



CITY OF SANTA BARBARA

INDEPENDENT REDISTRICTING COMMISSION

AGENDA REPORT

AGENDA DATE: August 25, 2021

TO: Honorable Chairperson and Members of the Commission

VIA: Honorable Mayor and Members of the City Council

FROM: City Attorney's Office

SUBJECT: Redistricting Criteria and Legal Requirements

The IRC has asked for an introductory summary of California redistricting criteria and legal requirements. The detailed outline that follows addresses the IRC's request. We are taking the liberty of sharing this report with the City Council.

FEDERAL REQUIREMENTS

I. Federal Voting Rights Act

Local district maps must satisfy the requirements under Section 2 of the federal Voting Rights Act ("VRA"). Section 2 of the VRA prohibits voting practices or procedures which discriminate based on race, ethnicity, or language.¹ For this reason, local district maps cannot be drawn in a manner that dilutes the voting power of underrepresented racial, ethnic, and language groups. Racial gerrymandering can lead to such voter dilution.

a. No Racial Gerrymandering

It is unconstitutional to have racial gerrymanders where district maps are drawn with race as the dominant and controlling factor, absent a compelling justification that withstands strict scrutiny.²

There are two principal gerrymandering tactics: "packing" and "cracking."³ Packing occurs when individuals from a minority group are included in few districts. When faced with packing, individuals from a minority group may be able to elect a person of their

¹ 52 U.S.C. § 10301.

² See *Shaw v. Reno*, 509 U.S. 630, 640-42 (1993).

³ See *Vieth v. Jubelirer*, 541 U.S. 267, 286 fn.7 (2004).

choosing in few districts. Cracking refers to when individuals from a minority group are spread across districts. As a result of cracking, individuals from a minority group will not have enough voting power to elect a person of their choosing in any district.

b. Gingles and Senate Factors

District line drawing must ensure compliance with Section 2 of the VRA to avoid a successful challenge using the “*Gingles*” factors. In *Thornburg v. Gingles*⁴, the Supreme Court nullified multi-member districts in a North Carolina redistricting plan. The Court identified three criteria – the “*Gingles* factors” – for identifying racial voter dilution under Section 2 of the VRA.⁵ The Court examined:

- (1) whether the minority group was a majority in a geographically compact district;
- (2) whether the minority group is politically cohesive; and
- (3) whether the majority votes sufficiently as a block such that it defeats the minority’s preferred candidate.^{6 7}

To fully satisfy the third factor inquiry, the “Senate Factors” must also be considered.⁸ The Senate Factors are a non-exhaustive list of factors set forth in a Senate Judiciary Committee Majority Report included in an amendment to Section 2 of the VRA, which helps assess the totality of the circumstances.⁹ These factors include questions such as whether the minority group has faced voter discrimination and whether the group continues to bear the effects of past discrimination.¹⁰

⁴ 478 U.S. 30 (1986).

⁵ *Id.* at 49-51.

⁶ *Id.*

⁷ The creation of majority-minority districts could be required under Section 2 of the VRA where a minority group could form a majority in a legal single member district. *Bartlett v. Strickland*, 556 U.S. 1, 13 (2009) (quoting *Voinovich v. Quilter*, 507 U.S. 146, 154-55 (1993) (“Placing black voters in a district in which they constitute a sizeable and therefore ‘safe’ majority ensures that they are able to elect their candidate of choice”)).

⁸ *Wright v. Sumter Cty. Bd. of Elections & Registration*, 301 F. Supp. 3d 1297, 1312 (M.D. Ga. 2018) (citing *Gingles*, 478 U.S. at 37-38); S. Rep. No. 97-417 (1982).

⁹ S. Rep. No. 97-417 (1982).

¹⁰ *Ibid.*

II. Equal Population

State legislative districts and local districts are required to be “substantially” equal in population, which allows some deviation.¹¹ Generally, deviations between the largest and smallest district of up to ten percent will be presumed constitutional, but can be proven to be unconstitutional.¹² It is rare for maps with total deviations above ten percent to be justified.¹³

CALIFORNIA REQUIREMENTS

I. California Elections Code

District maps must comply with the criteria in Elections Code Sections 21500(c), 21601(c), and 21621(c).

a. Contiguity

Contiguity is a traditional redistricting principle.¹⁴ A contiguous district is one in which all parts of the district are in physical contact with another part of the same district. The California Elections Code has clarified:

“Areas that meet only at the points of adjoining corners are not contiguous. Areas that are separated by water and not connected by a bridge, tunnel, or regular ferry service are not contiguous.”¹⁵

b. Communities of Interest

Preserving communities of interest is another traditional redistricting principle.¹⁶ A community of interest is a group of people with a common interest, such as interests, cultures, histories, languages, and values. The California Elections Code describes as a community of interest as:

“. . . a population that shares common social or economic interest that should be included within a single supervisorial district for purposes of its effective and fair

¹¹ See *Reynolds v. Sims*, 377 U.S. 533, 579-80 (1964).

¹² *White v. Regester*, 412 U.S. 755, 764 (1973).

¹³ *Mahan v. Howell*, 410 U.S. 315, 325 (1973) (affirming deviation of 16.4 percent where the deviation was “based on legitimate considerations incident to the effectuation of a rational state policy”).

¹⁴ See *Reno*, 509 U.S. at 647.

¹⁵ Cal. Elec. Code § 21500(c)(1) (counties); *id.* § 21601(c)(1) (general law cities); *id.* § 21621(c) (1) (charter cities).

¹⁶ *Bush v. Vera*, 517 U.S. 952, 977 (1996).

representation. Communities of interest do not include relationships with political parties, incumbents, or political candidates.”¹⁷

c. Easily Identifiable Boundaries

Another traditional redistricting principle is for district boundaries to be easily identifiable and understandable by residents.¹⁸ The California Elections Code elaborates:

“To the extent practicable, council districts shall be bounded by natural and artificial barriers, by streets, or by the boundaries of the city.”¹⁹

d. Compactness

A district is compact when residents within a district live near each other rather than being bypassed for people who live further away. The majority of courts determine whether a district is compact by a visual inspection.²⁰ Some courts have a mathematical approach, such as the Reock test, which calculates the ratio of the area of the district to the area of the minimum enclosing circle for the district.²¹ The California Elections Code describes compactness:

“To the extent practicable, and where it does not conflict with the preceding criteria in this subdivision, supervisorial districts shall be drawn to encourage geographical compactness in a manner that nearby areas of population are not bypassed in favor of more distant populations”²²

e. Shall Not Favor Or Discriminate Against A Political Party

Lastly, council districts should not be drawn for the purpose of favoring or discriminating against a political party.²³

¹⁷ Cal. Elec. Code § 21500(c)(2); *see also id.* § 21601(c)(2) (general law cities); *id.* § 21621(c)(2) (chartered cities).

¹⁸ Cal. Elec. Code § 21500(c)(4); *see also id.* § 21601(c)(3) (general law cities); *id.* § 21621(c)(3) (charter cities).

¹⁹ Cal. Elec. Code § 21500(c)(4); *see also id.* § 21601(c)(3) (general law cities); *id.* § 21621(c)(3) (charter cities).

²⁰ *Montes v. City of Yakima*, 40 F. Supp. 3d 1377, 1393 (E.D. Wash. 2014); *Cuthair v. Montezuma-Cortez*, Colo. Sch. Dist., 7 F. Supp. 2d 1152, 1167 (D. Colo. 1998).

²¹ *Montes*, 40 F. Supp. 3d at 1396.

²² Cal. Elec. Code § 21500(c)(5); *see also id.* § 21601(c)(4) (general law cities); *id.* § 21621(c)(4) (charter cities).

²³ Cal. Elec. Code § 21500(d); *see also id.* § 21601(d) (general law cities); *id.* § 21621(d) (charter cities).

II. California FAIR MAPS Act/AB 849

The California Fair and Inclusive Redistricting for Municipalities and Political Subdivisions (FAIR MAPS) Act requires compliance with the United States Constitution, the California Constitution, and the Federal VRA.²⁴ The Act prioritizes traditional redistricting principles²⁵ as follows:

1. Contiguity
2. Communities of interest
3. Preservation of cities and census designated places
4. Easily identifiable boundaries
5. Compactness

Further, the Act also requires cities to engage communities in the redistricting process by holding public hearings and/or workshops, and conducting public outreach.²⁶

III. AB 1276

AB 1276 modified AB 849 such that including the total population is mandatory, except that incarcerated persons can only count in certain circumstances.²⁷ The total population must be based on the last census.²⁸ Draft maps must include the total population, citizen voting age population, and racial and ethnic characteristics of the citizen voting age population for each district if available.²⁹

AB 1276 provided that a chartered city would be exempt from the mandatory criteria in AB 1276 if the city had adopted comprehensive or exclusive redistricting criteria.³⁰ This means that the city's charter either excludes the consideration of redistricting criteria other than those identified in the city charter, or that the city's charter provides two or more traditional criteria for redistricting other than the requirement that districts be equal in population.³¹ The City of Santa Barbara's Charter does not include comprehensive or exclusive redistricting criteria, thus AB 1276 applies.³²

²⁴ Cal. Elec. Code § 21500(b).

²⁵ Cal. Elec. Code § 21500(c).

²⁶ Cal. Elec. Code §§ 21500; 21507.1; 21508.

²⁷ See Elec. Code §§ 21500(a); 21601(a) (general law cities); 21621(a) (charter cities).

²⁸ *Id.*

²⁹ Cal. Elec. Code § 21508(d)(2) (counties); § 21608(d)(2); § 21628(d)(2) (charter cities).

³⁰ Cal. Elec. Code § 21621(e).

³¹ *Id.*

³² See Charter of the City of Santa Barbara, § 1301.

PREPARED BY: Michelle Sosa-Acosta, Deputy City Attorney

SUBMITTED BY: Ariel Calonne, City Attorney

APPROVED BY: City Administrator's Office