

Redistricting and Gerrymandering

Next year – 2020 – the United States Census Bureau is scheduled to conduct the decennial (10 year) census. Following the release of that information, all levels of government – national, state and local – will consider redistricting election boundaries. It is not too early for the League to discuss how we might be involved in that process.

Sometimes elected officials manipulate boundaries through redistricting to favor a political party or incumbent candidates. Such manipulation, called gerrymandering, disenfranchises people, violating the one person/one vote principle, particularly impacting underrepresented minority communities. (The term, gerrymander, commemorates Massachusetts Governor Elbridge Gerry, under whom, in 1812, a strangely redrawn district was said to look like a mythical salamander.)

Who is Counted for Redistricting?

Article I, Section 2 of the United States Constitution states: "Representatives and direct Taxes shall be apportioned among the several States ... according to their respective Numbers The actual Enumeration shall be made within three Years after the first meeting of the Congress of the United States, and within every subsequent Term of ten Years." Section 2 of the 14th Amendment states: "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."

The United States Census Bureau of the Department of Commerce is responsible for "counting the whole number of persons in each State." Title 13 of the US Code governs how the census is conducted and how its data is handled. Decennial US census figures are based on actual counts of persons dwelling in US residential structures. They include children and adults, citizens, non-citizen legal residents, non-citizen long-term visitors and illegal residents. The Census Bureau bases its decision about whom to count on the concept of usual residence. Usual residence, a principle established by the Census Act of 1790, is defined as the place a person lives and sleeps most of the time.

Certain American citizens living overseas are specifically excluded from being counted in the census even though they may vote. Only Americans living abroad who are federal employees (military and civilian) and their dependents living overseas with them are counted. Private US citizens living abroad who are not affiliated with the federal government are not included in the overseas counts.

By law, individual census records are sealed for 72 years, a number chosen in 1952 as slightly higher than the average female life expectancy of 71.6 years. The individual census data most recently released to the public is the 1940 census, released on April 2, 2012. Aggregate census data are released when available.

League of Women Voters of the United States (LWVUS) Position on Redistricting

Given the above information, the League adopted the following position in 2016:

The League believes responsibility for redistricting preferably should be vested in an independent special commission, with membership that reflects the diversity of the unit of government, including citizens at large, representatives of public interest groups, and members of minority groups. Every redistricting process should include:

- Specific timelines for the steps leading to a redistricting plan
- Full disclosure throughout the process and public hearings on the plan proposed for adoption
 - Redistricting at all levels of government must be accomplished in an open, unbiased manner with citizen participation and access at all levels and steps of the process, and
 - Should be subject to open meeting laws
- A provision that any redistricting plan should be adopted by the redistricting authority with more than a simple majority vote
 - Remedial provisions established in the event that the redistricting authority fails to enact a plan
 - Specific provisions should be made for court review of redistricting measures and for courts to require the redistricting authority to act on a specific schedule
 - Time limits should be set for initiating court action for review
 - The courts should promptly review and rule on any challenge to a redistricting plan and require adjustments if the standards have not been met

The standards on which a redistricting plan is based, and on which any plan should be judged, must:

- Be enforceable in court
- Require substantially equal population, geographic contiguity, and effective representation of racial and linguistic minorities
- Provide for (to the extent possible) promotion of partisan fairness, preservation and protection of “communities of interest,” and respect for boundaries of municipalities and counties
- Compactness and competitiveness may also be considered as criteria so long as they do not conflict with the above criteria
- Explicitly reject protection of incumbents, through such devices as considering an incumbent’s address and preferential treatment for a political party, through such devices as considering party affiliation, voting history and candidate residence

Current Rules for Redistricting

At the federal level the Constitution requires that states reapportion their congressional districts and state assembly districts after each federal decennial census. The House of Representatives has 435 district seats divided among all 50 states. The seats are apportioned according to population as determined by the census. As the population of states increase or decrease at varying rates, congressional seats have to be transferred between the states at each reapportionment. This process affects districts at all levels of government, from local school boards and city councils to state legislatures and the House of Representatives.

Once the number of district seats for a state is determined, the state legislature or other governmental body draws the boundaries of each electoral districts, known as redistricting. Gerrymandering occurs when redistricting is used to manipulate boundaries to favor a political party or incumbent candidates rather than to safeguard electoral fairness.

The two most common gerrymandering techniques are *packing* and *cracking*. In *packing*, the party in charge of redistricting tries to pack voters from the rival party into as few districts as possible to minimize the number of seats the opposition is likely to win. In *cracking*, blocks of opposition voters are splintered out amongst several districts to dilute their influence, thus achieving the same goal. *Hijacking* is another tactic which redraws two districts to force incumbents to run against one another, while *kidnapping* moves an incumbent’s home address into another district.

Identifying gerrymandering is not easy except in the most egregious situations. One method gaining momentum is the mathematical Efficiency Gap (EG) method to quantify partisan gerrymandering. It is a simple numerical score to detect unfair congressional and legislative maps that are rigged to keep one party on top in a way that is unresponsive to voter preferences. EG can be computed based on voting data from a single election. If the result exceeds a certain threshold, then the districting plan is found to have discriminatory partisan effect.

Federal Redistricting Criteria

Federal legal provisions include the 14th and 15th Amendments and the Voting Rights Act. After the 1962 Supreme Court decision in *Baker v. Carr*, the 14th Amendment's Equal Protection Clause was interpreted to require that political districts be equal in population. The court's ruling is known as the "one man, one vote" principle.

The 15th Amendment guaranteed citizens the right to vote and protected that right from being abridged on account of race or color. It also specifically authorized Congress to enforce it by enacting legislation. Accordingly, Congress enacted the Voting Rights Act of 1965 to aggressively enforce the amendment in states and localities that continued to deny African-Americans the voting franchise using state and local laws. As federal law, the Voting Rights Act overrides inconsistent state laws, just as the constitutional equal population rule overrides other state laws.

In June 2013 the Supreme Court ruled 5-4 to overturn the section of the Voting Rights Act that required federal pre-clearance of any changes to the voting system in 15 states. These states were known for their efforts to deny voting rights to African-Americans. Chief Justice John Roberts justified it by saying, "our country has changed," and that blanket federal protection wasn't needed to stop discrimination.

Oregon

Oregon's five congressional representatives and 90 state legislators are all elected from political divisions called districts. Following the 2010 United States Census, Oregon's House of Representatives consists of 60 districts and Oregon's State Senate of 30 districts. Two House districts comprise each Senate district. Congressional and state legislative district lines are drawn by the state legislature and are subject to veto by the governor.

Oregon State Redistricting Criteria

In addition to the Federal law that districts must have nearly equal populations and must not discriminate on the basis of race or ethnicity, the Oregon legislature uses the following criteria to draw legislative and congressional districts

- Be contiguous
- Be of equal population
- Utilize existing geographic or political boundaries
- Not divide communities of common interest
- Be connected by transportation links

State law requires that no district shall be drawn for the purpose of favoring any political party, incumbent legislator or other person or be drawn for the purpose of diluting the voting strength of any language or ethnic minority group.

Comparison of Independent Redistricting Proposals for the State of Oregon

The LWWUS promotes transparent and accountable redistricting processes to end hyper-partisan practices that don't benefit constituents. The LWWUS believes responsibility for fair redistricting should be vested in an independent special commission, with membership that reflects the diversity of the unit of government.

There are currently several proposals being advanced in Oregon regarding the creation of independent redistricting commissions. There are three key questions that need to be considered when determining which, if any, of the proposals the League of Women Voters should support. 1) How are members of the commission selected? 2) What kind of majority vote is need to approve a redistricting plan? 3) How are legal challenges to the redistricting plan decided? Below is a comparison of how the different proposals answer these questions.

Secretary of State's Redistricting Reform Task Force

- 1) Selection: A multi-party commission of eleven members, three Democrats, three Republicans, and five from other parties or unaffiliated. Applicants would be screened for qualifications by three randomly-selected, qualified, and independent auditors of diverse party affiliations, who would create three twenty-member pools that reflect Oregon's political diversity. Members of the commission would be randomly selected from these pools to ensure fairness.
- 2) Vote: The final map could be approved only by a supermajority vote of at least seven members of the commission, of whom at least one would be registered with the party with the most registered voters, one registered with the party with the second-most registered voters, and one other.
- 3) Legal Challenges: No procedures proposed.

Redistricting Matters Coalition – City Club of Portland; LWV, Common Cause, AARP

- 1) Selection: A multi-party commission of eleven members, three Democrats, three Republicans, and five from other parties or unaffiliated. Applicants would be screened for qualifications by three randomly-selected, retired Oregon judges, who would create a twenty-member pool of Democrats, a twenty-member pool of Republicans, and a twenty-member pool of non-aligned voters. Two Democrats, two Republicans and three non-aligned members will be randomly selected from these pools. The randomly selected members will, by vote, select one Democrat, one Republican and two non-aligned additional commission members.
- 2) Vote: The final map could be approved only by a supermajority vote of at least seven members of the commission, of whom at least one would be registered with the party with the most registered voters, one registered with the party with the second-most registered voters, and one other. If the commission does not adopt a redistricting plan, The Oregon Supreme Court shall prepare the final redistricting plan.
- 3) Legal Challenges: The Oregon Supreme Court

Initiative 5 - Kevin Mannix, Michele Fletchall and Charles Lee

- 1) Selection: The commission shall be composed of eleven persons appointed by county commissioners. Under this proposal, Lane and Linn County commissioners, by majority vote, would select one commission member.

- 2) Vote: The final map must be approved by a majority of commission members. If the commission does not adopt a redistricting plan, The Oregon Supreme Court shall prepare the final redistricting plan.
- 3) Legal Challenges: The Oregon Supreme Court

Lane County

Lane County has five districts. Every ten years, the Lane County Board of Commissioners must renew and, if necessary, adjust the commissioner districts based on population information from the US Census. Redistricting may be necessary to ensure that each district is more evenly distributed in population so as not to deny any person equal protection of the law.

Lane County Redistricting Criteria

In a memo dated August 4, 2011 from Acting County Counsel Stephen L. Vorhes to Lane County Clerk Cheryl Betschart, Vorhes outlined the following criteria for the Lane County Commissioners to use in redistricting the county:

- Equal population: Consideration of this factor is mandatory.
- 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.
- 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.
- 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.”
- 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.
- Contiguity: Consideration of this factor is optional.
- Communities of common interest: Consideration of this factor is optional.
- Transportation links: This is an optional factor to be considered.
- Voting strength of any language or ethnic minority group: Consideration of this is optional; however, care must be taken to avoid prohibited discrimination.
- Compactness: Consideration of this is optional.

The Lane County Board of Commissioners were to determine district boundaries following receipt of recommendations from the Redistricting Task Force and a public hearing process. After months of work, the task force forwarded five redistricting proposals but failed to recommend any of the scenarios. The commissioners dismissed the task force’s work and opted for a new proposal developed unilaterally by one of the commissioners. Technically, the new scenario complied with all criteria and, in particular, protected communities of interest when it moved a significant community of liberal voters into the already liberal South Eugene District. In their opinion, opponents saw this

as packing because opponents believed the move made the North Eugene District more conservative, resulting in four conservative districts and only one liberal district.

How Do Other States Draw District Lines?

Who draws the lines: Seven states (Washington, Idaho, Montana, California, Arizona, Alaska, Utah) have independent commissions to draw their state legislative districts; and seven states (New Jersey, Pennsylvania, Ohio, Arkansas, Missouri, Colorado, Hawaii) use commissions with political appointees. The state legislatures draw districts in the other 36 states. For congressional districts the numbers are slightly different because seven of the states have only one district. Some states also have back-up commissions to draw lines if the legislature can't approve a plan. Examples of who appoints the commissions include:

California uses state auditors: a 14-member commission. The commission must include five Democrats, five Republicans, and four members from neither party. Government auditors are to select 60 registered voters from an applicant pool. Legislative leaders can reduce the pool; the auditors then are to pick eight commission members by lottery, and those commissioners pick six additional members for a total of 14. For approval district boundaries need votes from three Democratic commissioners, three Republican commissioners, and three commissioners from neither party. No member can hold political office for five or ten years after the date of appointment.

Idaho: Leaders of two largest political parties in each house of the legislature each designate one member; chairs of the two parties whose candidates for governor received the most votes in the last election each designate one member. No member may be an elected or appointed official in the state at the time of designation.

Washington: Majority and minority leaders of the House and Senate each select one. These four select a non-voting fifth to chair the commission. If they fail to do so by January 1, the state Supreme Court will select the fifth by February 5.

Missouri will now mandate the use of a statistical, nonpartisan model that evaluates where lines are drawn, as well as the appointment of a state demographer. The evaluation is designed to promote fairness and competitiveness.

Utah: In 2018 voters approved the creation of an independent seven-member redistricting commission.

Some of these commissions because of their composition can be nonpartisan, some bipartisan and some are likely to be partisan. Therefore, there can still be gerrymandering with these commissions depending on how the commission members are selected. While legislatures are more likely to draw district lines that benefit the majority, it is not a forgone conclusion that that will occur. The point is that gerrymandering can be perceived even with the most carefully constructed process and specific criteria. It also demonstrates the potential hazard of allowing those who draw the boundaries to also be the officials affected by the process.

Some common redistricting criteria used by states include:

- Equal population numbers (who is counted - total population? voting age populations? citizens only? college students? where are prison populations counted?)
- Protection of minority vote
- Continuity
- Compactness
- Respect for political divisions (cities, towns, school districts, etc.)
- Preservation of communities of interest
- Partisan symmetry-competitiveness and responsiveness

Conclusion

Ultimately, any redistricting system implemented will have its challenges, and redistricting will always include trade-offs. When there are multiple criteria, some are inevitably given greater weight than others. That doesn't mean that reform is futile, but it means people who want reform should have a deeper conversation about their goals than simply to end gerrymandering.

The League of Women Voters needs to stay vigilant and involved in the redistricting process at all levels of government.

Discussion Questions

1. What are some of the pros and cons of using multiple criteria in drawing new boundaries? How should criteria be weighted?
2. Could the Redistricting Matters Coalition proposal for the state translate to Lane County?
3. In considering the redistricting process, how do you think the commission members should be chosen?
4. Who should make the final decision on boundaries?
5. How involved would you like the LWVLC to be in city and county redistricting efforts? Are you interested in monitoring local government?

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