

Revisiting Redistricting in 2015

The U.S. Constitution requires that states reapportion their congressional districts and state assembly districts after each federal decennial (10 year) census. This process affects districts at all levels of government, from local school boards and city councils to state legislatures and the U.S. House of Representatives. If a state gains or loses a congressional seat, the redistricting must take this into account. But even if a state doesn't gain or lose a seat, populations within the state typically shift sufficiently that district lines must be redrawn, including for state legislative seats, municipal districts and school board seats. (forum.org/sites/default/files/lwvus_redistricting_faqs.pdf/, accessed 9/30/2015)

Before the 1960s, each state legislature drew its congressional and legislative district boundaries without federal guidelines. In 1962, the U.S. Supreme Court concluded that apportionment issues could be resolved through the courts. In 1964, the Court decided that the concept of "one person, one vote" should be the standard for redistricting purposes. (p. 3 "Redistricting in Oregon", LWVOR study 2007)

The LWVUS statement of position on apportionment is: "The League of Women Voters of the United States believes that congressional districts and government legislative bodies should be apportioned substantially on population. The League is convinced that this standard established by the Supreme Court should be maintained and that the U.S. Constitution should not be amended to allow for consideration of factors other than population in apportionment." (<http://lwv.org/content/election-process>, accessed 10/5/2015)

"Reapportionment is the division of congressional districts among the states, whereas redistricting refers to the actual division (or drawing) of districts within a state" (<http://www.civilrights.org/census/education-kit/reapportionment.html>, accessed 9/30/2015)

This paper focuses on redistricting in Lane County and in Oregon.

Key Considerations on Redistricting [adapted from p. 3, "Redistricting in Oregon", LWVOR study 2007]

- 1) When are the boundaries drawn?
- 2) Who draws the boundaries?
- 3) Where are the boundaries drawn?
- 4) What are the criteria for drawing boundaries?

When are the Boundaries Drawn?

Traditionally, states have redrawn their district boundaries only once every 10 years, immediately after the U.S. census makes the new population data available. Since 2001, however, a handful of states have undertaken mid-term redistricting. (p. 12, "Redistricting in Oregon", LWVOR study 2007).

Lane County redistricting is governed by the Lane County Charter, Chapter III, Section 10(3)(d), which provides that “the board of commissioners shall, not less than every 10 years, initiate review of the population densities of each district and modify boundaries when necessary.” Section 10(3)(e) requires that “district boundaries shall be finally adopted at least six months prior to any election for which they are to be effective.”

Who Draws the Boundaries?

Who draws the electoral district lines is decided by each state’s laws. Currently, groups who draw include: (forum.org/sites/default/files/lwvus_redistricting_faqs.pdf/, accessed 10/4/2015)

- Independent commission: California and Arizona
- Bipartisan commission: Alaska, Colorado, Hawaii, Idaho, Montana, New Jersey, New York (newly passed initiative), Washington
- Hybrid system: Illinois, Indiana, Maryland, Missouri, Ohio
- A nonpartisan governmental agency: Iowa
- Legislature: the other 34 states

In Article IV, Section 6, subsection (1) the Oregon Constitution requires that the Legislature determine the number of representatives and senators and assign them in districts according to population. When the Legislature enacts a plan, the Governor must concur or veto the plan by or before August 1. If the Governor concurs, the plan goes into effect then unless legal challenges are filed. These are sent directly to the Oregon Supreme Court for judicial review. If all is deemed in order, the redistricting goes into effect September 1. If the Supreme Court determines that the plan does not comply with the requirements in subsection (1), its written opinion shall declare the plan void and specifically state the non-compliance. This opinion must be filed by September 15.

If the Legislature’s plan is voided, the Oregon Secretary of State must draft a redistricting of the state legislative districts, conduct a public hearing, file a transcript of the hearing, and file a corrected redistricting plan with the Supreme Court by November 1. The Court may order additional corrections; otherwise the new plan becomes operative on November 15. (p. 5, “Redistricting in Oregon,” LWVOR study 2007)

The Lane County charter requires the board of commissioners to determine the commissioner district boundaries. “In accordance with Federal, State or County census figures, the boundaries of the five districts shall be drawn by the board of commissioners so as not to deny any person equal protection of the law.” (Lane County Charter, Chapter III, Section 10(3)(d))

Where are the Boundaries Drawn?

Two federal criteria govern where the boundaries are drawn for congressional districts: equal population and race/ethnicity. The U.S. Constitution requires that each district have about the same population: each federal district within a state must have about the same number of people, each

state district within a state must have about the same number of people, and each local district within its jurisdiction must have about the same number of people. (<http://redistricting.lls.edu/where.php>, accessed 9/30/2015)

The standard for congressional districts is quite strict, with equal population required "as nearly as is practicable." In practice, this means that states must make a good-faith effort to draw districts with exactly the same number of people in each district within the state. Any district with more or fewer people than the average (also known as the "ideal" population) must be specifically justified by a consistent state policy. And even consistent policies that cause a one percent spread from largest to smallest district will likely be unconstitutional. (<http://redistricting.lls.edu/where.php>, accessed 9/30/2015)

The other main federal requirement for redistricting concerns race and ethnic groups. Redistricting has been abused to dilute racial and ethnic minorities' voice at the polls. One ploy is called "cracking": splintering minority populations into small pieces across several districts, so that a big group ends up with a very little chance to impact any single election. Another tactic is called "packing": pushing as many minority voters as possible into a few super-concentrated districts, and draining the population's voting power from anywhere else. (<http://redistricting.lls.edu/where.php>, accessed 9/30/2015)

The federal Voting Rights Act of 1965 was designed to combat tactics denying minorities the right to an effective vote, including redistricting techniques like those above. As federal law, the Voting Rights Act overrides inconsistent state laws, just as the constitutional equal population rule overrides other state laws. (<http://redistricting.lls.edu/where.php>, accessed 9/30/2015)

These federal requirements for districts based on substantially equal populations and taking into account racial and ethnic communities also apply to redistricting at the county level.

Criteria for Redistricting

1) State criteria

In Oregon, ORS 188.010 states:

The Legislative Assembly or the Secretary of State, whichever is applicable, shall consider the following criteria when apportioning the state into congressional and legislative districts:

(1) Each district, as nearly as practicable, shall:

- (a) Be contiguous;
- (b) Be of equal population;
- (c) Utilize existing geographic or political boundaries;
- (d) Not divide communities of common interest; and
- (e) Be connected by transportation links.

(2) No district shall be drawn for the purpose of favoring any political party, incumbent legislator or other person.

- (3) No district shall be drawn for the purpose of diluting the voting strength of any language or ethnic minority group.
- (4) Two state House of Representative districts shall be wholly included within a single state senatorial district.

Although these criteria are not binding on local redistricting efforts, they reflect the thinking of the legislature on what criteria are important when boundaries are redrawn.

2) Lane County Criteria

In a memo dated August 4, 2011 from Stephen L. Vorhes, Acting County Counsel, to Cheryl Betschart, Lane County Clerk, Vorhes outlined the following criteria for the Lane County Commissioners to use in redistricting the county: (<http://www.lanecounty.org/Departments/CAO/Documents/Redistricting%202011/August%204%20Memo.pdf>, accessed 9/30/2015):

1. Equal population. Consideration of this factor is mandatory.
2. Geographic boundaries. Geographic boundaries must be considered in that the Charter utilizes general geographic descriptions for Commissioner Districts: West Lane County District, Springfield District, South Eugene District, North Eugene District, and East Lane County District. Optional consideration can be given to rivers mountain crests, roads, etc.
3. Political boundaries. Political boundaries must be considered, again to the extent that the Charter utilizes political boundaries (Springfield, southern/northern Eugene metropolitan area). Current Charter language ("generally comprised of") allows for some variation. Consideration of other political boundaries (representative districts; cities; school districts, etc.) is optional.
4. Existing district boundaries. Consideration of this is mandatory in that the existing boundaries are an essential component of fulfilling the charge in the Charter to "review the population densities of each district and modify boundaries when necessary."
5. Combining incumbents. Consideration of this is mandatory as the Charter provides that no designation shall disqualify a commissioner from completing the term of office to which he or she was elected.
6. Contiguity. Consideration of this factor is optional.
7. Communities of common interest. Consideration of this factor is optional.
8. Transportation links. This is an optional factor to be considered.
9. Voting strength of any language or ethnic minority group. Consideration of this is optional; however, care must be taken to avoid prohibited discrimination.
10. Compactness. Consideration of this is optional.

The memo also included a discussion of federal and state criteria for redistricting.

In addition to the criteria in the memo from legal counsel, the website for Lane County also lists the criteria of political boundaries, no favoritism to any person, and additional considerations of city boundaries, and urban growth boundaries. (<http://www.lanecounty.org/departments/cao/pages/redistricting.aspx>, accessed 9/30/2015). Political boundaries include boundaries for state representative districts, cities, school districts, etc. Redistricting decisions should also consider how city political boundaries that may change as the result of annexations in the next ten years will impact commissioner district boundaries. Such districts may conflict with population equality and compactness. (<http://www.lanecounty.org/Departments/CAO/Documents/Redistricting%202011/Criteria.pdf>, accessed 9/30/2015)

There's no additional discussion on the criterion of "no favoritism to any person," and the discussion of "additional considerations" says "Historically commissioner districts have been drawn to be inclusive of city boundaries to minimize split precincts (for example, where a city precinct includes more than one commissioner district). An additional consideration would be the urban growth area to minimize the requirement of establishing split commissioner precincts when subsequent annexations occur with major cities such as the City of Eugene and the City of Springfield pending the next ten year reapportionment." (<http://www.lanecounty.org/Departments/CAO/Documents/Redistricting%202011/Criteria.pdf>, accessed 9/30/2015)

Problems in Redistricting

Redistricting is a fiercely-contested issue, primarily due to gerrymandering, the practice of drawing district lines to favor one political party, individual or constituency over another. Two areas of contention include the following:

1. **Competitiveness:** Political parties or incumbents sometimes draw district lines for their benefit at the expense of proportionality and fair representation. Some argue that this practice contributes to the present lack of competitive elections. Uncompetitive elections can in turn discourage participation.

2. **Race and ethnicity:** District lines sometimes minimize the influence of minority voters by disproportionately consolidating them within single districts or splitting them across several districts. These practices are examples of packing and cracking, respectively. (http://ballotpedia.org/Redistricting_in_Oregon, accessed 9/30/2015)

According to Pew Research over the past five years, maps drawn by legislators in 40 states have been challenged in court over accusations of gerrymandering or the attempts to reduce minorities' voting power. "The jury is still out, but there is a growing consensus that commissions are not any worse and are perhaps better. Where you have commissions there seems to be a lot less contentious and protracted litigation, you often have more competitive districts, and you tend to have more moderate people get elected." (Michael Li, New York University Brennan Center for Justice.) A large number of court cases suggests that gerrymandering is on the rise. Proponents of independent commissions say legislators have a conflict of interest and draw maps in their favor. (<http://www.pewtrusts.org/en/research-and-analysis>, accessed 10/4/2015)

The U. S. Supreme Court ruled in June 2015 that a voter-approved independent redistricting commission in Arizona is constitutional. The Arizona voters had passed a ballot initiative in 2000 approving an independent commission. The commission has two Republicans and two Democrats, chosen by legislative leaders from a list composed by the state's Commission on Appellate Court Appointments, and a fifth member, a chairman, who may not be of either party. Republican legislators brought suit after the 2012 election, claiming that they had been cut out of the districting process. The Supreme Court wrote that overturning the independent commission would go against the spirit of the Elections Clause. (http://www.huffingtonpost.com/2015/06/29/ Arizona-redistricting-supreme-court_n_7470488.html, accessed 10/4/2015)

Several initiatives, including ones in 2012 and 2015, have been introduced in the Oregon legislature to create independent redistricting commissions, but failed to pass.

Questions:

1. Which criteria do you think are most important for redistricting? Are there other criteria that should be included?
2. Thinking about the last time that Lane County was redistricted, are there ways that the public can engage to ensure that there is transparency in redistricting decisions?
3. What could be the advantages and disadvantages of an independent commission?
4. Do you feel your district was gerrymandered during the last redistricting, and if so, why?
5. Given that the Eugene-Springfield area has an increasing population, how can the redistricting process preserve equity of urban and rural interests, as well as the one-person one-vote rule?

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