

**DISTRICTING AND REDISTRICTING:
A PRACTICAL GUIDE
FOR LOCAL GOVERNMENTS**

**The Rose Institute of State and Local Government
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**by
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This paper is intended as a introductory outline and check-list for decision-makers in local governments that are forming single-member districts for the first time or that are realigning their existing districts. The comments are not intended to be comprehensive, but speak to the author's experience in local districtings and redistrictings in California and elsewhere.

I. Practical Problems

A. Legal.

The creation or re-design of electoral districts are undertakings that are regulated by federal and other laws. Compliance with the requirements of the law should be a primary concern. Following are some introductory notes on the two principal constitutional mandates.

1. Population Equality. In the decade of the 1960s the United States Supreme Court thrust vigorously into the "redistricting thicket" with a series of landmark "one-man-one-vote" decisions applying to state legislatures (see especially Reynolds v. Sims, 1964) and the United States Congress (see especially Wesberry v. Sanders, 1964). In dealing with state legislative redistricting, the Warren Court insisted that "legislators represent people, not trees or acres;" but the Court also made clear that absolute mathematical exactness was not a requirement in state apportionment questions. In dealing with Congressional redistrictings, however, the Court interpreted Article I, Section 2 of the U.S. Constitution to mean that "as nearly as practicable each man's vote in a Congressional election shall count just as much as another's." This hard line was strengthened and continued in two cases decided on the same day in 1969, Kirkpatrick v. Preisler and Wells v. Rockefeller. Kirkpatrick concerned itself with malapportionment of the Missouri Congressional Districts (involving a maximum deviation of 5.97%), and Wells dealt with malapportionment in New York (a congressional plan involving a deviation of 13.086%).

It was quite late in the one-man-one-vote revolution that the Court finally turned its attention to local governments. Avery v. Midland County in 1968 was really the first case to apply the Reynolds doctrine at the local level. Prior to that decision, the Court had seemed interested in keeping local governments free from the strict dictates of population equality (see Sailors v. Board of Education, 1967 and Dusch v. Davis, 1967). In Avery, the apportionment plan of the Midland County Commissioners' Court was challenged. The plan called for five members, one elected at large, the other four from separate county districts. The populations of these districts in 1963 were 67,906 and 852 and 414 and 828. Justice White in his opinion for the majority applied Reynolds v. Sims to find that one-man-one-vote was applicable. His opinion emphasized the delegation of power from state to local levels:

States characteristically provide for representative government--for decision making at the local level by representatives elected by the people. And, not infrequently, the delegation of power to local units is contained in constitutional provisions for local home rule which are immune from legislative interference. In a word, institutions of local government have always been a major aspect of our systems, and their responsible and responsive operation is today of increasing importance to the quality of life of more and more of our citizens. We therefore see little difference, in terms of the application of the Equal Protection Clause and of the principles of Reynolds v. Sims, between the exercise of state power through legislatures and its exercise by elected officials in the cities, towns, and counties.

In Hadley v. Junior College in 1970, the Court again applied the strict Reynolds doctrine and flexibility in redistricting local governments appeared doomed. In Abate v. Mundt in 1971, however, "the long tradition of overlapping functions and dual personnel in the Rockland County Government" was considered in allowing an 11.9% population deviation. In Gaffney v. Cummings and White v. Regester, both in 1973, the Court felt that deviations of 9.9% and 7.83% respectively failed "in size and quality to amount to an invidious discrimination."

With this record of Court judgements at the local level, the author has long felt justified in advising municipal clients that deviations of around 5 percent are safe from judicial attack on population equality grounds. In some cases, deviations slightly in excess of the 5 percent deviation have been recommended.

2. Minority Representation. Early in the history of the Court's entry into the redistricting thicket it was recognized that numerical equality alone was not enough to assure fairness in redistricting. In Fortson v. Dorsey (1975) it was recognized that, even if districts are equal in population, even if they are compact, racial gerrymandering can occur: that is, the racial minority can be discriminated against and its votes rendered relatively ineffective.

Even prior to the reapportionment decisions, the Warren Court had ruled against one of the grosser forms of racial gerrymandering: in the 1960 case of Lightfoot v. Gomillion, the Court found that the city boundaries of Tuskegee, Alabama, had been drawn to exclude black voters in violation of the 15th Amendment. Yet, in 1964 in Wright v. Rockefeller, the Court dismissed a challenge to New York's 17th "silk stocking" district on grounds that it excluded blacks and Puerto Ricans. In Whitcomb v. Chavis in 1971, also, the Court held against challengers to a state legislative redistricting in Indiana who had claimed that the use of multi-member districts resulted in invidious discrimination against the black voters of Indianapolis. These subtler forms of racial discrimination, achieved through less obvious gerrymandering or the sophisticated drawing of district lines, seemed to escape the Court's test of basic unfairness.

In the 1970s the Court continued to strike down district configurations where proofs of discriminatory intent could be joined with proofs of discriminatory result. Mississippi provided a number of classic cases where both the intent to discriminate and the discriminatory results were proved. In Mississippi, the black population is concentrated in the West of the State along the Mississippi River, but the Congressional districts were customarily drawn in an East-West pattern against the grain of transportation and land use to keep any district from having a black majority.

Although cases such as these arising from blatant racial gerrymandering fell within the Court's test, a larger category of cases--where discriminatory effects could be shown but where discriminatory intent was difficult or impossible to prove--remained outside. The Court continued to restrict itself to a use of the "intent" test of discrimination as late as Mobile v. Bolden in 1980. Essentially, the Court held there that a pattern of discrimination could be used as circumstantial evidence to help establish discriminatory intent, but a mere statistical disparity of white versus black voting or white versus black electoral outcomes was not illegal per se.

On June 29, 1982, however, Congress amended Section 2 of the Voting Rights Act of 1965 to codify a "results" test that overruled Mobile v. Bolden. Whereas Bolden required members of a racial minority who alleged impairment of their voting strength to prove that the challenged electoral system was created or maintained with a discriminatory purpose and led to discriminatory results, under the amended statute "plaintiffs may choose to establish discriminatory results without proving any discriminatory purpose."

The new broader test eased the task of plaintiffs alleging racial discrimination in electoral systems. In July of 1986, in a further smoothing of the path for such challenges, the Court rejected the argument that the election of one or more blacks from an electoral district immunizes that district from challenge under the Voting Rights Act. This was one of the key findings in Thornburg v. Gingles, the Court's first interpretation of the 1982 amendment. In this case, the State of North Carolina had argued that a three-judge federal panel had misinterpreted the 1982 amendment when it ruled that seven of that State's multi-member legislative districts had impermissibly diluted the strength of black votes. The Court denied this defense, holding that both the legislative history and the language itself "plainly demonstrated that proof that some minority candidates have been elected does not foreclose a Section 2 claim." When a challenged districting plan "works to dilute the minority vote, it cannot be defended on the ground that it sporadically and serendipitously benefits minority voters." The Court unanimously affirmed the finding of the lower court that in some districts blacks had been denied the full force of their right to vote. By 6-3, the Court reversed a similar lower court finding as to another district, in which black voters had been able to elect a black candidate in each of the preceding six elections. The Court was, however, sharply divided over how to test challenges brought under Section 2 and the exact standard that should be used. It is worth noting, however, that five justices (Brennan, White,

Marshall, Blackmun, Stevens) agreed that an electoral system is discriminatory if:

- * The minority group is large enough and sufficiently concentrated as to form a majority of the population in a single-member district.
- * The minority group typically votes together and is politically cohesive.
- * The white majority is sufficiently cohesive, or votes together as a block enough, that it usually defeats the minority-preferred candidate.

Perhaps the foregoing paragraphs will have suggested the complexity and flux in this area of the law. They should also suggest the importance of developing a districting plan that is in full compliance with the strictest interpretation of the Voting Rights Act.

B. Political.

Every district ever drawn has its friends and its critics -- those who believe themselves advantaged by it, and those who think it disadvantages them (or helps their opponents). The process of creating or re-designing district lines is one of the most intensely political in which local governments ever engage; and, all too often, it is a process that assumes partisan dimensions. Some of the chief problems are briefly noted below.

1. Incumbents. The movement from at-large elections to single-member districting and major adjustments in existing district boundaries are often perceived as deeply threatening by incumbents. Their reactions may take several negative forms:

Sometimes, they seek to control every detail of the line-drawing process -- right down to which side of the street and around which houses a line should be drawn.

Sometimes, they refuse involvement in the line-drawing process, but veto every change that remotely affects them. In other words, they present no proposals, but will accept none, and therefore the process comes to a halt.

Sometimes, they form alliances to secure safe districts for themselves and their allies at the expense of other colleagues; but such cliques are volatile and easily break down into a bitter and bloody free for all.

2. Challengers. In many jurisdictions, incumbents are safely entrenched. Challengers see districtings and redistrictings as a rare opportunity to change the odds in their favor and they launch themselves aggressively into the line-drawing process.

Sometimes, challengers are among the principal proponents of new districting arrangements: they see the move from at-large to single-

member districts as helpful to their candidacies; or they see an increase in the number of districts as a way of gaining a bigger role for their own favored constituencies in the electoral process.

Sometimes, challengers will champion the claims of particular groups to their own districts ("ethnically representative" districts, the "downtown commercial area" district, or the "poor people's" district), hoping that such group appeals will advantage their candidacies in some way. Such alliances between challengers and interested groups can often provoke formidable difficulties and delays.

Sometimes, challengers of very different types (a conservative and a minority group leader, for example) will join forces in attacking districts. (The mobilization of opponents of plans seems always an easier task than motivating supporters).

3. Interest Groups. Increasingly, districting and redistricting are occasions for groups to flex all the political muscle at their disposal. Believing that political outcomes for the rest of the decade may be at stake, they push for places at the mapping table.

Sometimes, geographically-based groups will seek to impose unconditional criteria on the process: e.g., "our neighborhood must not be divided." Often, such demands are incompatible with the requirements of population equality or infeasible for a variety of technical or political reasons.

Sometimes, "out" groups and those that perceive themselves to be underrepresented will pin all their hopes on a districting or redistricting process. Such expectations can rarely be fully satisfied and districtings and redistrictings can then lead to very bitter politics.

Sometimes, established economic interests will try to prevent change by asserting control over the line-drawing process. Or ideological groups will attempt to progress their agendas through districts that advantage their leaders or their allies.

4. Settling Scores. All too often, districting and redistricting form occasions for enemies to settle scores.

Sometimes, defeated candidates, both former incumbents and unsuccessful challengers, see an opportunity to re-design the electoral map in their favor.

Sometimes, incumbents use the occasion to penalize mavericks or exact punishment for past behavior by their colleagues.

Sometimes, groups will seize on the line-drawing as a way of ridding themselves of particularly objectionable incumbents.

C. Technical

Even in the smallest jurisdictions, drawing new district lines can involve severe technical difficulties. A few of the most common are itemized below.

1. Out of Date Population Data. Districting and redistricting do not always coincide with the results of the decennial census. Particularly in jurisdictions that have experienced rapid growth and significant demographic change, old data can be a major handicap.
2. Annexations, Seasonal Population, Undocumented. Recent and prospective annexations also trouble the technical task of accounting for population, as do seasonal populations (e.g., agricultural workers or tourists) and undocumented (and, therefore, significantly undercounted) populations.
3. Poor Maps. Many cities and counties give little attention to developing accurate, detailed maps (precinct, tract, street, special district, annexation, etc.). Yet, good current maps are the first technical requirement of all successful districtings and redistrictings.
4. Public Outreach. Districtings and redistrictings cannot be successful unless citizens are fully informed. Yet, some jurisdictions are inexperienced in the outreach processes that are necessary to bring in the full spectrum of community groups. For example, mailing lists may be out of date; or key contacts for major groups may be unavailable; or there may be no procedures for multilingual interpretation of public meetings.
5. Information Levels. Many local officials, both elected and appointed, lack information on even the basic demographic profile of the jurisdictions they serve; thus, they can make no contribution to the technical process. Similar difficulties can be caused by uninformed local media. Equally troublesome are groups, especially those that want a major role in the process, that lack the requisite technical know-how; often, their demands are impossible (or even self-defeating) and their expectations unrealistic.

II. Practical Solutions

Not all of the problems sketched above have solutions; but all can be minimized. The writer has found the following points to be especially useful.

A. Leadership.

Districting and redistricting, especially when the politics of line-drawing are difficult or tense, require effective leadership at political, staff and technical levels.

1. Responsibilities and Assignments. To the extent possible, responsibilities and assignments should be clarified right at the start of the process. For example, political (elected and staff), legal (in-house and consulting), and technical (in-house and consulting) responsibilities should be spelled out in detail; spokespersons should be identified; and

staff or consulting assignments should be made for all phases of the operation (database development, computerization, public meetings, plan development, Justice Department, metes and bounds, etc.).

2. The Principal Consultant. Complex districtings and redistrictings are best handled by a single consultant who is responsible for the development of alternative plans. If this approach is used, however, it is vital to arrive at a clear understanding of the role of the consultant vis-a-vis elected and appointed officials and staff, and also to clarify the consultant's involvement in the gray areas between politics and technics.

B. Clear Criteria.

Some of the most troubling problems in line-drawings arise from controversies over criteria (or the standards and guidelines that should control district development). In this writer's experience, it is far easier to win agreement about criteria at the start of the process than in the midst of disputes over district lines.

1. Paramount Criteria. It is important to begin by insisting on the absolute priority that must be accorded to population equality and minority representation.
2. Community. Next in priority to the constitutionally mandated criteria should be community. Neighborhoods that perceive themselves as communities must be treated as such. Not to do so is to develop a plan that, even if it is approved, will prove unsatisfactory. To protect communities in the districting process, however, is to harness powerful forces in favor of the plan and in support of the political system it creates.
3. Other Criteria. There is no reason why local governments should not spell out additional public goals in the line-drawing process. They may range from respect for existing jurisdictional or administrative boundaries or natural features to recognition of freeways or historic sites. Whatever they may be, however, it is crucial that they be identified as secondary criteria (i.e., secondary to population equality, minority representation, and community), and that they be clearly ranked in priority order.

C. Clear and Open Procedures.

In nearly all line-drawings, suspicion festers not far from the surface. Incumbents, challengers and rival groups all jockey for power and all suffer acutely from paranoia. Has this opponent stolen a march with this plan? What is the secret purpose of this line or that?

Backroom line-drawing fosters suspicion and paranoia; and it promotes the negativism that can make for political donneybrooks. To open up the process to full public scrutiny and involvement yields better plans, better representation -- and better politics in the course of the line-drawing as well as afterwards.

1. Use of the Media. Newspapers, radio, TV, and cable should be brought fully into the line-drawing process at its beginning. The prospect of new districts can be made interesting and newsworthy; and the media

can help develop public understanding of the realities (especially the problems and limitations) of the process.

2. Public Meetings. Typically, a number of groups will see line-drawing for new districts as of great potential significance to their interests. Thus, they will come to public meetings and technical forums on the process. These are excellent arenas for introducing potentially key participants to the realities of the process.

3. Citizen Kits. This writer has, for several years -- in redistrictings in all parts of the country -- employed "citizen kits" as a key feature of the line-drawing process. These are data sets and maps that allow interested citizens to develop their own plan or to critique the officially developed plan. In each case, the kits have played a useful role in developing consensus behind the plan voted into law.

4. Alternative Plans. Shakespeare teaches that nothing is either good or bad, save the alternatives make it so. A remedy for much of the dissatisfaction that can develop around a single districting plan is to present several alternatives and publically to canvass the advantages and disadvantages of each.

5. Firm Schedules. Key to avoiding many problems is a schedule that provides ample time for public involvement and careful review of all options, but that also incorporates absolute deadlines. For example, there should be deadlines for the public meetings process, for submission of plans by the public, for submission of plans by incumbents, for the public hearings process, and for final approval of the plan.

6. Readily Understandable Data and Graphics. Frustration quickly develops among non-technical participants -- whether local officials or members of the public -- if they cannot understand the data and materials used in the process. The best solutions are to use plain English prose (rather than statistics) and clear, easily reproduced graphics.

D. Computerization.

Even in small jurisdictions, there is a considerable gain from using a fully interactive computerized redistricting system. More alternatives can be quickly examined -- and, therefore, more logjams and stalemates broken, more imaginative solutions tested.

1. Geographic Retrieval. Whatever hardware or software are used, the basic requirement is that users be able to perform geographic retrievals, quickly and easily from appropriate databases. From the point of view of the person who is to draw the lines, the ease with which one can create or change district boundaries is the most important feature of the retrieval mechanism of the software. By retrieval we mean a "transfer" -- the designation of geographic units to be added to districts, subtracted from districts, or moved between districts. A typical transfer method would be the entry of names or numbers of the units to be transferred on a cathode ray tube (CRT) keyboard (tabular entry). Units may also be transferred by pointing to them on a tablet (LIST method), pointing to a centroid on a base map (POINT) or drawing around a group

of units (POLYGON). Whatever the method used, the results should be capable of being monitored in terms of geographic location, shape, compactness, contiguity, and the demographic characteristics of the districts. Typically, this means that the hardware configuration will include: a digitizer of some type; a graphics terminal for display of the geographic shape and an alpha terminal for display of the demographic characteristics; another terminal to permit hard copy drawings of the district (either as shown on the screen face of the graphics plotter or on a pre-printed basemap); and a printing device to output non-graphic data on the district (either a line printer or a highspeed printing terminal).

2. Databases. Technically, the first step in a districting or redistricting is the collection of maps and data. Typically, the main components will be census data and maps (usually ED or block and precinct maps), together with any specialized data that the jurisdiction may require (e.g., special census, projected population, utility hook-ups, elector information, etc.).

3. Computer Mapping. Maps are a vital part of any districting or redistricting process. It is important to have demographic data displayed in map form. It is also important that the user be able to examine the districts in question both in terms of the shapes of the districts and their locations. Maps of plans should contain enough detail so that those to whom the maps are given understand exactly where the boundaries of the districts lie. High speed plotters, with ability to plot in multiple colors, are the main output devices for mapping districts. The user has the option to plot out the maps on blank paper, showing the outlines and numbers of the units, or to mount a pre-printed map on a digitizer showing enough detail so that everyone can understand where the boundaries lie.