

SUMMARY OF REDISTRICTING LAW AND CRITERIA

REDISTRICTING COMMISSION
OF THE
CITY OF LOS ANGELES

Harit U. Trivedi
Deputy City Attorney
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Overview of Redistricting Laws

Laws Relevant to City Redistricting:

- Los Angeles City Charter
- U.S. Constitution
- Federal Voting Rights Act
- California Constitution
- California Elections Code
- Case Law

Los Angeles City Charter – Framing the Legal Criteria and Issues

- City Charter re Redistricting
 - Charter divides the City into 15 Council Districts (§ 241)
 - Charter requires that Council District lines be redrawn at least every 10 years (§ 204)
 - Charter creates Redistricting Commission to obtain public input, prepare a redistricting proposal and present it to the City Council (§ 204)
 - Charter provides the City Council with the ultimate authority to adopt a redistricting plan (§ 204)

Los Angeles City Charter – Framing the Legal Criteria and Issues

- City Charter re Redistricting Standards
 - Charter requires that Council districts “contain, as nearly as practicable, equal portions of the total population of the City” (§ 204(a))
 - Charter requires that districts “keep neighborhoods and communities intact, utilize natural boundaries or street lines, and be geographically compact” to the extent feasible (§ 204(d))
 - Charter requires that districts conform to state and federal redistricting law (§ 204(d))

Los Angeles City Charter – Framing the Legal Criteria and Issues

- City Charter frames several key legal concepts:
 - Equal Population Principle
 - Traditional Redistricting Criteria
 - U.S. Constitution's Equal Protection Clause
 - Federal Voting Rights Act

Equal Population Principle

- General Principle: City Council Districts must be substantially equal in population
 - U.S. Constitution's Equal Protection Clause and "One-Person, One-Vote" Jurisprudence (e.g., *Reynolds v. Sims*)
 - City Charter § 204 (equal "as nearly as practicable")
 - California Elections Code § 21620 ("as nearly equal in population as may be")

Equal Population Principle

- Make good faith effort to draw equipopulous districts
- Exact equality not required for local districts if deviation is justified by legitimate state purposes
- No longer a clear 10% “safe harbor” rule
 - Historically, deviation of <10% did not require justification
 - Change in law – now any deviation from equal population must be justified (*Larios v. Cox* (2004))

Equal Population Principle

- Deviations from equal population must be justified
 - Show consistent reliance on traditional redistricting criteria (e.g., maintaining compact districts, keeping neighborhoods intact, observing natural boundaries, respecting communities of interest)
 - Do not seek to advantage one particular group
 - Show good faith effort

Equal Population Principle

- Measuring Population Equality and Deviation
 - Start with City's total population
 - Determine ideal equal population of the 15 Council Districts
 - Determine percent deviation from ideal for each district
 - Determine total percent deviation – difference between the districts with the greatest positive and negative percent deviations

Equal Population Principle

Example of a City with a population of 1.5 million and 15 Council Districts

Total Percent Deviation = 8.5%

District	Total Population	Ideal Population	Percent Deviation
1	100,000	100,000	0
2	102,500	100,000	+2.5
3	97,000	100,000	-3
4	96,500	100,000	-3.5
5	104,500	100,000	+4.5
6	97,000	100,000	-3
7	105,000	100,000	+5
8	103,000	100,000	+3
9	100,000	100,000	0
10	101,000	100,000	+1
11	100,000	100,000	0
12	97,000	100,000	-3
13	98,000	100,000	-2
14	100,000	100,000	0
15	98,500	100,000	-1.5

Traditional Redistricting Criteria

- Focus on traditional redistricting criteria:
 - Contiguity
 - Compactness
 - Existing boundaries
 - Communities of Interest

- Legal Authorities – see Charter § 204, California Elections Code § 21620, Case law; see also California Constitution, Art. 21, § 2

Traditional Redistricting Criteria

- Contiguity – all parts of district should connect
- Compactness – district should be geographically compact
 - Many ways to measure compactness
 - Be aware of appearance, shape and border lines
- Existing Boundaries – observe existing boundaries
 - Geographic, topographic boundaries
 - Street boundaries
 - Political boundaries/subdivisions

Traditional Redistricting Criteria

- Communities of Interest – preserve communities sharing common interests
 - Examples of common interests
 - Income level
 - Educational background
 - Housing patterns (urban, rural, suburban, industrial)
 - Cultural and Language characteristics
 - Employment and Economic patterns (transportation, work)
 - Health and Environmental conditions
 - Crime, schools, other common issues
 - Obtain public testimony and consider census data, City planning information, etc.

Equal Protection Clause

- 14th Amendment's Equal Protection Clause prohibits the use of race as the predominant factor in redistricting
 - race must not be "predominant" factor
 - i.e., no racial gerrymandering
- Legal Authorities – U.S. Constitution; Supreme Court Case law re racial gerrymandering including *Shaw v. Reno*, *Shaw v. Hunt*, *Miller v. Johnson*, *Bush v. Vera*, *Hunt v. Cromartie*, *Easley v. Cromartie*

Equal Protection Clause

- 14th Amendment's Equal Protection Clause does not, however, prohibit all consideration of race
- May consider race as a factor along with traditional race-neutral redistricting criteria
- Consideration of traditional criteria must not be subordinated to consideration of race

Equal Protection Clause

- Evidence of race as predominant factor:
 - Direct testimony
 - Odd shape of district
 - Sparse record re use of traditional redistricting criteria

- If race determined to be predominant factor, strict scrutiny applies to redistricting plan
 - Need compelling state interest
 - Plan must be narrowly tailored
 - High burden – plan likely will be invalidated

Federal Voting Rights Act

- Section 2 of the Voting Rights Act of 1965
 - Prohibits any voting practice or procedure that “results in a denial or abridgement” of the right to vote based on race, color or language minority status
 - Applies to prohibit redistricting plans that result in “vote dilution” by depriving minority voters of an equal opportunity to elect a candidate of their choice
 - i.e., must not unlawfully minimize or cancel minority voting strength
 - Discriminatory effect sufficient, discriminatory intent not required

- Section 5 of the VRA does not apply to Los Angeles

Federal Voting Rights Act

- Examples of “Vote Dilution”
 - Fracturing – dispersing minority voters into several different districts such that a bloc-voting majority can routinely outvote them
 - Packing – concentrating minority voters into a small number of districts and thereby minimizing their influence in other districts

Federal Voting Rights Act

- The Supreme Court has set three preconditions to Section 2 liability under the federal VRA (the “*Gingles*” criteria):
 1. The minority group must be sufficiently large and geographically compact to constitute a majority in a district
 2. The minority group must be politically cohesive; and
 3. The white majority votes sufficiently as a bloc to enable it usually to defeat the minority’s preferred candidate

(Thornburg v. Gingles)

Federal Voting Rights Act

- The *Gingles* Criteria
 1. Is the minority group sufficiently large and compact to constitute a majority in a district?
 - Minority group must comprise at least 50% of district
 - No Section 2 liability re “influence” or “crossover” districts – where minority group is large enough to influence elections but less than a majority in a district (*Bartlett v. Strickland* (2009))
 - Note that while Section 2 does not require drawing “influence” or “crossover” districts, it also does not prevent drawing such districts provided that race is not the predominant factor
 - Section 2 liability may exist re “coalition” districts – where two or more minority groups can join to form a majority in a district
 - Minority group must be geographically compact

Federal Voting Rights Act

- The *Gingles* Criteria
 2. Is the minority group politically cohesive?
 - Evidence that minority group members usually vote for the same candidates or otherwise share common political preferences
 3. Is there racial bloc voting?
 - Evidence that white majority voters vote sufficiently as a bloc usually to defeat the minority group's preferred candidate
 - Look to evidence from past elections

- Proportionality between minority population and majority-minority districts also relevant

Federal Voting Rights Act

- If all three *Gingles* criteria are met, the courts next look to the “Totality of the Circumstances” to determine if there has been a Section 2 violation:
 - History of official discrimination
 - Racial polarization of voting
 - Use of unusually large election districts or other practices to enhance discrimination
 - Effects of discrimination endured by minority group in areas such as education, employment, health
 - Racial appeals in political campaigns
 - Minority group’s ability to be elected to public office
 - Responsiveness of elected officials to minority group’s needs

Conclusion

Key Principles to Keep in Mind:

- Strive for Population Equality
 - Make a Good faith effort to draw equipopulous districts
 - Justify any deviations with use of traditional redistricting criteria
- Focus on Traditional Redistricting Criteria
 - Draw contiguous and compact districts
 - Respect existing boundaries and communities of interest
 - Obtain public testimony and make a good record
- Do not Use Race as the Predominant Factor
 - Focus on population equality and traditional race-neutral criteria
 - May consider race as one of many factors, but not predominant factor
- Comply with the Voting Rights Act
 - Avoid fracturing or packing minority voters
 - Be aware of *Gingles* criteria