

Legal Considerations Governing Districting

City of Napa
February 11, 2020

by Marguerite Mary Leoni
Nielsen, Merksamer, Parrinello, Gross & Leoni

1

1

Drawing the Lines—Legal Considerations: Population Equality

- Overriding criterion is total population equality (*see Reynolds v. Sims*, 377 U.S. 533 (1964); see Elec. Code § 21620).
- Based on total population according to latest Census, not citizens or eligible voters.
- Unlike congressional districts, local electoral districts do not require perfect equality—some deviation acceptable to serve valid governmental interests even-handedly applied.
- While goal is equal population, total deviation less than 10% presumptively constitutional. (Caution: the presumption *can* be overcome!)

2

2

Drawing the Lines—Legal Considerations: Population Equality

- Deviation is calculated by summing the amount by which the largest district exceeds the ideal population for a district and the amount by which the smallest district falls short of the ideal population.

- Example: Ideal Population: 19,229

District Number:	1	2	3	4
Population:	18,954	19,379	19,564	19,018
Deviation from Ideal:	-275	150	335	-211
Deviation %:	-1.43%	0.78%	1.74%	-1.10%
Deviation Range:	610			
Total Deviation %:	3.17%			

- Redistricting in 2021

3

3

Drawing the Lines—Legal Considerations: Federal VRA

- Section 2 of the federal Voting Rights Act prohibits electoral practices (including district plans), which deny to racial and language minority voting rights an equal opportunity to nominate and elect candidates of their choice.
- Absent discriminatory intent, creation of minority districts required only if the minority group can form the majority of eligible voters (citizens of voting age) in a single-member district that otherwise complies with the law. *Bartlett v. Strickland*, 556 U.S. 1 (2009).

4

4

Drawing the Lines—Legal Considerations: California VRA

- California Voting Rights Act is silent with respect to the shape of electoral districts, so long as they are used.

5

5

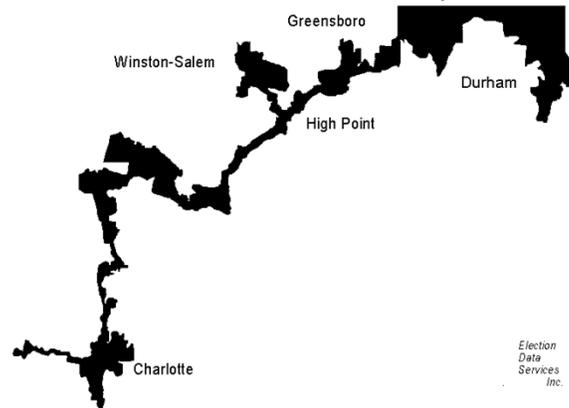
Drawing the Lines—Legal Considerations: No Gerrymandering

- The Fourteenth Amendment restricts the use of race as the “predominant” criterion in drawing districts and the subordination of other considerations. *Shaw v. Reno*, 509 U.S. 630 (1993); *Miller v. Johnson*, 515 U.S. 900 (1995).
- Looks matter! Bizarrely shaped electoral districts can be evidence that racial considerations predominate. (See next slide, NC CD 12 stretched 160 miles across the central part of the State, for part of its length no wider than the freeway right-of-way.)

6

6

Drawing the Lines—Legal Considerations: No Gerrymandering



7

7

Drawing the Lines—Legal Considerations: No Gerrymandering

- But bizarre shape is not required for racial considerations to “predominate”.
- “Race may predominate even when a reapportionment plan respects traditional principles, the [Supreme] Court explained, if ‘[r]ace was the criterion that, in the State’s view, **could not be compromised**,’ and race-neutral considerations ‘came into play only after the race-based decision had been made.’ *Shaw v. Hunt*, 517 U.S. 899, 907.” *Bethune-Hill v. Va. State Bd. of Elections*, 137 S. Ct. 788, 798 (2017), emphasis added.
- Fourteenth Amendment does not, however, prohibit all consideration of race in redistricting. *Easley v. Cromartie*, 532 U.S. 234 (2001). If race does predominate, strict scrutiny applies and compliance with Section 2 may be a sufficiently compelling justification.
- **Focus on communities of interest.**

8

8

Drawing the Lines -- Legal Considerations: Elec. Code §21621

- Elec. Code § 21621(c)&(d) specify mandatory criteria and prioritizes them (See Gov. Code § 34886):

(c)(1) Council districts shall be geographically contiguous.

(c)(2) The geographic integrity of any local neighborhood or local community of interest shall be respected in a manner that minimizes its division.

(c)(3) Council district boundaries should be easily identifiable and understandable by residents. To the extent practicable, council districts shall be bounded by natural and artificial barriers, by streets, or by the boundaries of the city.

9

9

Drawing the Lines -- Legal Considerations: Elec. Code §21621

(c)(4) To the extent practicable, and where it does not conflict with the preceding criteria in this subdivision, council districts shall be drawn to encourage geographical compactness in a manner that nearby areas of population are not bypassed in favor of more distant populations.

(d) The council shall not adopt council district boundaries for the purpose of favoring or discriminating against a political party.

10

10

More About Neighborhoods: How to Identify

Public testimony:

1st Question: what is your neighborhood?

2nd Question: What are the geographic definers/boundaries of your neighborhood?

Examples of physical features defining a neighborhood or delineating a community:

- Natural neighborhood dividing lines, such as highway or major roads, rivers, canals, and/or hills
- Areas around parks
- Other neighborhood landmarks

Lacking public testimony, planning and other similar documents may provide definition.

11

11

More About Communities of Interest:

Elections Code § 21621(c)(2) defines “Community of Interest”:

- A “community of interest” is a population that shares common social or economic interests ***that should be included within a single district for purposes of its effective and fair representation.*** Communities of interest do not include relationships with political parties, incumbents, or political candidates.

12

12

More About Communities of Interest: How to Identify

1st Question: what is your community?

Examples of identifiers:

- School attendance areas
- Homeowner's associations
- Specific housing types: historic, senior, mobile home, single family, multi-family
- Common issues, neighborhood activities
- Shared demographic characteristics such as similar levels of income or education
- Similar business activities

2nd Question: Where is your community located/ what are its boundaries?

3rd Question: Is the neighborhood or community best represented united in one district, or divided to have influence in multiple districts?

13

13

Drawing the Lines -- Legal Considerations: Other Considerations Approved by Courts

- Use of whole census geography (*e.g.*, census blocks).
- Other non discriminatory considerations unique to the jurisdiction.
 - Location of public facilities
 - Location of other jurisdictional boundaries

14

14

Drawing the Lines: Draft Plans

- An exercise in balancing criteria.
- More than one draft map is common – there is no one perfect map!
- Draft maps are intended to be modified in the discretion of the City Council considering public comment and the Council's own knowledge of the City.

15

15

Questions?

16

16

 REDISTRICTING PARTNERS

CVRA and Districting

City of Napa



1

 REDISTRICTING PARTNERS

Our Background

Redistricting Partners has been working for more than 10 years conducting CVRA conversion and redistricting.

Clients include dozens of municipalities, most recently cities of Santa Ana and Davis.

Also include non-profits and community organizations, including ACLU, Irvine Foundation, Equality California and affiliated groups.

2

Traditional Redistricting Principles

Ensuring a fair and open districting process

There are a number of criteria that have been used nationally and upheld by courts.

- Relatively equal size - people, not citizens
- Contiguous – districts should not hop/jump
- Maintain “*communities of interest*”
- Follow city/county/local government lines
- Keep districts compact – appearance/function

3

Traditional Redistricting Principles

Ensuring a fair and open districting process

There are a number of criteria that have been used nationally and upheld by courts.

- **Relatively equal size - people, not citizens**
- Contiguous – districts should not hop/jump
- Maintain “*communities of interest*”
- Follow city/county/local government lines
- Keep districts compact – appearance/function

4

Traditional Redistricting Principles

Ensuring a fair and open districting process

There are a number of criteria that have been used nationally and upheld by courts.

- Relatively equal size - people, not citizens
- **Contiguous – districts should not hop/jump**
- Maintain “*communities of interest*”
- Follow city/county/local government lines
- Keep districts compact – appearance/function

5

Traditional Redistricting Principles

Ensuring a fair and open districting process

There are a number of criteria that have been used nationally and upheld by courts.

- Relatively equal size - people, not citizens
- Contiguous – districts should not hop/jump
- **Maintain “*communities of interest*”**
- Follow city/county/local government lines
- Keep districts compact – appearance/function

6

Communities of Interest

Bringing like people together for representation

What is a community of interest includes ethnic and language minorities and other groups.

- Communities covered by the Voting Rights Act
 - Latinos
 - Asians
 - African Americans

While race is a community of interest, it cannot be the *predominant factor* in drawing districts.

7

Communities of Interest

Bringing like people together for representation

What is a community of interest includes ethnic and language minorities and other groups.

- Other Communities, example are:
 - People living near an industry (farming, higher education, manufacturing)
 - Senior Citizens or Students
 - Downtown / Urban
 - Rural or Agricultural
 - Homeowners or Renters

8

Traditional Redistricting Principles

Ensuring a fair and open districting process

There are a number of criteria that have been used nationally and upheld by courts.

- Relatively equal size - people, not citizens
- Contiguous – districts should not hop/jump
- Maintain “*communities of interest*”
- **Follow city/county/local government lines**
- Keep districts compact – appearance/function

9

Traditional Redistricting Principles

Ensuring a fair and open districting process

There are a number of criteria that have been used nationally and upheld by courts.

- Relatively equal size - people, not citizens
- Contiguous – districts should not hop/jump
- Maintain “*communities of interest*”
- Follow city/county/local government lines
- **Keep districts compact – appearance/function**

10

City of Napa

What's Next

Public hearings will be held to obtain input on communities of interest before any map is drafted and receive feedback on potential districting plans prior to board adoption

Input can be provided in public hearings or using our "Community of Interest Worksheet."



11

City of Napa

What's Next

Public hearings will be scheduled to obtain input on communities of interest before maps are drafted and receive feedback on potential districting plans prior to board adoption.

- **First Hearing** – Public Information / Feedback
- **Second Hearing** – Public Information / Feedback
Release of maps 7 days before next hearing
- **Third Hearing** – Discussion of Maps
Release of Amended Maps 7 days before next hearing
- **Fourth Hearing** – Selection of Map
Release of final map 7 days before next hearing
- **Final Vote on plan** – (up or down, no significant changes)

12



REDISTRICTING PARTNERS

13

Tentative Timeline

- **Tuesday February 25** – 1st public hearing without maps of proposed district boundaries, to provide information to the public, and solicit input from the public and Council on composition of the districts.
- **Tuesday March 3** – 2nd public hearing without maps of proposed district boundaries, to provide information to the public, and solicit input from the public and Council on composition of the districts.
- **Saturday March 7** – Community workshop - Public Meeting where Consultant will provide a presentation to the public and solicit input from the public regarding proposed district boundaries.
- **Tuesday March 17** – 3rd Public hearing – 1st hearing with maps of proposed district boundaries produced by the demographer and published seven days in advance, and with a summary of comments received during the Community Workshop, for consideration and feedback by the public and Council
- **Tuesday April 7** – 4th public hearing - with revised map(s) of proposed district boundaries produced by the demographer and published seven days in advance; consideration of public input regarding the revised map(s), and introduction an ordinance establishing a district-based election system and map of district boundaries for Councilmembers
- **Tuesday April 21** – 5th public hearing to adopt an ordinance establishing a district-based election system and map of district boundaries for Councilmembers



14

Recommended Action

Adopt a Resolution Declaring the City's Intention To Transition from At-Large Elections to District-Based Elections of Councilmembers; Outlining Specific Steps to Facilitate the Transition (Including Public Outreach to Solicit Public Input, and Public Hearings); and Estimating a Timeframe for the Transition.

