

Redistricting Commission

# Redistricting Principles: Population Equality and the Voting Rights Act

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# Redistricting Review

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

# Charter Section 5.1 Requirements

- Composed of whole Census units, as developed by U.S. Bureau of the Census (blocks and tracts)
  - To the extent it is practical to do so.
- **Each district has one-ninth of City's population as nearly as "practicable."**
- Fair and effective representation for all citizens of the City, including racial, ethnic, and language minorities . . ."

# 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 a congressional election has the same worth as another’s vote – strictest standard.**

# Population Equality

- Equal Protection Clause (14<sup>th</sup> 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 the federal standard.
- U.S. Supreme Court:
  - Requirement of substantial equality in population applies to districts for city elections.

# Population Equality

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

# Not as easy as it sounds . . .

- Equal population is a constitutional mandate, not just a “factor.”  
*Alabama Legislative Black Caucus v. Alabama*, 135 S.Ct. 1257 (2015)
- 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 by the courts, unless proven otherwise.
- Courts have upheld the use of other data (registered voter information, separate census by a 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:**
  - Established in *Gaffney v. Cummings*, 412 U.S. 735 (1973) (Brennan's dissent claimed the majority had essentially established a 10% rule, which later court majorities adopted as the 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. A plan can be challenged and fail even if the deviation is less than 10% (<10% is not a safe harbor). 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: 2010 Commission

District	Total Population	Optimal	Total Deviation	Percent Deviation
1	147,375	144,624	2,751	1.90%
2	142,711	144,624	-1,913	-1.32%
3	147,117	144,624	2,493	1.72%
4	142,727	144,624	-1,897	-1.31%
5	143,961	144,624	-663	-0.46%
6	140,738	144,624	-3,886	-2.69%
7	147,113	144,624	2,489	1.72%
8	144,830	144,624	206	0.14%
9	145,045	144,624	421	0.29%
Total	1,301,617		6,637	4.59%

# 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 “[m]athematical exactness or precision is hardly a workable constitutional requirement” 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].”

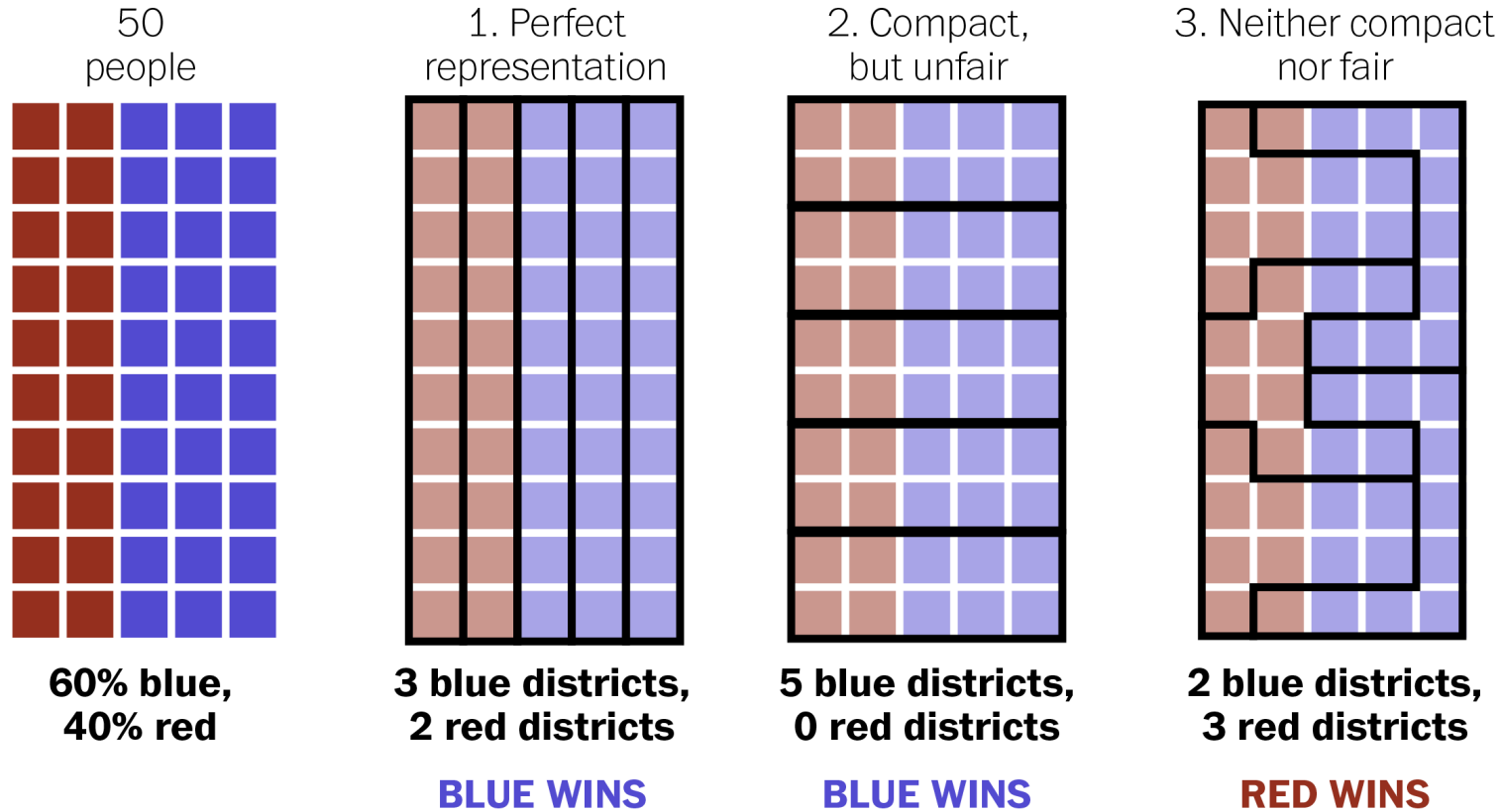


## Voting Rights Act of 1965: Vote Dilution

- 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

# Gerrymandering, explained

Three different ways to divide 50 people into five districts



# 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
- In 2010, the Commission created District 8 and 9 as majority-minority Latino districts, with findings in the plan to support that the groups were compact and would suffer vote dilution otherwise.
- No legal challenge was filed to the City's 2010 redistricting plan.

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

- *Shaw v. Reno*, 509 U.S. 630 (1993)
  - Excessive and unjustified use of race prohibited
- *Miller v. Johnson*, 515 U.S. 900 (1995)
  - Consideration of race cannot outweigh traditional race-neutral redistricting principles.
- *Bush v. Vera*, 517 U.S. 952 (1996)
  - If traditional redistricting criteria are neglected and neglect is predominately due to the misuse of race, district is presumptively unconstitutional.
- *Cooper v. Harris*, 137 S.Ct. 1455 (2017)
  - Race cannot be used as a proxy for partisanship.

# 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 on race.
  - Consider *Gingles* criteria and Voting Rights Act cases for guidance.

Questions?