

**BOARD OF TRUSTEES WORK SESSION  
DALLAS COUNTY COMMUNITY COLLEGE DISTRICT  
AND RICHLAND COLLEGIATE HIGH SCHOOLS**

**District Office  
1601 South Lamar Street  
Dallas, TX 75215  
Lower Level, Room 007  
Tuesday, January 4, 2011  
1:30 P.M.**

**Agenda**

- I. Certification of Posting of Notice of the Meeting
- II. Re-districting briefing from Bob Heath (Bickerstaff, Heath, Delgado)
- III. Special presentations from Doug Hawthorne, Hunter Hunt and Betheny Reid about DCCCD Foundation, Inc. and DCCCD Resource Development
- IV. Citizens Desiring to Appear Before the Board
- V. Executive Session: The Board may conduct an executive session as authorized under §551.074 of the Texas Government Code to deliberate on personnel matters, including any prospective employee who is noted in Employment of Contractual Personnel.

As provided by §551.072 of the Texas Government Code, the Board of Trustees may conduct an executive session to deliberate regarding real property since open deliberation would have a detrimental effect upon negotiations with a third person.

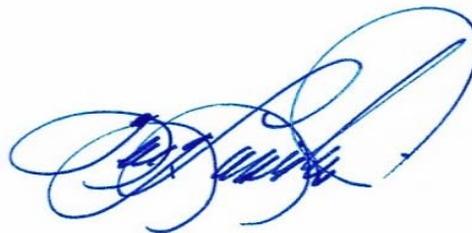
The Board may conduct an executive session under §551.071 of the Texas Government Code to seek the advice of its attorney and/or on a matter in which the duty of the attorneys under the Rules of Professional Conduct clearly conflict with the Open Meetings Act. The Board may seek or receive its attorney's advice on other legal matters during this executive session.

- VI. Adjournment of Meeting

**CERTIFICATION OF POSTING OF NOTICE JANUARY 4, 2011**

**WORK SESSION OF THE  
DALLAS COUNTY COMMUNITY COLLEGE DISTRICT  
AND RICHLAND COLLEGIATE HIGH SCHOOLS  
BOARD OF TRUSTEES**

I, Wright L. Lassiter, Jr., Secretary of the Board of Trustees of the Dallas County Community College District, do certify that a copy of this notice was posted on the 23<sup>rd</sup> day of December, 2010, in a place convenient to the public in the District Office Administration Building, and a copy of this notice was provided on the 23<sup>rd</sup> day of December, 2010, to John F. Warren, County Clerk of Dallas County, Texas, and the notice was posted on the bulletin board at the George Allen Sr. Courts Building, all as required by the Texas Government Code, §551.054.



---

Wright L. Lassiter, Jr., Secretary

# Single-Member District Plan Adopted by Board

On Tuesday, April 25, 1978, citizens of Dallas County will go to the polls for the first time in the Dallas County Community College District's 13-year history to elect Board of Trustee members from seven single-member districts.

The elections are the result of new single-member redistricting legislation passed by the state legislature in early summer. Governor Briscoe signed the legislation, S.B. 353, into law in late August giving the District the go-ahead to proceed with plans for creating and implementing a seven-district single-member plan.

During the past few years, judicial opinions have increasingly indicated that the at-large form of representation does not adequately provide for a true minority voice in local government.

Sensitive to this trend and favoring the establishment of a single-member redistricting plan, the Dallas County Community College District Board of Trustee members, after several public hearings during monthly DCCCD Board of Trustee meetings, and after publicly soliciting the opinions of various interested ethnic and minority groups county-wide, adopted plan I-5, during the October 10 meeting (see map).

Plan I-5 is a radial-type plan which divides the District into pie-shaped wedges. By dividing the districts in such a manner, fast-growing suburban areas and portions of slower-growing inner-city areas such as the inner-city core are combined in the same districts and are both equally represented by a Board member.

One major obstacle in developing the plans involved gathering specific census figures for the entire county so equal division could be achieved. According to the law, division into single-member districts must provide for equality of population as close as is practicable based on federal census figures.

The Special Services Division of the Dallas County Community College District accepted the assignment, working three and a half months to research and develop ways to divide the county's population centers.

Assisted by its computers, the Special Services Division developed fourteen separate redistricting plans, including plan I-5.

Several factors were taken into consideration: population flexibility, ethnicity, geographical and other natural or physical boundaries in addition to the matter of compactness and relative equal size of population centers. Each seven-district plan used the county's 289 census tracts and 1970 decennial census figures as a starting point.

A stipulation of the law dictates that



after each decennial census, if there is a reflection of more than ten percent variance in population between the most and least populous districts, then the Board must adjust each district accordingly.

To curb the necessity for changing districts every few years, it was the Board's intention to create a viable redistricting plan that, from the onset, would be agreeable and workable to all parties involved over a long period of time.

Plan I-5 was deemed by the Board the best possible solution to all legal and practical aspects of the redistricting question.

## FILING DATE SET FOR FEBRUARY

Citizens wishing to seek a place on the seven-member DCCCD Board of Trustees may file for candidacy beginning February 27. The last day for filing will be March 24.

Tuesday, April 25, 1978, has been established as the date for the election. Following the April election, the newly elected Board members will draw lots to determine who will serve each of two 2-year terms, two 4-year terms and three 6-year terms. This procedure will be included to

The Dallas County Community College District's redistricting plan I-5 divides the county into seven distinct areas.

In the plan adopted by the Board of Trustees, *District One* includes Richland College plus North Dallas, Richardson, Highland Park and University Park.

*District Two* includes the Brookhaven College campus, scheduled to open in the fall of 1978 and Carrollton, Farmers Branch, and Northwest Dallas.

To the Northeast, *District Three* includes part of downtown Dallas, Northeast Dallas, and a portion of Garland while *District Four* includes Eastfield College and portions of Garland, East Dallas, Mesquite, Balch Springs and Pleasant Grove.

*District Five* includes North Lake College in north Irving plus West Dallas, Irving, a portion of Grand Prairie and downtown Dallas.

*District Six* includes Mountain View and El Centro Colleges plus Southwest Oak Cliff, Duncanville, DeSoto, Cedar Hill, and downtown Dallas and *District Seven* includes Cedar Valley College in Lancaster, South Dallas, Wilmer, Hutchins, Seagoville, Kleburg and downtown Dallas.

get the Board back on a regular 6-year election cycle.

Inquiries regarding the election and candidacy qualifications should be addressed to Dr. Walter L. Pike, Vice Chancellor of Business Affairs at 701 Elm Street, Dallas 75202.

*The Dallas County Community College District is an Equal Opportunity Employer.*

**outlook**  
Volume 9 Number One, December, 1977

# Bickerstaff Heath Delgado Acosta LLP

3711 S. MoPac Expressway Building One, Suite 300 Austin, Texas 78746 (512) 472-8021 Fax (512) 320-5638 www.bickerstaff.com

December 20, 2010

*Via Federal Express*  
214-378-1703

Mr. Robert Young  
Legal Counsel  
Dallas Community College District  
1601 S. Lamar Street  
Dallas, Texas 75125

Dear Robert:

I am forwarding the enclosed information which we plan on reviewing with the board at the next opportunity to orient them to the activities that will be required at the Dallas Community College District in connection with the upcoming redistricting process. I know that several members of the board participated in the 2001 redistricting cycle and the material is intended to assist the District's Board of Trustees in recalling the major elements in the cycle. I have enclosed:

- A time line that identifies when the recommended steps in the process are anticipated;
- A narrative description of the activities;
- An introduction to our core redistricting team; and,
- An article I prepared for Community College Trustees entitled, "Ten Things You Need to Know About Redistricting" which I published as part of my redistricting presentation for the 2010 TACCA Conference.

I will guide the District through the legal decisions that are the core of the redistricting process and then prepare the District's submission to the U.S. Department of Justice ("DOJ") to obtain Voting Rights Act section 5 preclearance. As part of the service, I will monitor the submission at DOJ and respond to any inquiries or requests for additional information about the District's submission to ensure compliance with redistricting obligations.

Bob Heath and Sherry McCall are looking forward to presenting this material to the Board at the January 4, 2011 presentation, and I'll be ready to assist you as soon as the census data is released.

Sincerely,



David Méndez

DM/da  
Enclosures

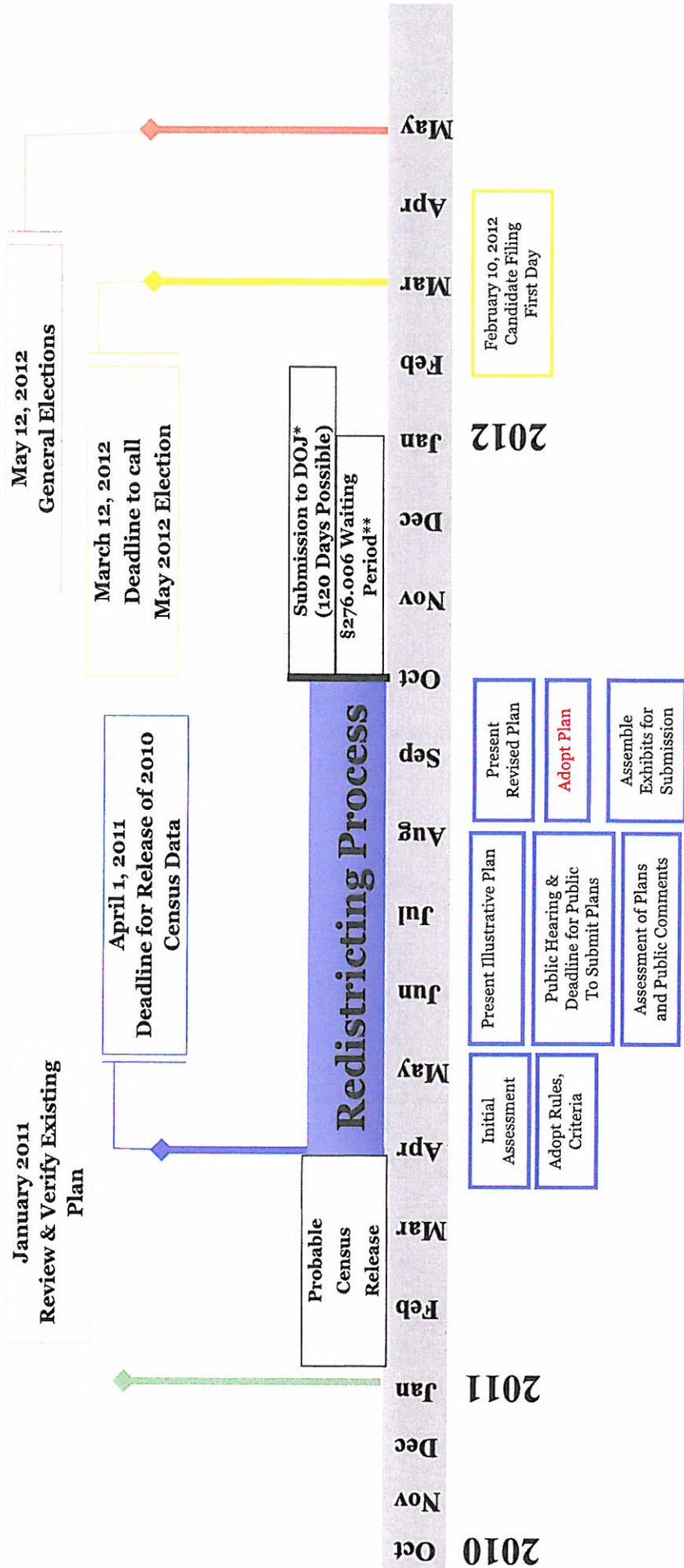
00501387

Work Session 01/04/2011

Page 4 of 18

Printed 12/23/2010 8:30 AM

# Time Line for 2011 Redistricting and Subsequent Elections



Bickerstaff Heath Delgado Acosta LLP  
 3711 S. Mopac Expressway  
 Building One, Suite 300  
 Austin, Texas 78746  
 512/472-8021 (phone)  
 512/320-5638 (fax)  
 1-800-479-6646  
[www.bickerstaff.com](http://www.bickerstaff.com)  
 AUSTIN-EL PASO-HOUSTON-DALLAS-EDINBURG

\*Department of Justice Preclearance requires 60 days for initial review and possibly 60 additional days with a request for additional information.  
 \*\*Section 276.006 of the Texas Election Code requires that redistricting orders be adopted at least three months prior to election day.  
 The section 276.006 waiting period and the submission time may overlap as we have depicted above.

## **Bickerstaff Heath Delgado Acosta LLP**

### **Overview**

Bickerstaff Heath Delgado Acosta LLP is an Austin-based law firm founded in 1980 that represents Texas counties, cities, colleges, schools and other governmental entities. Since it was founded, the Firm has been involved with Redistricting for the State of Texas as well as hundreds of Texas local governmental entities. The Firm's attorneys and other experts have redistricted Texas school districts and community college districts in the 1981, 1991 and 2001 redistricting cycles. The Firm proposes a complete solution to the District's project and has all of the expertise and technology to provide redistricting services.

Guiding Texas governmental entities through the political and legal minefields of redistricting has been a specialty of our attorneys for three decades. Since the Firm's founding, it worked with the Texas Legislature in the 1981 redistricting cycle to assist in the drawing of legislative districts. During the 1991 redistricting cycle the Firm represented numerous counties, cities and other entities in redistricting. During the 2001 redistricting cycle, the Firm represented the Attorney General of the State of Texas on Texas Legislative Redistricting and approximately 98 Texas local governmental entities, including 44 counties, 23 municipalities, 22 school districts, 3 community colleges, and 6 special districts. Whether the entity needed merely an evaluation of redistricting requirements, a complete remapping of its districts, consolidation of districts or creation of additional districts, conversion from at-large to single-member voting systems, or counseling on litigation avoidance, our depth of experience in this practice area helped make the process both successful and as smooth as possible for our clients. The Firm was hired by the Texas Senate in 2003 to assist it in congressional redistricting.

In our redistricting representation, we use the latest technology and software, so we can directly assist entities in drawing new districts. We have full-time GIS (geographic information system) staff to assist in the redistricting process, including in-house production and printing of maps. We prepare submissions to the U.S. Department of Justice to obtain Voting Rights Act section 5 preclearance and respond to DOJ's questions during that process. We work with officials, staff, and members of the public to ensure that redistricting obligations are met and public participation is enhanced.

## REDISTRICTING PROCESS

1. Initial schedule planning. The Firm will consult with the Board of Trustees and establish a schedule for performance of the various tasks for which the Firm has been engaged. This would include scheduling Board meetings, work sessions and public meetings; establishing target dates for presentation of proposed plans for Board consideration and/or for public discussion; and establishing target deadlines for the Board of Trustees adoption of a redistricting plan and submission of a preclearance request to the Department of Justice. The Firm will counsel the Board of Trustees and clearly define the Board's responsibility in the redistricting process.
  
2. Conduct training sessions. If desired, the Firm will also schedule training sessions or workshops for the Board of Trustees or any District staff who will be involved with the District's redistricting process. Possible topics include overview of applicable legal standards; development of redistricting criteria; organization and coordination of redistricting process and schedule; role of public input and conduct of public meetings; required documentation for preclearance submission; the Firm's GIS and demographic capabilities; and, the use of Internet-based conferencing to conduct some or all of the meetings and public hearings.
  
3. Identify and begin other census pre-release tasks. Tasks in this category may include: (i) collecting data concerning existing Board member voting district boundaries to be input into the Firm's GIS/redistricting software databases and verified and any other demographic or boundary-related data or information the District may have; (ii) assisting the District with preparation of draft resolutions, public notices, and other documents likely to be needed during the process (and preparation of their translation into Spanish); and (iii) identifying and beginning to collect data and documents likely needed as part of any ultimate preclearance submission.

The Firm is experienced in the use of census data and Tiger/Line (census geography) files and is capable of drawing districts at various levels of geography. Where possible, the geographical units the Firm recommends be used are election (voting) precincts, which in census terminology are known as voting tabulation districts or VTDs. This is especially appropriate in the context of seeking to avoid *Shaw v. Reno* (racial gerrymandering and/or reverse discrimination) liability. In the event of unforeseen circumstances, as appropriate, the Firm can use other geography with census population data.

4. Performing an initial assessment. Upon the release of the Census Data in 2011, the Firm will examine the new population data and determine whether current Board of Trustee districts have become sufficiently

unbalanced in population as to require the District to engage in redistricting. This “initial assessment” will be presented to and discussed with the Board.

5. Development and adoption of criteria for redistricting. If the Trustee Districts are determined to be out of balance, the Firm will assist the Board of Trustees in identifying and adopting practical and legal criteria to be followed during the redistricting process. In light of *Shaw v. Reno*-type cases concerning gerrymandering and the standards that have emerged from them, this is a critical element of a successful redistricting process and important to establishing defensibility of an adopted plan against later litigation. (Much of this can be done before the release of census data.)
6. Develop redistricting plans. The Firm will develop redistricting plans for Board members’ single-member districts, using the Firm’s GIS and demographic capabilities. The Firm will work with the Board of Trustees to develop plans suitable for preclearance submission that take into account, consistent with the applicable legal requirements, the various practical and political considerations the Board determines are relevant. Under our approach, we interview affected trustees to ascertain their interests and concerns as we propose adjustment to population in their trustee district territory. We anticipate that a number of plans may be developed, each responding to a different set of considerations proposed by the Board of Trustees and that some modifications or refinements may be required before a plan is acceptable to the Board. As desired, the Firm will provide written materials in support or explanation of any plans developed by the Firm at the Board’s request.
7. Advise the Board of Trustees regarding the merits of plan(s). The Firm will advise the Board of the relative legal and practical merits of particular plans under consideration. As requested, members of the Firm will attend meetings of the Board at which plans are presented and discussed. The Firm will provide written materials in support or explanation of any plans evaluated by the Firm at the Board’s request. In addition, the Firm will provide an independent assessment of any plans under serious consideration. This assessment will verify whether and how the plan under consideration satisfies the applicable legal standards and whether the adopted redistricting criteria appear to have been followed.
8. Conduct public presentation, discussion of proposed plans and adoption of final plan. Typically, one or more plans proposed by the District will be presented for public comment. The Firm will conduct public presentations of proposed plans and summarize public comments for the Board. The Firm will assist the Board in adopting a final plan based on the analysis.

Testimony at each hearing will be transcribed by a certified court reporter or by electronic recording devices, depending upon the District's instructions. The substance of such meetings, public comments on the specific plans presented, and the District's responses should be characterized in the preclearance submission. Our experience is that the time and cost for attorney review of such meetings associated with preparation of the submission package is greatly reduced – by more than the cost of the reporter – if there is an accurate printed transcript on which to rely, in lieu of poring over tapes of the meetings, from which identification of the various speakers is difficult, if not impossible, and which may suffer unpredictably from poor sound quality or even wholly missed portions of meetings.

9. Preparation of preclearance submission. Upon adoption of a plan, the Firm will prepare the required Voting Rights Act section 5 preclearance submission for the Department of Justice, including assembling all documentation required.

As the District is aware, under section 5 of the Voting Rights Act, any redistricting plan adopted by the Board of Trustees will need to be approved by the Department of Justice or by a three-judge district court in the District of Columbia before it can be implemented. The Firm has prepared hundreds of submissions to the Department of Justice and routinely does this for its redistricting clients. It is important that the submission not be thought of as merely something that happens at the end of the process. Rather, the redistricting process should be specifically designed to address the issues that will be important to the Department of Justice and to develop the material that will need to be included in the submission. It is also important to remember that the submission process involves not only the written submission materials, but often also includes a substantial effort to respond to clarifying questions posed by the Department and to its requests for additional information. The Firm will work with the District to submit its plan to any other required agency.

10. Responding to DOJ requests for additional information. During the Department of Justice's review of the preclearance submission, it may request additional information. The Firm will prepare responses to those requests and deal directly with DOJ to answer any questions. In unusual circumstances, it may be desirable for Board members and members of the Firm to visit with DOJ officials in Washington D.C. We do not anticipate such circumstances arising, but in the event they do, the Firm will be available to meet with DOJ personnel.
11. Ongoing legal counsel and consulting. The Firm will be available through the conclusion of the submission stage to provide ongoing legal counsel and consulting to the District concerning the redistricting process, related

requirements, the plan(s) considered and the plan adopted, the District's preclearance submission, and initial implementation of any precleared plan. This does not include counseling regarding any specific litigation brought against the District, which would fall under the category of litigation representation.

12. Litigation. In the event there is actual litigation or threatened litigation, the Firm will be available to counsel the District about the likely merits of any suit or claim brought or anticipated to be brought imminently or to defend the challenge. The Firm will also be available to advise the District regarding potential litigation arising after the submission process is concluded.

A major goal of the redistricting process is to design a plan that will avoid litigation and liability. The Firm tries during the process to minimize the likelihood of a legal challenge by advising the client of the most legally defensible plan and by being sure that the process produces a record that can be used to demonstrate that the adopted plan complies with the applicable legal standards. Sometimes, however, when the opponents of a plan are unsuccessful in the political arena, they will move their battle to the courthouse. In those instances, the Firm is prepared to defend the plan as it has extensive experience in litigating Voting Rights Act and *Shaw v. Reno* issues. As described earlier, the Firm has unique experience in *Shaw v. Reno*-type cases, because of its success in the *Chen v. City of Houston* case. The members of the Firm are licensed in the U.S. Supreme Court and various lower federal courts, including in particular the U.S. Court of Appeals for the Fifth Circuit, and the U.S. District Courts for the Eastern, Western, Northern and Southern Districts of Texas.

**Bickerstaff Heath Delgado Acosta LLP**  
**Redistricting Team**

Our redistricting team consists of a number of Firm lawyers. The Firm's team is headed by Bob Heath, David Méndez and Syd Falk. In addition, the Firm has six other attorneys and two technical staff that have substantial elections, redistricting and voting rights experience.

**C. Robert Heath**

Mr. Heath has been lead counsel on many redistricting cases and is a frequent speaker on redistricting at state and national conferences. In December 2009 he was featured as a panelist at the Conference on Voting Rights Litigation sponsored by the International Municipal Lawyers Association in Columbia, South Carolina. In March 2010 he spoke before the Association of State Legislatures at their National Redistricting Conference.

He has supervised the preparation of many complex submissions to the Department of Justice. Mr. Heath represented governmental entities in several voting rights lawsuits. A notable recent suit is *Chen v. City of Houston*, 206 F.3d 502 (5th Cir. 2000), in which the City obtained a summary judgment dismissing a *Shaw v. Reno* challenge to its council districts. He has 30 years experience as a redistricting attorney. Mr. Heath graduated from The University of Texas School of Law in 1972. He is licensed by the Supreme Court of the State of Texas, and also licensed to practice in the U.S. District Court for all Texas districts, the U.S. Court of Appeals for the Fifth Circuit, and the Supreme Court of the United States.

Mr. Heath has spoken and delivered papers on redistricting throughout the United States and is recognized as an expert in this area of law. His article, *Managing the Political Thicket: Developing Objective Standards in Voting Rights Litigation*, 21 Stetson L. Rev. 819 (1992), was quoted and cited by the United States Supreme Court in *Holder v. Hall*, 512 U.S. 874, 889 (1994) (O'Connor, J., concurring).

**David Méndez**

Mr. Méndez has experience in voting rights and redistricting issues and regularly advises counties, cities, colleges and school districts in these areas. He has also prepared numerous Department of Justice submissions. He joined the Firm in 1986, and during the 1991 and 2001 redistricting cycles he represented some of the largest counties in Texas in their redistricting and justice and constable precinct realignment projects. Mr. Méndez graduated from The University of Texas School of Law in 1980. He is licensed to practice law by the Supreme Court of the State of Texas, and also licensed to practice in

the U.S. District Court for all of the Districts in Texas, as well as the U.S. Court of Appeals for the Fifth Circuit.

He speaks and writes extensively on election law, voting rights and redistricting issues and hosts a one day seminar for local government officials on redistricting sponsored by the Texas Leadership Institute. Mr. Méndez has also presented election law and voting rights topics for the Office of the Secretary of State of Texas for local government officials, for TAC, the VG Young Institute, the University of Texas School Law Conference and the Texas Association of Community College Attorneys.

Mr. Méndez was lead attorney or had substantial authority for several redistricting projects, including the following: Dallas County, Dallas County Community College District, Dallas Independent School District, City of Midland, City of San Angelo and City of Bryan.

Mr. Méndez assisted extensively in the Firm's representation of the City of Houston in the 1991 *Campos* litigation, conducting substantial portions of the discovery, defending council members' depositions, preparing expert witnesses, and analyzing and briefing of legal issues. He has helped numerous cities and other entities implement single-member districts. Mr. Méndez also works frequently on election contests, recounts and other election-law-related matters before the courts and the Texas Legislature. He has spoken at seminars on election law sponsored by county associations and the Secretary of State. Mr. Méndez has 20 years of redistricting and Voting Rights Act experience.

|                            |
|----------------------------|
| <b>Sydney W. Falk, Jr.</b> |
|----------------------------|

Mr. Falk has substantial experience in voting rights litigation, both through his work on cases handled by the Firm (including *Chen v. City of Houston*), and as a former Fifth Circuit briefing attorney. Prior to obtaining his law degree, Mr. Falk received a Ph.D. in theoretical astrophysics, performed post-doctoral work at CalTech and the University of Chicago's Fermi Institute, was an Assistant Professor of Astronomy at the University of Texas at Austin, and was a scientific consultant at the Los Alamos National Laboratory. His background in mathematics and statistics is valuable in analyzing relevant redistricting statistics and the expert testimony in voting rights cases. He has 20 years of redistricting experience, including redistricting for numerous governmental entities of all sizes and kinds, and has prepared many preclearance submissions to the Department of Justice. He has successfully defended Dallas County and (with Bob Heath) Bexar County in lawsuits challenging their redistricting plans – in particular, aspects of their plans that eliminated justice precincts; the counties prevailed in these cases. He was co-counsel with Bob Heath in the *Chen v. City of Houston* case and participated with other firm attorneys in the 1991 *Campos v. City of Houston* litigation. He recently defended Bexar County in a case challenging the County's precleared elimination of a justice of the peace position – the case settled and the abolition of the position stood. Mr. Falk graduated from The University of Texas School of Law in 1984.

He is licensed to practice law by the Supreme Court of the State of Texas, and also licensed to practice in the U.S. District Courts for all Texas federal districts, the U.S. Court of Appeals for the Fifth and Ninth Circuits, and the Supreme Court of the United States.

### **GIS/Redistricting Staff**

#### **Sherry McCall**

Ms. McCall is the Firm's senior redistricting specialist. As the Firm's GIS specialist, she will handle or supervise the technical drawing of the college district's maps, and she works closely with legal counsel and our Elections Specialist to compile the various technical reports and maps required for the Department of Justice submission.

Prior to joining the Firm 13 years ago, she was a GIS specialist at the Texas Education Agency, where she helped implement the Agency's first GIS system. She has data programming experience and has worked extensively with data from the Texas Education Agency, the Census Bureau and the Texas Legislative Council. Once the Census data is released in 2011, Ms. McCall and other Firm GIS staff under her supervision will develop specific client districting plans. She will also be responsible for the initial review of other specialists' plans, as well as the preparation of all data used for the redistricting cycle. She also assists attorneys in analyzing population data and relevant historical elections and develops exhibits needed for preclearance submissions. She provides analyses and exhibits for all redistricting litigation cases. Ms. McCall graduated from the University of North Texas with a B.A. in Biology in 1991. She is not an attorney and is not licensed to practice law.

#### **Betty Brown**

Ms. Brown serves as the Elections Specialist for the Firm. Ms. Brown is responsible for compiling the data that supports a college district's DOJ submission. She works closely with the legal team and the GIS specialist to make sure we have all of the materials we need for the District's submission to DOJ. She will be in contact with District staff to obtain the information we need from your office to complete the necessary submission. Ms. Brown also is responsible for functions that prepare college districts and other governmental entities for elections, as well as for consultation regarding records management, policy development, office administration, and training of personnel. Under attorney supervision, she reviews processes and procedures to ensure compliance with local, state and federal law. Ms. Brown worked in the City of Austin's City Clerk's Office for 22 years prior to joining the Firm. She is Texas Registered Municipal Clerk #92 and has received her Master Municipal Clerk's designation from The International Institute of Municipal Clerks. She is a member of the Capital Chapter of City Clerks, Texas Municipal Clerks Association, and International Municipal Clerks Institute. She is not an attorney and is not licensed to practice law.

**TEN THINGS YOU NEED TO KNOW ABOUT REDISTRICTING**  
**Information for Texas local governments concerning the 2011 redistricting cycle**

Prepared by: David Méndez, Bickerstaff Heath Delgado Acosta LLP

December 20, 2010

The release of the 2010 census will trigger redistricting obligations for Texas Community College Districts, as well as College Districts that elect their governing boards from single-member districts. In addition, release of the Census will provide opportunities for Community College Districts with At-Large governance structures to assess their exposure to potential liability under the Voting Rights Act of 1965. This paper discusses important issues that impact these entities as they fulfill their redistricting obligations or assess voting rights issues. A detailed description of the redistricting process for Texas local governmental entities is being presented at the program where this paper is being distributed. For a copy of that Power Point presentation, or for more information on these obligations, please do not hesitate to contact us.

**1. Release of census data.**

- The Secretary of Commerce is required to conduct the next decennial census on April 1, 2010. The census is administered by the Census Bureau. 13 USCA §141 <http://2010.census.gov/2010census/>
- An important aspect of the census is that a tabulation of the total population of the States must be completed and delivered to the President of the United States by December 31, 2010. This initial release is of state-wide totals rather than detailed data and is used to determine how congressional seats will be apportioned among the state.
- Detailed population figures (sometimes referred to as the “PL-94-171 data”) must be released to the states for use in state and local redistricting efforts on or before April 1, 2011. 13 USCA §141(c). We expect this data to be released in January or February 2011.
- Texas law allows use of census data for redistricting purposes after delivery of the data by the Census Bureau to the Governor. TEXAS GOVERNMENT CODE Annotated § 2058.002(b)

**2. Timing issues for Texas Community College Districts and other political subdivisions.**

- Texas Community College Districts with single-member districts will need to take into consideration the 2010 census data upon its release, and determine if the population of the single-member districts is out of balance.
- If the population of the most populous district exceeds the population of the least populous district by more than 10%, the College District will need to redistrict.
- In redistricting, the Board of Trustees adjusts the boundaries of the respective single-member districts to allocate population (based on the 2010 census) so that it is evenly distributed among the respective single-member districts.
- As a practical matter, the Board of Trustee’s must complete the redistricting process by February 28, 2012 so candidates for county commissioner precinct positions are able to determine which district they will file for in the May General Elections (if scheduled).
- Some political subdivisions, are on a November uniform election cycle, and they should complete the process prior to the November 2011 election cycle if elections are scheduled for that date.

- Because candidate filing for such elections occurs prior to the call of these general elections, the redistricting process must be complete by the end of February 2012 for those entities holding May elections, and by the end of August 2011 for those entities holding elections in November 2011.

### **3. The Voting Rights Act of 1965 (“VRA”) and recent challenges.**

- Texas and each political subdivision within the state have been “covered jurisdictions” under Section 5 of the VRA since 1972.
- As Covered Jurisdictions, any changes in election practices by the state or any of these political subdivisions must be precleared by the Department of Justice in Washington D.C. before such practices can be used.
- Changes in election practices include changes in election precinct boundaries, polling locations, commissioner court, or justice precinct boundaries, city limit lines and single-member district lines, as well as many other changes.
- The VRA was re-authorized by Congress in 2006. After the re-authorization, the North Austin Municipal Utility District challenged the constitutionality of these preclearance requirements. In a recent ruling the Supreme Court of the United States decided the case without reaching the constitutional question, and the VRA remains in effect and applicable to Texas political subdivisions.

### **4. One person -- one vote and some related issues.**

- Texas Community College Districts and other political subdivisions with single-member districts typically redistrict based on total population from the census data to comply with one person – one vote requirements under the Fourteenth Amendment of the United States Constitution.
- This constitutional principle applies to “legislative” bodies that govern political subdivisions such as Congress, the Texas Legislature, as well as counties, cities, school districts, college districts and other special districts in Texas.
- To the extent that representatives to these legislative bodies are elected from districts, the one person – one vote constitutional principle requires that each district have substantially equal population.
- One person-one vote requirements do not apply to judicial districts such as justice precincts from which justices of the peace and constable are elected.
- While the Census and other data resources measure many aspects of population including age, ethnicity, racial composition, gender, citizenship, voter registration, voter participation, and other factors, for one person – one vote purposes, governmental bodies typically utilize total population as the appropriate measurement criteria.
- For political subdivisions other than the United States Congress, districts are considered to be in balance and thus meet the one person – one vote requirement if the districts have substantially equal (within 10%) total population.
- This means that a political subdivision’s electoral districts would be considered to be in balance under this constitutional requirement if the population in the most populous electoral district in the political subdivision did not have more that 10% more persons than the least populous electoral district.

- The total population in an electoral district may differ substantially from the voting age population or the actual population of citizens eligible to vote in the district.
- There may be situations (e.g., a relatively small county containing a prison whose inmates are ineligible to vote) where it would be permissible to depart from total population as the apportionment base.
- While total population is used to determine that the districts are in balance, other population figures, such as voting age population, citizenship information, registered voter information and voter turnout data are regularly utilized in the redistricting process to assess the relative voting strength of districts.

**5. Calculating 10% deviation among electoral districts.**

- For non-congressional districts a deviation of no more than 10% is prima facie valid. Here’s an example of how this is calculated for a Texas Community College District with a population of 70,000:

College District Total Population = 70,000      Ideal district size = 10,000 (70,000/7)

|                                  |        | Deviation |
|----------------------------------|--------|-----------|
| District 1                       | 10,500 | +5.0%     |
| District 2                       | 9200   | -8.0%     |
| District 3                       | 10000  | 0.0%      |
| District 4                       | 9,900  | -1.0%     |
| District 5                       | 10,100 | +1.0%     |
| District 6                       | 10,300 | +3.0%     |
| District 7                       | 10,000 | 0.0%      |
| Total Deviation 5% + (-8%) = 13% |        |           |

- Total population is utilized to make these calculations. Voting age population, citizenship, registered voter information or other data are not utilized.
- Adjustments of total population data are typically made in situations where there is a large penal institution in the electoral district that houses convicted felons. The Census Bureau will count these felons as residing at the penal institution and in some rural counties this penal population can constitute a significant portion of the total population. Since felons are disenfranchised of their right to vote, it is appropriate in some instances to adjust for these populations in calculating deviation.

**6. County election precinct changes resulting from redistricting may affect College Elections.**

- As part of the redistricting of any County Commissioner precincts, the commissioners’ court will need to review county election precincts for compliance with certain size limitations and other statutory criteria. TEXAS ELECTION CODE Sections 42.031 – 42.032.
- Size Requirements – Typically, a county election precinct must contain at least 100 but not more than 5,000 registered voters. TEXAS ELECTION CODE Section 42.006
- Other Requirements – A county election precinct, including a consolidated precinct, may not contain territory from more than one of each of the following types of territorial units:

00501146

a commissioners precinct;  
a justice precinct;  
a congressional district;  
a state representative district;  
a state senatorial district;  
a ward in a city with a population of 10,000 or more; or  
a State Board of Education district

*See*, TEXAS ELECTION CODE Section 42.005

- Legislative redistricting efforts may affect the ability of some counties to complete their county election precinct adjustments in a timely manner. Historically, the Texas Legislature has not been quite as quick to complete the drawing of state legislative districts and congressional districts. Also, litigation involving those districts has often delayed the finalization of those electoral districts. Because county election precincts cannot contain territory from more than one of these state and federal districts, the finalization of the drawing of precincts in some counties has been delayed or had to be redone multiple times.
- Because Community College Districts use county election precincts to conduct elections in most counties, these issues involving the drawing of election precincts are likely to affect the District.

## **7. Municipal, School, College and Special District requirements.**

- The general election cycle for most political subdivisions other than counties in Texas requires elections on the uniform election date in May. There are a few Texas political subdivisions that have general elections in November based on their home rule charter or (for some school districts) because they selected this date as a legislative required option.
- The Texas Election Code provides that an election change must have been in effect for at least 90 days before it can be used in an election. As a result, entities with single-member districts that must redistrict in 2011 cannot do so in time to use new districts in the May 2011 election cycle. The general election would be called (and the filing deadline for candidates would occur) at about the time that the census data is expected to be released.
- Typically, for these types of political subdivisions, the first election at which any new districts will be effective is May 2012. The redistricting process should be organized so that the new electoral districts are precleared prior to the call of the general election (which typically coincides with the filing date for candidates). This is 62 days prior to the election date and occurs in early March of an election year.
- The redistricting statutes (and many home rule charters) for these political subdivisions usually specify when the process must be initiated and also specify whether the incumbent elected officials single-member districts may serve out the remainder of their term after a plan is adopted. In some unusual situations all members may be required to run for office as part of implementation of a new redistricting plan.
- Some political subdivisions have implemented single-member district forms of governance as a result of a court order in a voting rights lawsuit and the order may dictate the manner in which modifications to the redistricting plan are made.

## **8. Texas Congressional Districts may increase as a result of the 2010 census.**

- Population estimates suggest that Texas may get additional congressional seats as a result of the 2010 census. Seats are apportioned to the various states in proportion to the state's population relative to the rest of the country's population. Various estimates suggest that Texas may gain up to four additional congressional seats.
- The Texas Legislature draws congressional districts. The House and Senate adopt a plan in the form of legislation creating the congressional districts. If the Legislature fails to adopt a plan, or if the plan it does adopt is overturned by the courts, it is possible that an interim plan will be drawn by a court as happened in 2002.
- Congressional redistricting plans have affected the ability of counties to finalize adjustments to county election precincts in urban areas.

## **9. Short form census questionnaire and discontinuation of long form.**

- The 2010 Census data will be gathered using a 10 question form that concentrates on the number, age, gender, race/ethnicity of persons living in each household.
- Historically, the Census Bureau had utilized a combination of short form questionnaires and a longer (more detailed) questionnaire that was issued only to a smaller portion of the populace. This long form asked questions about a broad range of economic, demographic and education topics. The long form census has been discontinued for this decade and the Census Bureau is using other census tools to collect data from citizens on a regular basis.

## **10. Handling census data for redistricting.**

- Data from Census Bureau is received in raw data files that must be processed and appended to specific mapping data at several levels (blocks, block groups, voting tabulation districts (VTD), tracts, place and county) before it can be used for redistricting.
- Data file size is large and provided as a statewide dataset – it has to be processed down to redistrict at various levels (county, place and school district). PL-94-171 data files contain 288 fields of data spread across 4 tables (two total population tables and two voting age tables)
- Specialized redistricting GIS software applications are required to process and manipulate the data and to develop plan maps. In certain instances, demographic thematic maps, electoral history data, voter registration information, and specialized citizenship data runs are required to analyze the voting strength of redistricting plans.
- The redistricting process is a legal analysis performed for the political subdivision. Work performed by legal counsel for the County or other political subdivision in developing plans or analyzing the voting strength of districts can be treated as attorney work product and/or privileged communications until such time as the political subdivision releases information to the public.