SUMMARY OF REDISTRICTING LAW AND CRITERIA

REDISTRICTING COMMISSION
OF THE
CITY OF LOS ANGELES

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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

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<th>Ideal Population</th>
<th>Percent Deviation</th>
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Example of a City with a population of 1.5 million and 15 Council Districts

Total Percent Deviation = 8.5%
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

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