

# ***Overview of Legislative and Congressional Redistricting***

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(detailed outline)*

## **I. WARDS: THE BUILDING BLOCKS OF ELECTION DISTRICTS**

### **A. Municipal and county redistricting**

Wards are created and finalized during the 180-day period between the publication of the census results (approximately April 1, 2001) and approximately October 1. Generally, wards are made up of whole census blocks. The creation of wards requires cooperation between municipalities and counties, which must use the wards to construct aldermanic and supervisory districts. Once the wards are finalized, they are reported to the state along with certain other information.

### **B. The legislature's use of wards**

The legislature has traditionally used wards to build legislative districts and congressional districts. As a result, the districts drawn by the legislature allow for easier administration of elections because a greater number of electors in a particular ward are eligible to vote the same ballot.

## **II. ELECTION DISTRICTS OF (ALMOST) EQUAL POPULATION**

### **A. Basic Terminology**

**i. Election districts.** The districts from which a jurisdiction's governing body is elected. For example, the election districts of the legislature are assembly and senate districts.

**ii. Ideal population.** The total population of a jurisdiction divided by the total number of election districts. For example, if a county's population is 100,000 and there are 20 supervisory districts, the "ideal" election district population is 5,000.

**iii. District deviation.** The degree by which a single district's population varies from the "ideal."

**a. "Relative deviation"** is the percentage by which a district's population exceeds or falls short of the "ideal" population. The percentage is obtained by dividing a district's absolute deviation by the "ideal" population. For example, if the "ideal" population is

5,000 and a given district has a population of 5,050, its "relative deviation" is +1 percent.

**b.** "Absolute deviation" is the actual amount by which a district's population exceeds or falls short of the "ideal" population. In the preceding example, the "absolute deviation" is +50.

**iv. Plan deviation.** The degree to which a districting plan varies from a plan composed of "ideal" districts.

**a.** "Overall range" is the difference in population between the largest and the smallest districts within a plan, expressed either as a percentage or as the number of people. For example, if the ideal district population is 5,000, the largest district in the plan has a population of 5,050, and the smallest district has a population of 4,500, then the "overall range" is 550 people or 11 percent.

**b.** "Range" is a statement of the absolute or relative deviations of the most populous district within a plan and the least populous district. In the preceding example, the range is +50 and -500, or +1 percent and -10 percent.

**c.** "Absolute mean deviation" is the average absolute deviation of the districts within a plan. It is the sum of the absolute deviations of all the districts in the plan, (disregarding "+" or "-" signs) divided by the total number of districts.

**d.** "Relative mean deviation" is the average relative deviation of the districts within a plan. It is the sum of the individual district relative deviations (disregarding "+" or "-" signs) divided by the total number of districts.

## **B. The Legal Standards**

### **i. Legislative districts must be substantially equal in population.**

The Equal Protection Clause of the 14<sup>th</sup> Amendment to the U.S. Constitution ("No state shall ... deny to any person within its jurisdiction the equal protection of the laws") requires substantially equal legislative representation for all citizens in a State regardless of where they reside. Legislators represent people, not areas. See *Reynolds v. Sims*, 377 U.S. 533 (1964) (applying standard to legislative redistricting).

### **ii. Congressional districts must be strictly equal.**

Article I, Section 2 of the U.S. Constitution ("Representatives . . . shall be apportioned among the several states . . . according to their respective numbers . . .") requires congressional districts to be as equal in population as practicable. *Westberry v. Sanders*, 376 U.S. 1 (1964). The federal courts have interpreted "as nearly equal in population as practicable" to require near mathematical equality.

## C. Application of the Legal Standards

### i. Legislative districts: the 10 percent standard.

a. What does the 10 percent standard mean? If a plan has an overall range of 10 percent or more, the legislature likely will be required to show that the plan advances a rational governmental policy and that the population disparities among the districts are within constitutional limits. *Absent other evidence of discrimination*, the legislature does not have to justify an overall range of less than 10 percent. See, for e.g., *Brown v. Thomson*, 462 U.S. 835 (1983).

b. The 10 percent standard doesn't mean that a plan with an overall range of greater than 10 percent is automatically invalid. But the governmental body has the difficult burden of proving that the plan constitutionally advances a rational governmental policy. See, for e.g., *Abate v. Mundt*, 403 U.S. 182 (1971).

c. Also, a districting plan with less than a 10 percent overall range is not automatically constitutional. The federal courts would look closely at a plan that is within the 10 percent standard, if the persons challenging the plan show that the plan was drawn to accomplish an unconstitutional, discriminatory purpose.

d. Wisconsin has a tradition of <1% deviation in legislative districts. Is this a one-way ratchet? Now that we've shown we can do <1% are we forever bound to keep doing so?

### ii. Congressional districts: near mathematical equality.

The legislature must strive to achieve the absolute minimum possible deviation between congressional districts. If the legislature enacts a plan that could have been more equal in population, the legislature may be required to justify the difference. In order to withstand scrutiny, the difference must be necessary to achieve a legitimate state objective. See, for e.g., *Karcher v. Daggett*, 462 U.S. 725, 740 (1983).

## III. DISCRIMINATION AND SECTION 2 OF THE VOTING RIGHTS ACT

**A. Prohibition.** Under Section 2 of the Voting Rights Act, the legislature may not create districts that result in the denial or abridgment of any U.S. citizen's right to vote on account of race, color or status as a member of a language minority group.

**B. Packing.** Districting plans have been challenged under Sec. 2 due to "packing." Packing is the practice of concentrating members of a particular minority group into one or more districts so that the members constitute an

overwhelming majority in those districts, in order to reduce the total number of districts in which members of the packed minority group could elect candidates of their choice. Adherence to well-defined lines of racial division within a community may result in packing.

**C. Fracturing.** Districting plans have been challenged under Sec. 2 due to "fracturing." Fracturing is the practice of breaking off a group of minority voters from a concentration of minority voters and adding them to a large majority district. This practice submerges the minority voters in the majority district, thus diluting the voting strength of the minority voters.

**D. What areas of the state are affected?** Any area with a minority population:

- i. That is sufficiently large and geographically compact to constitute a majority in a single-member district;
- ii. That it is politically cohesive; and
- iii. That, in the absence of special circumstances, will be prevented from electing its preferred candidate due to bloc voting by the White majority. See *Thornburg v. Gingles*, 478 U.S. 30 (1986); *Grove v. Emison*, 507 U.S. 25 (1993).

**E. Legal Test: Totality of the Circumstances, Not Intent.** A violation of Sec. 2 is established if, based on the totality of circumstances, it is shown that:

- i. The political processes leading to nomination or election in the state are not equally open to participation by members of a protected racial, color, or language minority class, in that
- ii. The members of the protected class have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.

For a list of the factors a court will examine under the "totality of the circumstances" test, see *Thornburg*, 478 U.S. at 36-37. The extent to which members of a protected class have been elected is one circumstance which may be considered, BUT Sec. 2 does NOT establish a right to have members of a protected class elected in numbers equal to their proportion in the population. 42 USC Sec. 1973 (b).

**F. Beware the racial gerrymander.** In an attempt to comply with Section 2, the legislature should not forget to follow the traditional redistricting principles such as compactness, contiguity, communities of interest, and respect for political subdivisions. Trying too hard to create a majority-minority district can result in a racial gerrymander—a district that is drawn solely or predominantly on account of

race. Although justifiable in certain limited circumstances, a racial gerrymander will likely be struck down as unconstitutional.

**i. Example of an unconstitutional racial gerrymander.**



**ii. Example of the same district, as approved by a federal court.**



Source: How to Draw Redistricting Plans That Will Stand Up In Court, Peter S. Wattson, Senate Counsel, Minnesota. Available at <http://www.senate.leg.state.mn.us/departments/scr/redist/draw/draw202web.htm#>

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