

**PRIMER ON DISTRICTING AND APPORTIONMENT
BASIC FACTS**

Prepared for the Montana Districting and Apportionment Commission
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Districting and apportionment are two distinct but interrelated concepts that are often used as if they are interchangeable. In the discussion in this document, they are relevant for both congressional and legislative districts, although many other political subdivisions also redistrict. For redistricting, after a population count is obtained, the population is "apportioned" among a set number of districts, whose boundaries are then redrawn. For example the 435 seats in the U.S. House of Representatives were apportioned among the 50 states. If Montana were to have received a second congressional seat, "redistricting" or the redrawing of the boundary lines of the districts would then have had to occur until the population of each district was within the accepted range.

During the legislative redistricting process, Montana's population of 902,195 persons will be apportioned among the 100 House districts, and the legislative district boundaries will be redrawn so that the population within each district is close to equal. The Commission has adopted a plus or minus 5% deviation from the ideal population of 9,022 persons in each district. House districts will then be coupled to form 50 Senate districts.

Redistricting is traditionally the bastion of the Legislature, but little redistricting was done over the first half of the 20th century, except to add districts. By the 1960s, malapportionment, or an imbalance in population, existed in both the congressional and legislative districts. Court rulings forced redistricting, but not without difficulty or further involvement of the courts.

The 1972 Montana Constitutional Convention addressed the districting and apportionment issue and made substantive changes in past practices. A new provision required single-member Senate and House districts for the Legislature, with two House districts constituting a Senate district. Mandates were adopted for population equality and for compactness and contiguity of districts. Also, "with the adoption of the new constitution, the people of Montana divested the legislature of all power concerning apportionment of the legislature, except for the power of recommendation".¹

The creation of a five-member Commission outlined in the 1972 Constitution was influenced by the fact that by the end of the 1960s, "more than one third of the states had developed some specialized non-legislative reapportionment agency either to initiate the matter or to backstop legislatures that failed the

¹ 35 A.G. Op. 12, 26 (1973).

task".² Montana's Legislature had proved the difficulty of reapportioning itself, and the constitution provided for an autonomous Commission. According to the National Conference of State Legislatures, Montana is one of 12 states that has some form of Commission that is not merely advisory or contingent in nature. In only five states, including Montana, are the Commission members not allowed to be public officeholders.

The Commission is composed of five citizens, none of whom may be public officials. The majority and minority leaders of each house appoint one member, and the four appointed Commissioners select the fifth member, who serves as the presiding officer. If the four members fail to select the fifth within the prescribed 20-day time limit, the majority of the Montana Supreme Court selects the presiding officer.

The first redistricting plan under a Commission was filed with the Secretary of State in 1974. In late 1974, a constitutional amendment³ returned the Legislature to meeting in regular biennial legislative sessions and, therefore, complicated the subsequent redistricting schedules. The 1972 Constitution requires that the Commission "shall submit its plan for legislative districts to the legislature at the first regular session after its appointment or after the census figures are available".⁴ Although the current Commission was appointed during the 1999 Legislature, it must present its plan to the 2003 legislative session because census data became available after the 2001 legislative session had convened.

The 15th amendment to the United States Constitution has, since 1870, guaranteed the right to vote to all citizens, regardless of race, color, or previous condition of servitude. A reconstructionist attempt to ensure that right took almost a century to be clearly outlined and enforced and culminated in the Voting Rights Act of 1965, with amendments in 1970, 1975, and 1982. The 1975 amendments extended protection against denial or abridgement of the right to vote to "language minority groups", including Native Americans, in addition to traditionally recognized minority groups that are identified by race or color. The 1982 amendments further delineate how to determine whether vote dilution occurred. The Voting Rights Act, subsequent amendments, and litigation will be applied as guidelines for the Commission with a goal of protection of minority voting rights for minorities in Montana who are predominantly Native Americans.

The U.S. and Montana Constitutions provide the foundation for criteria that the Commission has adopted to guide its redistricting, and the Commission has also adopted discretionary criteria that reflect traditional redistricting principles. It is a complex balancing act that the Commission must perform in applying the criteria consistently throughout the state.

² Ellis Waldron, Legislative Reapportionment, Montana Constitutional Convention Memorandum No. 10, Montana Constitutional Convention Commission, 1971-72, p. 35.

³ Art. V, §6, Mont. Const. 1972 (from compiler's comments). An amendment was proposed by initiative petition and adopted at the general election of November 5, 1974, as Constitutional Initiative No. 1, effective December 31, 1974.

⁴ Art. V, §14(4), Mont. Const. 1972.

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