



# **City Manager Report**

## **The City of OKLAHOMA CITY**

**NO.** 6555

**DATE** October 17, 2006

**TO THE MAYOR and MEMBERS OF THE CITY COUNCIL**

**SUBJECT: PEER CITIES INFORMATION ON FORM OF GOVERNMENT, WARD  
SIZE, NUMBER OF WARDS, AND REDISTRICTING**

In a survey of peer cities, information was gathered about each city's form of government, the number of wards and size of each ward. The survey also requested information about the mechanism each city uses to redistrict wards and when they complete the process. The peer cities used for this survey were El Paso, Fort Worth, Austin, Kansas City, Omaha, Nashville, Tucson, Wichita, and Tulsa.

### **Overview**

Among the cities surveyed, either a Strong Mayor-Council or Council-Manager form of government is used. Those cities with the Strong Mayor-Council are Nashville, St. Louis, Omaha, and Tulsa. The remaining cities use the Council-Manager form of government. Various terms are used in each city to refer to council members and wards. Many cities refer to their representative areas as districts instead of wards.

The number of wards in each city varies from six (6) wards in Wichita to nine (9) wards in Tulsa and Fort Worth. Nashville has 35 districts and five (5) at-large positions comprising their council and is a metropolitan/county combined government entity. Most cities use between six (6) and nine (9) wards to make up their council. Kansas City uses six (6) districts with two representatives in each district. Residents of the district elect one representative and the other representative is elected at-large. This model has 12 members on the council with six (6) districts. The City of Austin has a six (6) member council but all of its members are elected at large and do not have wards.

All peer cities use the same process to determine the size of their wards or districts. The size of the area for representation is based on population and is drawn to be as equal as possible. Land mass of each ward has no direct bearing due to different population densities within cities. Kansas City districts contain roughly 75,000 people and Fort Worth districts are near the 60,000-population mark. The City of Wichita and the City of Omaha have populations of about 59,000 in each ward. These numbers are based on population averages of the wards of each city and each city's ward population sizes are usually within 10 percent of each other. For a complete ward population size comparison by city see Table 1 on page 2.

The mechanism cities use to redistrict ward or district boundaries all follow the federal law under the Voting Rights Act and subsequent case law decisions. Federal law requires municipalities to examine the results of the most recent Federal Decennial Census and redraw ward boundaries to equalize population changes in the wards, if needed. In most of the peer cities the redistricting is completed by the following year after completion of the Federal Decennial Census. Most cities reference this process in their city charters. The City of El Paso redistricts, as needed, every four years per their city charter and stays updated on shifting and growth patterns on their population every year. Tulsa reviews their city charter every two years and includes reviewing population changes in wards as part of their process.

Oklahoma City's Charter outlines the requirement under Article XI. Sections 1 and 2 outlining the provisions to change the numbers of wards or change the boundaries of the wards including the federal provisions (See attached Article XI of the City Charter). Also enclosed for your review is a legal opinion from the Municipal Counselor's Office dated January 24, 1992 on the subject of adding wards.

Table 1

<b>Oklahoma City</b>	<b>Council-Manager</b>	<b>8</b>	<b>63,266</b>
Austin	Council-Manager	6 at-large members	115,042*
Tucson	Council-Manager	6	81,342
Kansas City	Council-Manager	6	75,000
Wichita	Council-Manager	6	59,200
Omaha	Mayor-Council	7	59,142
El Paso	Council-Manager	8	70,457
Fort Worth	Council-Manager	9	60,043
Tulsa	Mayor-Council	9	44,000
Nashville	Combined City/County	35	20,353

\*Note: Because Austin council members are all elected at-large, the population represented is 690,252 divided by 6.

  
 James D. Couch  
 City Manager

## Oklahoma City Charter

### ARTICLE XI. WARDS

**Section 1. Redistrict Wards.** Utilizing the 1970 Federal Decennial Census the boundaries and ward lines of each ward were changed by Ordinance No. 14,060 whereby the area of each ward was reapportioned based upon equalization of population. It shall be the mandatory administrative function and duty of the City Council and the members thereof within one year from the receipt of the Federal Decennial Census of 1980 (Census of Housing: Block Statistics, Final Report, Oklahoma City Urbanized Area) by Oklahoma depository libraries and each succeeding Federal Decennial Census (Census of Housing: Block Statistics, Final Report, Oklahoma City Urbanized Area) by Oklahoma depository libraries thereafter, to ascertain based upon the said Federal Decennial Census the population in each of the City wards at such time. If and when the population as ascertained by the said Federal Decennial Census in any ward is greater than any other ward, it shall be the mandatory duty of the Council to redistrict the wards by changing the boundaries of the existing wards or creating additional wards so as to equalize, as nearly as practicable, the population of the several wards of the City, and shall by ordinance define the boundaries thereof. The wards shall be as compact in form as possible and ward lines shall not set up artificial corridors which in effect separate voters from the ward to which they most naturally belong.

(Charter, 4-2-57; am. 3-18-75)

**Section 2. Additional Wards and Boundary Change of Wards.** The City Council may, at other periods than those directed in Section 1 hereof, in the manner and upon the basis stated and provided for in Section 1 hereof, create additional wards or change the boundaries of existing wards so as to equalize, as nearly as practicable, the population of the several wards of the City.

(Charter, 4-2-57; am. 3-18-75)

**THE CITY OF OKLAHOMA CITY  
OFFICE OF  
THE MUNICIPAL COUNSELOR**

**TO:** Mayor and Council  
**FROM:** James G. Hamill  
Municipal Counselor  
**DATE:** January 24, 1992  
**RE:** Council's redistricting obligations under Section 2 of  
the Voting Rights Act, 42 U.S.C. § 1973

**BACKGROUND**

On Tuesday, January 7, 1992, certain individuals spoke before Council and commented on the upcoming redistricting of City wards. Some of these speakers argued that since twenty-five percent (25%) of the total population of The City of Oklahoma City is now made up of "minority population"<sup>1</sup> the Council is under an absolute legal obligation to make certain that at least two (i.e., 25%) of its eight wards are "minority wards." These individuals were apparently basing such statements upon their interpretation of the requirements of Section 2 of the Federal Voting Rights Act, codified as Section 1973 of Title 42 of the United States Code.

Since January 7, 1992, the Municipal Counselor's Office has been engaged in an effort to further research the Council's redistricting obligations under Section 2 of the Voting Rights Act, 42 U.S.C. § 1973. An analysis of such obligations are set forth below.

**ANALYSIS OF COUNCIL'S OBLIGATIONS  
UNDER SECTION 2 OF THE VOTING RIGHTS ACT  
42 U.S.C. § 1973**

Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, is applicable to redistricting by The City of Oklahoma City and other governmental entities. In full, said statutory provision currently reads as follows:

<sup>1</sup> This twenty-five percent (25%) "minority population" as referred to by those who spoke before Council on January 7, 1992, would appear to include Blacks, American Indians, Hispanics, Asians, and "others" (such as multiracial, interracial, Middle Eastern, etc.).

**§ 1973. Denial or abridgement of right to vote on account of race or color through voting qualifications or prerequisites; establishment of violation**

(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color; or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, as provided in subsection (b) of this section.

(b) A violation of subsection (a) of this section is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: Provided, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

Section 1973, as quoted above, is the relevant provision to examine in attempting to determine the Council's obligations in adopting a redistricting plan. A plan adopted in violation of said section would be contrary to Federal statutory law and, thus, invalid.

In reading Section 1973, it should be noted that the language of the law specifically rejects "proportional representation." Your attention is directed to the last sentence of Subsection (b) of Section 1973 which expressly provides that "nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population." Thus, the Council is under no legal obligation to develop a redistricting plan that guarantees all minority groups that they will have a number of seats on the Council equal to their respective proportion to the total population of The City of Oklahoma City.

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The Council is, however, under an obligation pursuant to Section 1973 to make certain that its redistricting plan does not impermissibly "dilute" "minority voting strength." Redistricting plans have been challenged in numerous cases on the ground that they constitute an impermissible "dilution of minority voting strength" and thus run afoul of the language in 42 U.S.C. § 1973 (a) and (b) that prohibits any procedure "which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color" by establishing a system where a minority group has "less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." [See 42 U.S.C. § 1973 (a) and (b)].

In the case of *Thornburg v. Gingles*, 478 U.S. 30 (1986), the United States Supreme Court established a three-pronged test for discovering "illegal minority vote dilution." There are three (3) primary elements of proof which a plaintiff must satisfy to prevail in such an action:

1. The plaintiff must prove that the relevant "minority group" in the particular jurisdiction is "sufficiently large AND geographically compact" enough "to constitute a majority in a single-member district" [*Gingles*, 478 U.S. at 50];

2. The plaintiff must also prove that the relevant "minority group" in the particular jurisdiction is "politically cohesive"--- i.e., that the "minority group" in that jurisdiction votes as a bloc [*Gingles*, 478 U.S. at 51]; AND

3. The plaintiff must also prove that the majority group in the particular jurisdiction (i.e., whites in Oklahoma City) "vote sufficiently as a bloc" so as "usually to defeat the minority's preferred candidate" [*Gingles*, 478 U.S. at 51].

This is the so-called Gingles test which must be applied to the facts and circumstances existing in a particular jurisdiction to determine whether a redistricting plan impermissibly dilutes minority voting strength. The burden of proof is upon those individuals claiming "minority vote dilution" to prove that the Gingles test is met for their particular jurisdiction.

A detailed analysis applying the Gingles test to the facts and circumstances now existing in The City of Oklahoma City follows.

#### EXAMPLE OF GINGLES TEST AS APPLIED TO OKLAHOMA CITY

According to the 1990 U.S. Census, and as stated by those individuals who spoke before Council on January 7, 1992, approximately twenty-five percent (25%) of the total population of

The City of Oklahoma City is now made up of "minority population." This "minority population" does not include just one minority group, however, but is in fact made up of Blacks, American Indians, Hispanics, Asians, and "others" (such as multiracial, interracial, Middle Eastern, etc.). The largest minority group within this twenty-five percent (25%) "minority population" is Blacks, with approximately sixteen percent (16%) of the total population of The City of Oklahoma City being made up of Black citizens. There are currently eight ward seats on the Council,<sup>2</sup> and the burden is upon the proponents of two minority seats to prove that The City of Oklahoma City meets the Gingles test; if such proof can be made, then there should indeed be two "minority" wards on the Council as suggested and argued; however, if such proof cannot be made, then only one minority ward---now Ward 7, where minority citizens make up approximately seventy percent (70%) of the total population---is legally sufficient under Section 2 of the Voting Rights Act.

For the Council to be legally obligated to create an additional minority ward, the proponents of the additional ward must prove:

1. That the twenty-five percent (25%) "minority population" within Oklahoma City is "sufficiently large AND geographically compact" enough "to constitute a majority" in two single-member minority wards; AND

2. That the total "minority population" within Oklahoma City (the Blacks, American Indians, Hispanics, Asians, and "others") is a "politically cohesive" minority population---i.e., that these various minority groups within the total twenty-five percent (25%) minority population vote as a bloc in elections; AND

3. That the majority population within Oklahoma City (the white citizens) "votes sufficiently as a bloc" so as "usually to defeat the minority's preferred candidate"---i.e., that whites within The City usually vote as a bloc in elections to defeat minority candidates.

In regard to element number 1, it is unclear at this time whether the twenty-five percent (25%) "minority population", which represents roughly 111,180 citizens out of a total population of

<sup>2</sup> By case law, it appears that the existing number of districts or wards within a jurisdiction is presumed to be the appropriate number; i.e., there is no legal duty on the jurisdiction to increase the number of districts or wards beyond the current number. [See Romero v. City of Pomona, 883 F.2d 1418, 1425, n.10 (9th Cir. 1989); and McNeil v. Springfield Park Dist., 851 F.2d 937, 946 (7th Cir. 1988)].

444,719, is both "sufficiently large AND geographically compact" enough "to constitute a majority in" two single-member wards. The approximate size of each of the eight wards to be created pursuant to the 1990 census will be 55,589; thus, a majority in each ward would be 27,795. It seems that the "minority population" may indeed be "sufficiently large" to constitute a majority in two single-member minority wards, but it is by no means clear that such population is "geographically compact" enough to do so. And, again, by law, the burden is upon the proponents of the additional minority ward to prove this element.

In regard to element number 2, there has been no proof offered and it seems highly unlikely that the Blacks, American Indians, Hispanics, Asians, and "others" who make up The City's total "minority population" of twenty-five percent (25%) are "politically cohesive". Without hard evidence, one cannot simply assume that these various minority groups "vote as a bloc" for minority candidates. In other words, do Black voters within The City "vote as a bloc" with American Indians, Hispanics, Asians, multiracial, interracial, Middle Eastern and other minority voters? It seems difficult to make this assumption based upon the evidence presented thus far and, again, the burden to prove this element is upon the proponents of the additional minority ward.

In regard to element number 3, it is unclear whether white voters in The City "vote sufficiently as a bloc" so as "usually to defeat the minority's preferred candidate." There are few examples in Oklahoma City to go by, but in the most recent election in which City voters were given a choice between a white and a minority candidate, the minority candidate was the overwhelming choice of the white voters. This election was the 1990 race for State Corporation Commissioner in which Mr. J.C. Watts, the minority candidate (Mr. Watts is Black), was the overwhelming choice of all voters, white and minority, within The City of Oklahoma City. Indeed, based upon Oklahoma County Election Board records as researched by the City Manager's office, it would appear that Commissioner Watts in fact received a higher margin of victory in Ward 8 of The City, a majority ward, than in Ward 7 of The City, a minority ward. Thus, the most recent example of a minority vs. majority race within Oklahoma City would seem to disprove element number 3 of the Gingles test.

#### CONCLUSION

Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, is applicable to redistricting by The City of Oklahoma City and prohibits any redistricting plan which impermissibly "dilutes minority voting strength." Such a plan, if adopted by the Council, would constitute a violation of said statute and would be invalid.

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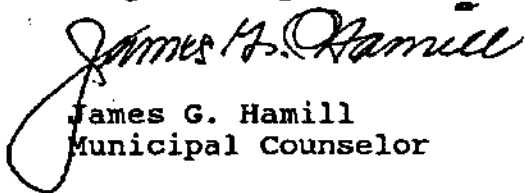
The three elements for proving "dilution of minority voting strength" under 42 U.S.C. § 1973 were expounded in the U.S. Supreme Court case of *Thornburg v. Gingles*, 478 U.S. 30 (1986); these three (3) elements are discussed at length in the body of this memorandum.

The Gingles test must be applied to the facts and circumstances existing in the particular jurisdiction that adopted the challenged redistricting plan. The burden of proof to show "dilution of minority voting strength" under the Gingles test is upon the proponent of such position.

In regard to the proposed redistricting plan of The City of Oklahoma City, which plan would provide only one minority ward (Ward 7), it seems doubtful, based upon the evidence presented thus far, that the Council would be guilty of "minority vote dilution" by adopting said plan. While the total "minority population" within The City might be "sufficiently large AND geographically compact" enough "to constitute a majority" in two minority wards, it seems highly unlikely that (1) this "minority population", which is composed of various disparate minority groups, is in fact "politically cohesive" and that (2) the majority population within The City in fact "votes as a bloc" so as "usually to defeat the minority's preferred candidate."

Thus, it appears doubtful, based upon the evidence presented thus far, whether a redistricting plan adopted by the Council which provides only one minority ward would in any way violate Section 2 of the Voting Rights Act, 42 U.S.C. § 1973.

Respectfully submitted,

  
James G. Hamill  
Municipal Counselor