

Redistricting Principles:
Population Equality and Voting Rights Act



**REDISTRICTING COMMISSION
OF THE CITY OF SAN DIEGO**

Sharon Spivak, Deputy City Attorney
February 17, 2011

Redistricting Review



- Redistricting Plan must comply with:
 - U.S. Constitution
 - Federal Voting Rights Act of 1965
 - San Diego City Charter §§ 5 and 5.1
 - Related statutes and case law interpreting redistricting plans and criteria

Charter Section 5.1 Requirements



- Nine districts to be created
- Composed of whole Census units, as developed by U.S. Bureau of the Census (blocks and tracts)
 - ✦ Note: “to the extent it is practical to do so”
- **Each has one-ninth of City’s population as nearly as “practicable”**

Population Equality



“One Person, One Vote”

- Fundamental rule: Achieve substantial equality of population in the districts
 - “Equal representation for equal numbers of people”
- U.S. Constitution (Art. I, sec. 2):
 - U.S. representatives chosen so that one person’s vote in Congressional election has same worth as another’s vote – strictest standard

Population Equality



- Equal Protection Clause, 14th Amendment:
 - ✦ Applies to states: “No State shall. . . deny to any person. . . the equal protection of the laws.”
 - ✦ States are to make “an honest and good faith effort” to create population equality among districts. Less strict than federal standard.
- U.S. Supreme Court:
 - ✦ Requirement of substantial equality in population applies to districts for city elections.

Population Equality



- San Diego Charter:
 - ✦ Redistricting must comply with federal and constitutional law
 - ✦ Population equality requirement:
 - “Districts shall each contain, as nearly as practicable, one-ninth of the total population of the City as shown by the Federal census.” (Section 5.1)
 - “In any redistricting, the districts shall be . . . made as equal in population as shown by the census reports . . . as possible.” (Section 5)

Not as easy as it sounds....



- Districts are to have equal population, but also:
 - ✦ Be composed of contiguous territory
 - ✦ Be geographically compact
 - ✦ Preserve “identifiable communities of interest”
 - ✦ Have reasonable access between population centers
 - ✦ Be bounded by natural boundaries, street lines and/or City boundary lines

Population Equality: How it works



- Charter requires use of federal census data
- Census data presumed accurate, unless proven otherwise by the courts
- Courts have upheld use of other data (registered voter information, separate census by state) if the resulting redistricting would not be substantially different using federal census data

Focus on Deviation



- Deviation =
 - Difference between total population of most heavily and least populated districts after plan is drawn
 - Expressed as a percentage and by number of people
 - Population figures and deviation must be detailed in the plan

General rule for deviation



- Strive for equality and least deviation possible
- **10 Percent Rule:**
 - ✦ Total population deviation of up to 10% historically was considered acceptable by the courts without justification
 - (Note: 10% was the historical standard. Now, must measure deviation along with other redistricting criteria. Plan may be challenged and fail even if deviation is less than 10%. Strive for zero deviation.)

General rule for deviation



- Deviation must be justified
 - ✦ Show good faith
 - ✦ Show reliance upon consistently applied, nondiscriminatory redistricting principles (districts are compact, contiguous, have natural geographic boundaries, etc.)

Population Equality: 2000 Commission



District	Total Population	Optimal	Total Deviation	Percent Deviation
1	157,301	152,925	4,376	2.86
2	148,503	152,925	-4,422	2.89
3	156,828	152,925	3,902	2.55
4	153,888	152,925	963	0.63
5	159,524	152,925	6,599	4.32
6	149,307	152,925	-3,618	-2.37
7	146,853	152,925	-6,072	-3.97
8	151,199	152,925	-1,726	-1.13
Total	1,223,403		12,671	8.29

Reasons for some deviation



- Deviation may be necessary:
 - To account for population shifts
 - To avoid separating areas with distinct economic or social interests
 - Geographic boundaries may make it better to consolidate certain areas
 - Communities may not wish to be split
 - Consider the context of the justification and whether it is applied uniformly to the plan

Population Equality: Bottom Line



U.S. Supreme Court has recognized that it may be impossible to “achieve precise mathematical equality,” but states are to make a “good-faith effort” to get as close as possible to absolute equality.

Voting Rights Act of 1965: An Introduction



- “One person, one vote” does not always guarantee equal representation
- **Section 2 of the Voting Rights Act of 1965**
 - Federal law: Applies nationwide
 - Enacted to bolster 15th Amendment guarantee that “no citizen’s right to vote shall be denied or abridged. . . on account of race, color or previous condition of servitude.”

Voting Rights Act of 1965: Section 2



Prohibits any practice or procedure that “results in a denial or abridgement of the right of any citizen . . . to vote on account of race or color [or membership in a language minority group].”

Voting Rights Act of 1965: Vote Dilution



- Redistricting plan should not minimize or dilute the voting strength of a minority group through the way the lines are drawn
- How can this occur?
 - ✦ By fragmenting a cohesive group of minority voters among several districts
 - ✦ By “packing” a cohesive minority group into one district or a small number of districts to dilute its strength

Is there minority vote dilution?



- *Thornburg v. Gingles*, 478 U.S. 30 (1986)
 - Set three preconditions a minority group must prove to establish a violation of Section 2 of the federal Voting Rights Act of 1965
 - Keep these preconditions in mind as you review data to draft your redistricting plan

Is there minority vote dilution?



○ Gingles criteria:

- 1) Is the group “sufficiently large and geographically compact to constitute a majority” in a differently drawn district?
- 2) Is the minority group “politically cohesive?” (usually votes for same candidates)
- 3) In the absence of special circumstances, does the white majority vote “sufficiently as a bloc to enable it usually to defeat the minority’s preferred candidate?”

1. Group Sufficiently Large and Compact



- Is the group sufficiently large and compact to constitute a majority in the district?
 - Use voting age population
 - Must be 50% or close to 50% with ability to elect candidates
 - Must be close together and not scattered
 - Compactness looked at in context of region
 - Courts split on allowing claims by coalitions of more than one racial group, but most have failed due to small size or lack of cohesiveness

2. Group is Politically Cohesive



- Is the group politically cohesive?
 - Common political goals and actions
 - Party affiliation
 - Success of candidates belonging to the group
 - Bloc is voting for same candidates

3. Racially Polarized Voting



- Does the majority vote sufficiently as a bloc to defeat the group's preferred candidates?
 - *i.e.*, does the majority usually defeat the minority's preferred candidate?
 - Evidence must be “legally sufficient”

If *Gingles* Criteria Exist....



- If the answer is “no” to the preconditions involving a particular group, the Commission is not required to establish a “majority-minority” district.
- If the answer is “yes” to the preconditions involving a particular group, the courts (and Commission) would look at the next step of the analysis: “totality of the circumstances”

Totality of the Circumstances Analysis



- The right to vote is abridged or denied if:
 - “based on the totality of the circumstances, it is shown that the political processes leading to nomination or election . . . are not equally open to participation by members of a [racial or language minority group] 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.”

Analysis of *Gingles* Criteria



- Consultants should assist with data to determine whether coalitions or groups are numerous and geographically compact enough to satisfy the criteria
- No such groups were found in the analysis done for the City's 2000 redistricting
 - ✦ Note that 2000 plan was not adding a new district - no "carve out" of new district

Limits on Use of Race: U.S. Supreme Court



- *Shaw v. Reno* - 1993
 - ✦ Excessive and unjustified use of race prohibited
- *Miller v. Johnson* – 1995
 - ✦ Consideration of race cannot outweigh traditional race-neutral redistricting principles
- *Bush v. Vera* - 1996
 - ✦ If traditional redistricting criteria are neglected and neglect is predominantly due to the misuse of race, district presumptively unconstitutional
- *Hunt v. Cromartie* - 2001
 - ✦ Upholds creation of minority seats under Section 2, suggests race may be used as one of several factors

Summary



- Principles to remember :
 - “Population Equality” and Deviation
 - Traditional redistricting principles must be met (compact, contiguous, natural boundaries, etc.)
 - Line-drawing cannot be based exclusively upon race
 - Consider *Gingles* criteria and Voting Rights Act cases for guidance

Upcoming Training Topics



- Other requirements for districts:
 - What is contiguous?
 - A single, unbroken shape
 - What is geographically compact ?
 - Many definitions : Do you know it when you see it?
 - What are communities of interest?
 - Meaning varies, if defined at all