

Voting Rights Act (42 U.S.C. §1973c) because §5 only aimed to prevent retrogression in voting position of racial minorities; district court's plan showed no retrogression from plan adopted following 1980 census); *Gonzalez v. City of Aurora, Illinois*, 535 F.3d 594 (7th Cir. 2008) (city not required to redraw districts to give Latinos more "safe" districts because there was no evidence of vote dilution and 42 U.S.C. §1973 does not require city to maximize Latino voter's ability to elect Latino candidates); *United States v. Euclid City School Board*, 632 F.Supp.2d 740 (N.D. Ohio 2009) (city not required to change method of electing board members to method that would guarantee election of minority board members, but only had to change method to allow meaningful participation in election process). *But see Benavidez v. City of Irving, Texas*, No. 3:07-CV-01850-P, 2009 WL 2060123 (N.D.Tex. July 15, 2009) (city ordered to adopt single member voting districts in lieu of at-large voting method for electing council seats when compact district of Hispanic voters could be carved out and when totality of circumstances suggested that Hispanics were at disadvantage in terms of electing candidates of their choice).

Add at the end of the section:

Similarly, in *Bartlett v. Strickland*, ___ U.S. ___, 173 L.Ed 2d 173, 129 S.Ct. 1231 (2009), the Supreme Court found that, although not required by the Voting Rights Act, a state may choose to create "crossover" districts in which the minority population makes up less than the majority of the voting-age population but is large enough to elect the candidate of its choice with help from majority voters who cross over to support the minority's preferred candidate. In *Bartlett*, the North Carolina legislature's 1991 redistricting plan drew House District 18 to include portions of four counties, in direct contravention of a state constitutional mandate that counties not be divided. After county officials sued for violation of the constitutional mandate, the state legislature defended the plan by asserting that the district was necessary to satisfy §2 of the Voting Rights Act of 1965. At the time, the plan made District 18 a geographically compact majority-minority district. However, when it was time to redraw districts in 2003, the minority voting age population had fallen below 50 percent of the district's population. Regardless, the state legislature again split counties in order to give District 18 more, if not a majority of, minority voters. County officials sued again, asserting that as District 18 was no longer a majority-minority district, then §2 of the Voting Rights Act did not require that it be drawn. The Supreme Court agreed, finding that the Voting Rights Act does not require the creation of crossover districts. However, such districts do not violate the Voting Rights Act and states may, as a matter of legislative choice or discretion, draw such districts.

V. CHALLENGING REDISTRICTING PLANS

A. The Voting Rights Act

1. In General

c. Test for Vote Dilution Claims

- (1) [16S.27] The *Gingles* factors

Add before the Page citation in the carryover paragraph at the top of p. 16-37:

Bartlett v. Strickland, ___ U.S. ___, 173 L.Ed.2d 173, 129 S.Ct. 1231 (2009) (challenged district was not protected because minorities did not constitute over 50 percent of voting age population in district as required by *Gingles*);