
REDISTRICTING IN 2011: A BRIEF SUMMARY FOR LOCAL GOVERNMENT OFFICIALS

by William Geary

In 2011 most Missouri cities will play the decennial game of redistricting. Except it's no game. The serious business of representation on city councils and boards of aldermen for the next 10 years will be faced in community meetings and reflected in new ordinances throughout Missouri.¹

The act of redistricting is simply drawing lines to define the neighborhoods from which local legislators are elected. Contrast this with reapportionment, the act of determining the number of districts within the political subdivision.

Maps are based upon redistricting data files that the Census Bureau released in late February.² The information is publicly available, which allows interest groups like neighborhood associations to suggest detailed maps. Information on the population of census tracts or other voting districts defined for the Census Bureau will tell people not just the population, but many demographic characteristics of that population such as race.

How a map is drawn can influence whether all residents are fairly represented and how elected officials respond to the community's needs. A map can encourage vibrant and engaged voter participation or stack the deck against some residents. As observed by President Lyndon Johnson at the signing of the Voting Rights Act of 1965: "This right to vote is the basic right without which all others are meaningless. It gives people, people as individuals, control over their own destinies."³

The process used by a city to redistrict may depend upon the cohesiveness or segmentation of a city's population. A community with a relatively homogeneous population may find redistricting a noncontroversial job. But in cities where the population is more diverse,⁴ redistricting can be a time of suspicion and distrust. Consequently, the more open the process the more likely citi-

zens will view the process as fair, even if they disapprove of the final map.

PROCESSES FOR REDISTRICTING

The process for redistricting a city is not mandated by federal or Missouri law, although a city charter or ordinances may provide a guide. A city, town or village may use a citizen redistricting committee, or the elected officials may simply assume the responsibility for redistricting without a citizen workgroup, relying on staff members or consultants for assistance. If a city uses a citizen redistricting committee, the appointed members may recommend to the council or board of aldermen one or more maps for consideration by the elected officials. Kansas City used a citizen redistricting commission in the 2010 redistricting before its 2011 municipal election. The commission recommended three maps; the city council adopted one of the three recommended maps without amendment.

Some cities may have detailed directions for drawing lines. For example, the Independence city charter mandates four districts established by dividing the City's population in half, then dividing those two halves into equal (or as nearly equal as possible) districts by drawing a perpendicular line through the first dividing line.⁵ Joplin defines its zones by voting precincts, prohibiting split precincts.⁶ The most common criteria imposed for cities is that districts, wards or zones be composed of compact and adjacent territory.⁷ Although the enabling statutes for third and fourth class cities do not include these requirements,⁸ the courts use these criteria as a measure of the validity of maps. Long ago the Missouri Supreme Court gave the reason for this requirement:

It has been stated that the purpose of these requirements was "to guard, as far as practicable, under the system of representation adopted, against a legislative evil, commonly known as the 'gerrymander,' and to require the Legislature to form districts, not only

of contiguous, but of compact or closely united, territory."⁹

Those local governments using an at-large system without district, ward or zone elected officials are, of course, not involved in the redistricting process since the city or village is a single voting district.

ONE PERSON - ONE VOTE

The primary purpose of the map is to insure that one person's vote carries the same weight as any other person's vote. However, protecting the constitutional principle of one-person one-vote¹⁰ is not simply an arithmetic problem. A city can protect or denigrate the interests of segments of our society by how we draw these maps.

Congress enacted the Voting Rights Act to protect the principle of one-person one-vote, and to combat the subtle - and not so subtle - means of denying groups of people real political power. The Act provides:

A violation of [the Act] is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the state or political subdivision are not equally open to participation by members of a class of citizens protected by [the Act] 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.¹¹

A city can help avoid a challenge to its districts by using standard redistricting criteria, although standard redistricting criteria does not guarantee a lawful map. Standard criterion includes (1) population equality; (2) compact districts of contiguous territory; (3) retention of neighborhood boundaries; (4) retention of precinct boundaries; (5) retention of other community of interests; (6) desire to retain historic boundaries; and (7) consideration of incumbency.

The Apportionment Clause of the United States Constitution requires that congressional districts be as equal as

possible.¹² The Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, however, governs the constitutionality of cities' districts. To comply, local districts, wards or zones must have "substantial equality of population among the various districts."¹³ This has come to mean a deviation of not more than 10 percent between the largest and smallest districts, absent evidence of intentional discrimination. Simple arithmetic establishes the deviation.

Assume a city has 20,000 residents and four wards. Ideally, each district would have 5,000 residents. (20,000 people ÷ 4 wards = 5,000 people per ward) Now assume the city's four wards have the following population: Ward 1 - 4,875; Ward 2 - 4,600; Ward 3 - 5,275; Ward 4 - 5,250. The deviation for each ward is a comparison to the perfect district; in this example that is 5,000 people. This formula is used: (Current Population ÷ Ideal Population) - 1 = Deviation.

The total deviation, the critical number, is the sum of the absolute value of the deviation of the smallest district, Ward 2, and the deviation of the largest district, Ward 3. With a deviation of 13.5% (|-8%| + 5.5% = 13.5%) the map fails to meet the one person - one vote measure. Unless unusual circumstances exist, a challenge to the district will be successful; the city should draw another map.

Ward	Population	Deviation
1	4,875	-2.50%
2	4,600	-8.00%
3	5,275	5.50%
4	5,250	5.00%

The goal of redistricting is equality and setting out to draw a map with a 10 percent deviation is a dangerous approach. Without a proper justification, using a 10 percent deviation as the goal of redistricting shortchanges the residents and risks a legal challenge by an affected protected group. The better approach is to use traditional redistricting criteria then determine the deviation to ensure equality.

It is important to remember that members of a city council or board of aldermen represent people, not voters. Who is counted includes all persons living in a city on the Census Day, April 1, 2010. Homeless people are counted

where they sleep. Persons in the United States without proper immigration status are included in the count. Children are included. Persons prohibited from voting are counted. The Census counts all people, not just eligible voters. Even if there is a large difference between voting aged people in districts that are substantially equal in total population, a city may continue to use total population figures.¹⁴

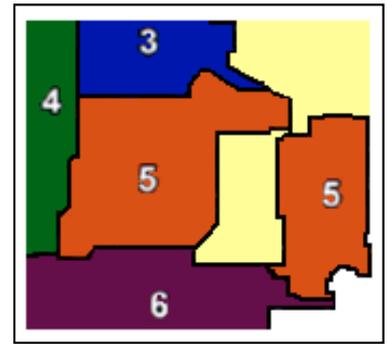
COMPACT DISTRICTS OF ADJACENT TERRITORY

Districts should be compact and composed of adjacent territory. There is no definitive means of determining whether a district is properly compact. There are recognized statistical methods of measuring compactness, each emphasizing a different aspect of an area's geography. There are, however, indicators of gerrymandering that can raise the sensibilities of those drawing the maps.¹⁵

The concept of adjacent property can be a challenge in some areas. Using Kansas City as an example, there are other cities whose city limits bisect Kansas City or are wholly surrounded by Kansas City. For many years, Kansas City has understood the requirement that property be adjacent be applied by removing the other jurisdictions from consideration. For example, the Fifth District in Kansas City is bisected by the city of Raytown. In an attempt to retain other important interests, such as neighborhood and school district cohesiveness, the Fifth District moves east, rather than south. Remove Raytown from the map and the fifth district is adjacent.¹⁶

The retention of special boundaries is an important goal in redistricting. Although most often described as keeping together people with the same general interests, there are a number of considerations that may arise. As already seen, Joplin requires voting precincts be within a single district. Splitting voting districts obviously increases the time and expense of the election authorities to conduct municipal elections by requiring separate ballots for the same precinct. The retention of these types of political boundaries is an important consideration and may help explain the deviation between districts.¹⁷

In cities with diverse neighborhoods, keeping those areas together may be important. Depending upon the nature of a neighborhood, school attendance areas may also reflect people



with common interests. Although the racial make-up of a voting district is important, diversity for neighborhoods is not limited to racial considerations. Economic interests, neighborhood history and cultural ties may be important facets of the map.

If possible, a city may draw districts to reflect the preferences of voters. Thus, placing more than one incumbent in the same new district should be avoided if possible. Because of the opportunity to justify a deviation between districts of up to 10 percent, this factor can be respected. But the consideration of incumbency is a unique factor. Notice this is far different from drawing a "safe" district for an incumbent; this is the recognition of voter preference in two or more different districts. Avoiding competition among incumbents is also the least important of the traditional factors.

VOTING RIGHTS ACT OF 1965

For many cities, the Voting Rights Act of 1965 must be considered when drawing wards, districts or zones. The Act invalidates any "voting qualification or prerequisite to voting or standing, practice or procedure" that results in a denial or abridgement of the right to vote because of race or color, or because a person is a member of a language minority.¹⁸ The protections guaranteed by the Act are directly implicated by redistricting:

A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the state or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) 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.¹⁹

When the following three factors

all exist, districts are almost certainly improperly drawn because they unlawfully dilute the voting power of a minority group.²⁰

(1) A minority group is sufficiently large and geographically compact to constitute a majority in a single-member district; and

(2) the minority group is politically cohesive; and

(3) the white majority votes as a bloc to enable it to defeat a minority group's preferred candidate.

Although these factors are not sufficient to unqualifiedly establish a violation of Section 2 of the Act without a case-by-case determination of unique local circumstances, it seems few cases fail to find vote dilution if the three factors are established.

Minority Population. The first of the three factors, known as the *Gingles* factors after the U.S. Supreme Court decision in which they were announced,²¹ may be the easiest to address. To apply the first factor two elements must be addressed: the number of people in the identified minority group and where those people live. Additionally, the number of wards and persons elected must be considered.

Another example may be useful.

City	Total	White	African American	Other Races	Two or More Races	Hispanic of any Race
Kansas City	459,787	272,305	137,540	35,361	14,581	45,953
St. Louis	319,294	140,267	157,160	14,305	7,562	11,130
Springfield	159,49	14526	6,524	6404	5.044	5,851

The 2010 Census reflects the following for Missouri's three largest cities:

Kansas City is divided into six districts, St. Louis into 28 wards, and Springfield into 4 zones. Consequently, the size of the ideal districts for each

unit within Kansas City was occupied by African American families could it be said that the City was so fully integrated that the geographic distribution of African American families eliminates a Voting Rights Act analysis of Council districts. That is simply not the case; there are areas where the African American population is geographically compact and can constitute a majority in a district. In Springfield, the African American population is not large enough to constitute a majority in any zone.

The interests of persons of Hispanic heritage also are protected by the Voting Rights Act. Consider the recent Census information for Carthage:

In Carthage, councilmembers are elected from five wards. The ideal district is 2,876 people, about one-third less than the total Hispanic population. This highlights the need to carefully consider the reasons for changes in population. According to the 2010 Census the Hispanic residents of Carthage make up 25.63 percent of the population, while the 2000 Census reflected a 12.52 percent share of the total population of the City. In 2000, the Hispanic population barely met the first element of the first *Gingles* factor - sufficiently large to constitute a majority in a ward. But

now, possibly for the first time, considerations brought about by the Voting Rights Act may come into play as new ward lines are drawn.

In addition to size, location is important. A minority population dis-

subject to challenge.

The following charts show the same city with a population of 5,000 people. Each dot represents 100 residents; the red dots reflect African American residents and the black dots represent White residents. African Americans represent 30 percent of the population and there are four wards. Chart 1 the map with square districts divides the minority population in the northern part of this hypothetical city so that no district contains a large enough group of African American residents to elect a preferred candidate. But Chart 2 shows how the city could be divided into four wards where the African American population is powerful enough to elect a preferred candidate in one of the four wards.

Chart 1 is an example of "cracking." This is a technique that divides a substantial minority population so that its ability to elect preferred candidates does not reflect its actual political power. A second technique, "packing," develops a highly concentrated minority population into a single district that dilutes the voting power of the group in the remaining districts. One of the most obvious ways to discern this problem is the use of racial gerrymandering. Chart 3 shows the same hypothetical city with a packed district.

P o - litical Cohesion. It is not enough that a racial or ethnic

minority group meet the first *Gingles* factor. The group must be politically cohesive, that is, the political interests of the members of the group are expressed through general support of the same candidates.

Census	Total	White	African American	Other Races	Two or More Races	Hispanic of any Race
2010	14,378	10,581	222	3,092	483	3,685
2000	12,688	10,984	195	1,204	285	1,589

city is 76,631; 14,403; and 39,874 respectively.

In St. Louis, clearly, African American residents may have a right to a district map that reflects their contribution to the total population of the City. The African American population in St. Louis is the largest racial group in the City. Only if every third dwelling

persed throughout the city may not be suitable for consideration under the Voting Rights Act because compact districts could not be drawn to include sufficient population to elect the group's preferred candidates. But if there is a concentration of those residents and their potential voting strength is not considered, the district map can be

White Bloc Voting. To implicate the protections of Section 2 of the Voting Rights Act, there must also be White bloc voting that is able to defeat the minority group's preferred candidate. This ability to defeat a preferred candidate is the essence of a vote dilution claim. For example, in our hypothetical city assume the great majority of African

Chart 1

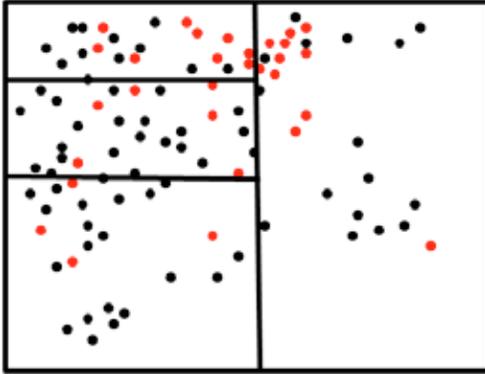


Chart 2

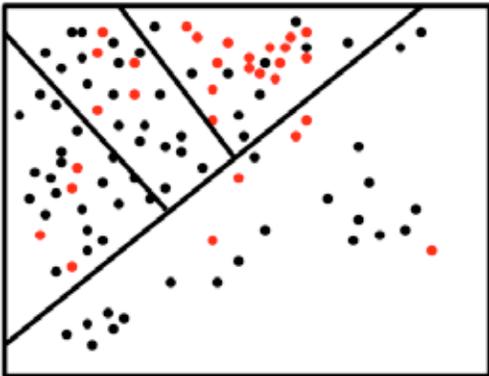


Chart 3



American people prefer a certain type of candidate, for example, someone who believes in emphasizing neighborhood improvement. But most of the White majority prefers emphasizing commercial and industrial development. The first map is drawn in a way that the political influence of 30 percent of the population is irrelevant to the elections. The Voting Rights Act may require a new map.

RACIAL AND ETHNIC CONSIDERATIONS

Drawing maps intentionally reflecting racial or ethnic considerations is not always unlawful because redistricting differs from other kinds of state

- Water
- Wastewater
- Hazardous Waste
- Transportation
- Other - GIS, Studies



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decisionmaking in that the legislature always is *aware* of race when it draws district lines, just as it is aware of age, economic status, religious and political persuasion, and a variety of other demographic factors. That sort of race consciousness does not lead inevitably to impermissible race discrimination.²²

Sometimes this consideration can be the by-product of attempts to draw compact districts containing residents with the same interests and reflecting historical neighborhood boundaries. Concentrating a group of people within such district may not reflect vote dilution. However, when the map reveals gerrymandering based on race, the likelihood of a court invalidating the map is great.

The invalidity of the map will flow from the subordination of traditional redistricting principles to race. Said another way:

A redistricting plan violates the equal protection clause only if race is the predominant factor in placing voters within or outside of a particular district. Strict scrutiny does not apply where . . . race was merely a factor in redistricting.²³

Be mindful that our system assumes people living within specified geographical areas have more common interests to be considered in relationship to their government than do people who do not live in the same geographical area. That is, schools, housing, public infrastructure, public

safety, neighborhood parks, and other similar interests are given priority over the interests of non-geography based interests. This is a reason the Voting Rights Act requires a minority group to establish its geographical compactness within the political subdivision.

CONCLUSION

For a vote to count *for* something, it must have the potential to *affect* something. Non-competitive districts lead to the question "Why vote?" That question is a warning that people are detached from their government. Traditional redistricting factors will guide a city through the redistricting process, helping it support its map. A deviation of less than 10 percent between the largest and smallest districts will help, although not guarantee, a lawful map. Finally, Section 2 of the Voting Rights Act must be considered when the three *Gingles* factors are present.²⁴ □

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You may request a copy of the footnotes for this article by calling Missouri Municipal League at 573-635-9134 or e-mail to info@mocities.com.