

Redistricting:

The Legal Requirements
October 20, 2010



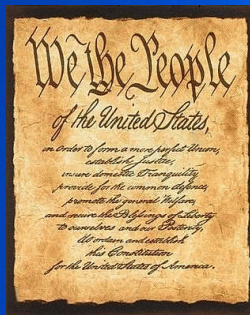
 **OLRGC**
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Four Elements

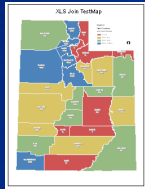
- Population
- Race
- Partisan Gerrymandering
- Redistricting Principles

Population Requirements

General Rule -- “[t]he conception of political equality from the Declaration of Independence, to Lincoln’s Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments can mean only one thing -- one person, one vote.” *Gray v. Sanders*, 372 U.S. 368, 381 (1963)



Population Requirements:



Congressional Districts

“As nearly equal as practicable” *Wesberry v. Sanders, 376 U.S. 1 (1964)*

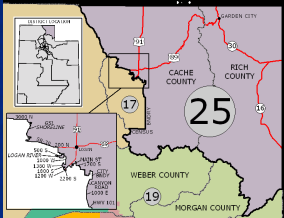
“Practicable” means “capable of being done.”

“Practical” means “capable of being done” and “sensible,” “worthwhile.”

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Population Requirements:

Utah Senate, Utah House, and Utah State School Board Districts



“Substantial equality of population among the various districts” *Reynolds v. Sims*, 377 U.S. 533 (1964)

Generally, upheld if overall range is less than 10%.

Race

- Section 2 of the Voting Rights Act of 1965 prohibits discrimination in voting against racial or language minorities.
- **Intent** does not matter: does your plan have the **effect** of diluting minority voting strength?
- General rule: draw districts that the racial minority has a fair chance to win. (Majority-minority districts)
- **But:** the Equal Protection Clause prohibits race from being the “predominant factor” in redistricting decisions.

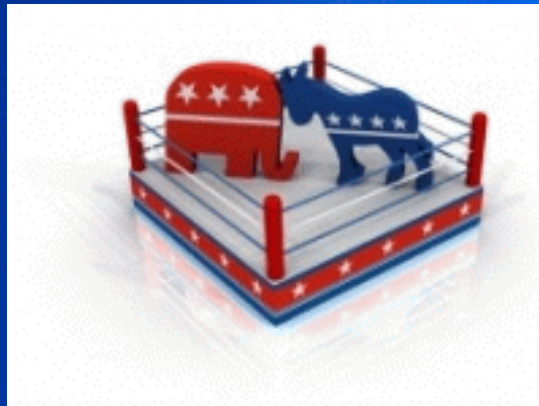


Race

- The Utah Legislature has not had to draw majority-minority districts in past redistrictings.
- Depending upon the concentration or diffusion of Hispanics throughout the state, and other legal factors, the Utah Legislature may need to draw majority-minority House districts in 2011.

Partisan Gerrymandering

“Partisan gerrymandering” means the drawing of legislative or congressional district lines that intentionally discriminate against a political party.



Partisan Gerrymandering

- The United States Supreme Court first authorized lawsuits challenging redistricting plans alleging partisan gerrymandering in 1986.
- The Court has not yet agreed on a standard for striking down a redistricting plan based upon partisan gerrymandering.
- Given the uncertainty of the law in this area, a challenge to a redistricting plan based upon an allegation of partisan gerrymandering is unlikely to succeed.

Redistricting Principles

- “Redistricting principles” are the criteria used to draw district maps.
- Although some states establish redistricting principles in their constitution, statutes, or legislative rule, Utah has not.

Redistricting Principles

Utah's Practice

- Utah's practice has been to have the Redistricting Committee adopt redistricting principles.
- In 2001, the Redistricting Committee adopted principles relating to equal population, single member districts, number of legislative districts, use of the Census Bureau's population figures, and contiguity and compactness.

Redistricting Principles



Use in Litigation

- Unless a state is required by its constitution or statutes to apply certain redistricting principles, redistricting principles are most commonly used as a defense in litigation challenging a state's plan.

Redistricting Principles



Use in Litigation, continued

To successfully challenge a redistricting plan on one person - one vote grounds, the plaintiffs must present a plan with a lower population deviation than the state's plan.

Redistricting Principles



Use in Litigation, continued

- Even if the plaintiffs present a plan with a lower population deviation, the state's plan may still be upheld if the state can show that it was drawn based upon "traditional redistricting principles."

Redistricting Principles

Use in Litigation, continued

- The Supreme Court has recognized seven “traditional redistricting principles”:

Compactness

Contiguity

Preservation of political subdivisions

Preservation of communities of interest

Preservation of the cores of prior districts

Protection of incumbents

Compliance with the Voting Rights Act



Questions?



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