

# Redistricting Texas Counties In 2011



Prepared by:

David Méndez, Bickerstaff Heath Delgado Acosta LLP  
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Texas County Commissioner's Courts have redistricting obligations that arise with the release of the next federal census data in early 2011.

These obligations must be met within a limited time frame and have significant repercussions for the commissioners courts and other governmental entities. This paper provides an overview of the actions required of the Commissioner's court and explains the timelines within which those actions must occur.

## **Commissioners Court Redistricting Obligations**

Texas counties have two basic responsibilities that are triggered by the release of the census.

1. **Balancing Commissioner Precinct Population** – The County must examine the new census data when it becomes available to determine if the population in the four county commissioner precincts is in balance.
2. **Adjusting County Election Precincts** – The County must also adjust county election precincts to account for registered voter caps and other election requirements.

In addition to these duties, a commissioner's court has oversight authority on county justice precincts and may adjust these for the convenience of the people. Typically, adjustments to justice precincts, if necessary, are undertaken by commissioners courts at the same time as the other redistricting duties in order to conform election precinct and avoid undue voter confusion.

## **Balancing the Population in Commissioner Precincts**

The one person – one vote principle under the Fourteenth Amendment of the United States Constitution applies to electoral districts of "legislative" bodies that govern political subdivisions such as Congress, the Texas Legislature, and Texas Counties. Because County Commissioners make policies and laws that affect the citizens of the county, the one person – one vote constitutional principle requires that each commissioner precincts have substantially equal population.

While the Census measures many aspects of population including age, ethnicity, racial composition, gender, citizenship and other factors, for one person – one vote purposes, governmental bodies typically utilize total population as the appropriate measurement criteria. Although not an absolute safe harbor, commissioner precincts are generally considered to be in balance and thus meet the one person – one vote requirement if the districts have substantially equal total population, i.e., if the total deviation does not exceed ten percent.

For County Commissioner precincts a deviation of no more than 10% is prima facie valid. Here is an example of how it is calculated for a Texas County with a population of 400,000:



County Total Population = 400,000  
Ideal district size = 100,000 (400,000/4)

		Deviation
Precinct 1	104,000	+4.0%
Precinct 2	101,000	+1.0%
Precinct 3	98,000	-2.0%
Precinct 4	97,000	-3.0%
Total Deviation 4% + (-3%) = 7%		

The County's total population is utilized to make these calculations. 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 of the county. Since felons are disenfranchised of their right to vote, it is appropriate in some instances to adjust for these populations in calculating deviation. Adjustments to deduct penitentiary inmates are fairly common in small counties, but less so in large counties where the impact is ineligible.

Balancing Registered Voters in County Election Precincts

The Texas Legislature has long required that a commissioner's court periodically review county election precincts for compliance with certain size limitations and other statutory criteria. Because the decennial redistricting process affect many county election precincts, the county election precincts must be reviewed by the commissioner's court after redistricting to check for appropriateness of size and to insure that election precincts do not contain territory of more than one precinct or office.

TEXAS ELECTION CODE Section 42.006 requires that a county election precinct must contain at least 100, but not more than 5,000 registered voters.

In addition to size 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:

- 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.

The adjustment of election precincts involves a coordinated dance between the county commissioner's court, the Texas Legislature, and larger cities within the territory of the county. In some instances, the courts also try to cut into this dance. Changes by county commissioner's court to the commissioner precinct and justice precinct lines will typically split election precincts and these splits are easily identified by the County and adjusted. More complex issues arise as to timing and structure, when the County has to adjust election precincts to account for changes in electoral districts made by other political subdivisions. For example, legislative redistricting efforts may affect the ability of some counties to complete their county election precinct adjustments in a timely manner. While Texas Counties may complete their commissioner precinct redistricting quickly, 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 and in



some instances election precincts have had to be redrawn multiple times.

Because other political subdivisions use county election precincts to conduct elections, the same type of issues can arise with these entities. For example, if there are cities with ward or single member district systems in the county that have a population of more than 10,000, the county election precincts must be adjusted to avoid having territory from more than one single member district in an election precinct. The Election Code does not generally prohibit splitting election precincts with school district single-member district lines, but counties will often want to coordinate election precinct lines with school district boundaries for ease in election administration.

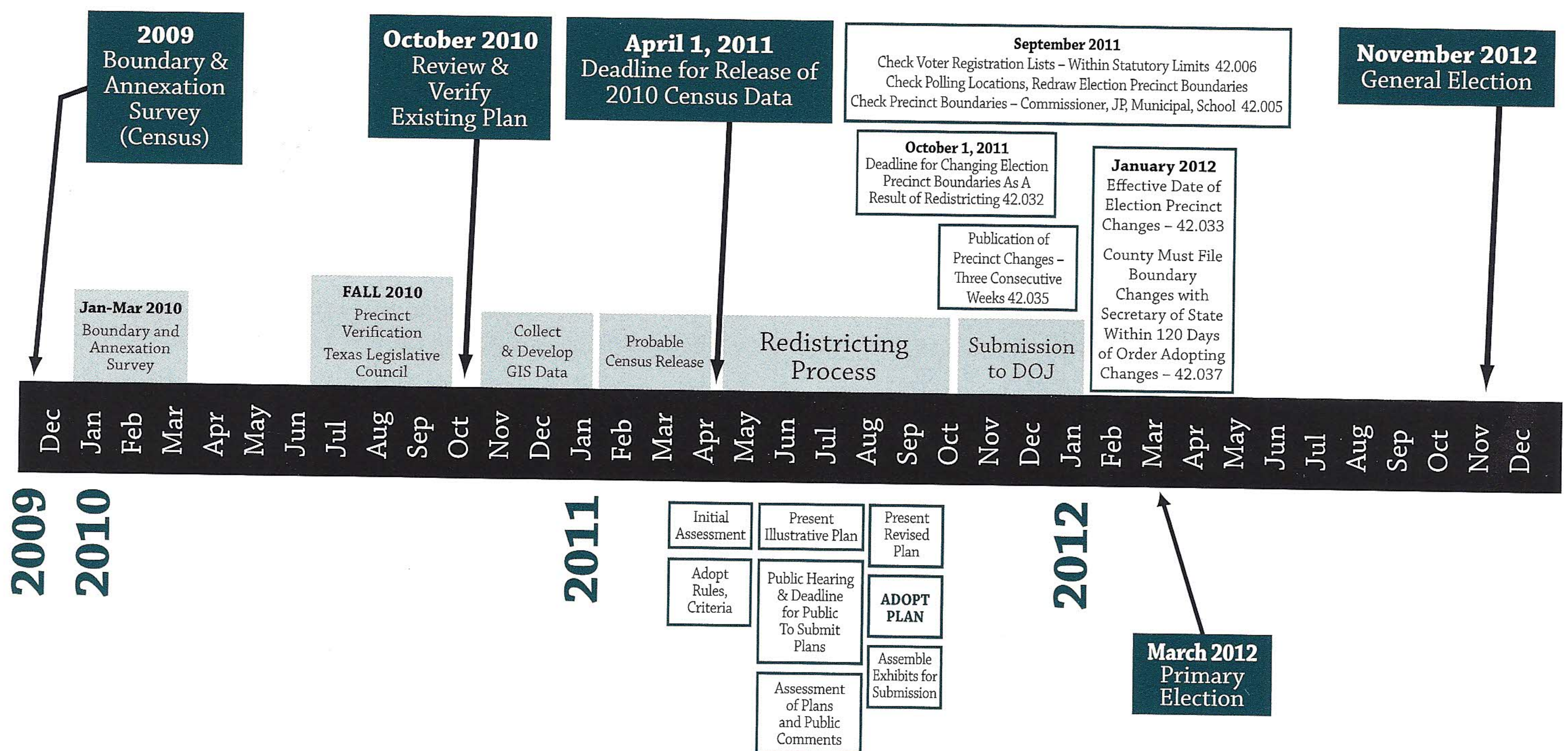
### Adjustments to Justice Precincts

The Texas Constitution allows county commissioner's courts to divide counties into Justice of the Peace precincts based on population as follows:

Population	Number of Precincts
Less than 18,000	1-4 precincts
18,000 to 49,999	2-8 precincts
50,000	4-8 precincts

A commissioner's court has authority to abolish existing justice precincts, establish or reduce the number of justice/constable places within a justice precinct, or to modify the territorial boundaries of the precincts. However, the Constitution provides that "any county that is divided into four or more

## Timeline for 2011 Redistricting and Subsequent General Election





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precincts on November 2, 1999 shall continue to be divided into not less than four precincts." Article V, Section 18, Texas Constitution.

## **Timing Issues for the Completion of Redistricting**

The Secretary of Commerce is required to conduct the next decennial census on April 1, 2010. Detailed population figures must be released to the states for use in state and local redistricting efforts on or before April 1, 2011. We expect this data to be released in January or February 2011.

Texas County Commissioner's Courts will need to take into consideration the 2010 census data upon its release, and determine if the population of the four county commissioner precincts is out of balance. As a practical matter, a commissioner's court must complete the redistricting process by January 1, 2012 so candidates for county commissioner precinct positions are able to determine which precinct they will file for in the March 2012 primaries.

Most Texas cities, school districts, colleges and special districts that have a single-member district structure for electing their governing boards and that are on a May uniform election cycle, must complete their redistricting process in time to allow for the May 2012 Elections. Most of these entities rely on county election precincts to conduct their elections, so they also have a stake in the completion of the county redistricting and election precinct redraw.

## **Conclusion**

While this paper focuses on the framework and timing within which redistricting takes place, Texas Counties need to be aware that the redistricting process in Texas also involves the application of the Voting Rights Act of 1965 and other complex legal principles. The County

must assure itself that it has not only organized the county's process but must also be certain that its legal representatives have the depth and experience to guide the County through the complexities of the law and the challenges that inevitably will be faced.