

Legal Criteria

Districting & Apportionment Commission

June, 2020

Districting Criteria

Federal Constitution and Statutory Law Requirements

- I. Equal Population
- II. Prohibition of Racial Discrimination
 - Minority Vote Dilution
 - Racial Gerrymandering

State Law Requirements

Montana Constitutional Requirements

- I. As Nearly Equal in Population as is Practicable
- II. Compact
- III. Contiguous

Statutory Law

Other Potential Criteria

Equal Population: One Person, One Vote

Article 1, Section 2 of the US Constitution:

The House of Representatives shall be composed of Members *chosen every second Year by the People of the several States. . . .*

“ . . . [A]s nearly as is practicable one man's vote in a congressional election is to be worth as much as another's” – US Supreme Court, *Wesberry v. Sanders*, 1964

A ***strict*** requirement

There may be small, acceptable variances

- justified by legitimate state objectives,
i.e. consistently applied, nondiscriminative policies

Legislative Districts

Equal Protection Clause, 14th Amendment

“. . . [N]or [shall any state] deny to any person within its jurisdiction the equal protection of the laws.”

Montana Constitution:

Section 14. Districting and apportionment. (1) The state shall be divided into as many districts as there are members of the house, and each district shall elect one representative. Each senate district shall be composed of two adjoining house districts, and shall elect one senator. Each district shall consist of compact and contiguous territory. *All districts shall be as nearly equal in population as is practicable.*

Total population deviation >10%: Presumptively impermissible but rebuttable by showing that the state implemented a rational state policy that could not be achieved with plans of lower deviations

Total population Deviation <10%: Presumptively valid but if plaintiffs establish that illegitimate factors predominated in the redistricting process, the plan can still violate the Equal Protection Clause

Population Base Metrics

Congressional:

Apportionment clause is based on total population:

“Representatives . . . shall be apportioned among the several States . . . according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.” – Art. I, sec. 2

“Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. . . .” – 14th Amendment, sec. 2

Legislative

“The Equal Protection Clause does not require the States to use total population figures derived from the federal census as the standard by which [the] substantial population equivalency is to be measured.” – Burns v. Richardson

Montana Constitution:

Article V, Section 14. Districting and apportionment. (1) *All [legislative] districts shall be as nearly equal in population as is practicable.*

Minority Vote Dilution

(Section 2 of the Voting Rights Act)

STEP 1

Gingles Preconditions:

- 1) The minority group is sufficiently large and geographically compact to constitute a majority in a single-member district
- 2) The minority group is political cohesive
- 3) The majority votes sufficiently as a bloc to usually defeat the minority's preferred candidate

STEP 2

Based on the totality of circumstances, it is shown that the political processes leading to nomination or election are not equally open to the minority group members in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice

Racial Gerrymandering

“No state shall . . . deny to any person within its jurisdiction the equal protection of the laws.” – Equal Protection Clause of the 14th Amendment

The Equal Protection Clause protects against the purposeful discrimination between individuals on the basis of race.

A racial gerrymander is the deliberate and arbitrary distortion of district boundaries for racial purposes.

Plaintiffs must prove that race was the **predominant** factor in placing a significant number of voters in a particular district. If racial considerations predominated over other factors, the district is subject to **strict scrutiny**. To uphold the design of a district, the burden shifts from the plaintiff to the state to prove that its race-based sorting of voters serves a compelling interest and is narrowly tailored to that end.

- Compliance with the Voting Rights Act is a compelling state interest
- The State must have “good reasons” for believing its decision is necessary to comply with the VRA

Montana Constitution

Art. V, Section 14. Districting and apportionment. (1) The state shall be divided into as many districts as there are members of the house, and each district shall elect one representative. Each senate district shall be composed of two adjoining house districts, and shall elect one senator. Each district shall consist of **compact** and **contiguous** territory. All districts shall be as **nearly equal in population as is practicable**. . . .

5-1-115. Redistricting criteria. (1) Subject to federal law, legislative and congressional districts must be established on the basis of population.

(2) In the development of legislative districts, a plan is subject to the Voting Rights Act and must comply with the following criteria, in order of importance:

(a) The districts must be as equal as practicable, **meaning to the greatest extent possible, within a plus or minus 1% relative deviation from the ideal population of a district as calculated from information provided by the federal decennial census.** The relative deviation may be exceeded only when necessary to keep political subdivisions intact or to comply with the Voting Rights Act.

(b) District boundaries must coincide with the boundaries of political subdivisions of the state to the greatest extent possible. The number of counties and cities divided among more than one district must be as small as possible. When there is a choice between dividing local political subdivisions, the more populous subdivisions must be divided before the less populous, unless the boundary is drawn along a county line that passes through a city.

(c) The districts must be contiguous, meaning that the district must be in one piece. Areas that meet only at points of adjoining corners or areas separated by geographical boundaries or artificial barriers that prevent transportation within a district may not be considered contiguous.

(d) The districts must be compact, meaning that the compactness of a district is greatest when the length of the district and the width of a district are equal. A district may not have an average length greater than three times the average width unless necessary to comply with the Voting Rights Act.

(3) A district may not be drawn for the purposes of favoring a political party or an incumbent legislator or member of congress. The following data or information may not be considered in the development of a plan:

(a) addresses of incumbent legislators or members of congress;

(b) political affiliations of registered voters;

(c) partisan political voter lists; or

(d) previous election results, unless required as a remedy by a court.

Traditional Redistricting Criteria

Federally recognized traditional redistricting criteria:

Compactness

Contiguity

Preservation of counties and other political subdivisions

Preservations of Communities of Interest

Preservations of Cores of Prior Districts

Protection of Incumbents (uniformly applied)

Some previous criteria adopted by Montana Commissions:

Following geographic boundaries

Following lines of political unites

Consideration of communities of interest

Consideration of existing district boundaries where practical

Maximum deviation % from the ideal district

Questions