

Redistricting In 2021:

A Brief Overview For Local Government Officials



In 2021, most Missouri cities will face the challenge of redistricting the wards or districts from which members of their governing bodies are elected. The act of redistricting consists of drawing lines on a map of the city to define the geography and population from which local legislators are elected.

This issue arises every 10 years because the U.S. Census is conducted every 10 years, and is the source of the population data upon which the constitutionality of existing districts is measured and upon which the legality of new districts is assessed. Redistricting is a process fraught with political volatility and entails some measure of legal risk for every government.¹

Delayed Data

In 2021, the redistricting process will be especially challenging because the Census Bureau announced on Feb. 12, 2021, that the census results they normally report on or before April 1 will not be available until Sept. 30, 2021.

This allows very little time for cities to compile the relevant population and geographic data; assess whether existing districts need to be revised in order to meet constitutional standards; consider options for new district boundaries; enact legislation to adopt new boundaries; work with the applicable election authority to implement new jurisdictional lines for

election administration; and orient the public as to where the new lines are. It impacts the time for people to make a decision about whether to run for an office, especially when candidate filing begins in mid-December.

One Person, One Vote

The necessity for redistricting legislative districts arises from long-standing federal constitutional and statutory obligations generally encompassed by the rubric “One Person, One Vote.” When new census data shows disparity in the populations of districts, the evidence needed to successfully sue the city for a civil rights violation is

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report to the governing body that retains discretion to modify and finally adopt new boundaries (e.g., City of Hazelwood Charter, Art. I, Sec. 4).

In general, in third- and fourth-class cities and charter cities where no process is specified, there would not appear to be any prohibition against the governing body appointing an advisory body to study options and recommend new boundaries. There is also not a bar to having a public engagement process whereby the governing body and/or an advisory group solicit public input on redistricting issues and help identify (and document in the event of future litigation) issues bearing on communities of interest, minority voter impact, natural dividing lines (highways, rail lines, topography, creeks, etc.), and community circumstances that may have a legitimate role in deciding exactly where a line should be drawn.

laid out on a platter just waiting for any aggrieved voter and hungry attorney to come along (and recover attorney fees in the process). Problematic data cannot be ignored, swept under the rug or wished away.

More than 50 years ago, the U.S. Supreme Court made it clear in *Reynolds v. Sims*, 377 U.S. 533 (1964) that the Equal Protection Clause of the Fourteenth Amendment to the U. S. Constitution requires that legislative districts within a jurisdiction be comprised of substantially equal population. And, Section 2 the federal Voting Rights Act of 1965, as amended in 1982, also prohibits any electoral practice that results in abridgment of the right to vote based on race or color.

These constitutional and statutory requirements are as applicable to municipal electoral districts as they are to state and federal legislative and congressional districts. If census data establishes that municipal electoral districts do not have substantially equal population, the Constitution requires district boundaries to be redrawn so that the disparity is erased. Additionally, if racial or ethnic groups are discriminated against by reason of an electoral practice (e.g., district boundaries) that results in less opportunity to participate in the political process and to elect

representatives of their choice, the Voting Rights Act mandates redrawing the boundaries to eliminate such a discriminatory result.

Redistricting Process

Missouri statutes specify that ward boundaries in third-class cities (Sec. 77.030 RSMo) and fourth-class cities (Sec. 79.060 RSMo) "shall" be established "by ordinance." There is nothing in state law specifying any other body or entity with authority to establish ward lines. Accordingly, it falls to the city council or board of aldermen to adopt a redistricting plan in third- and fourth-class cities.

Sec. 82.110 RSMo applies to charter cities in Missouri and specifies that ward redistricting "may be done by ordinance." This leaves open the possibility for home rule charter cities to establish a separate redistricting body or committee to assist or to actually carry out redistricting of city wards or districts under the broad grant of charter authority under Missouri Constitution Art VI, Section 19(a). Some Missouri home rule charters have provisions to establish a separate redistricting body with final authority to determine district lines (e.g., St. Louis County Charter, Sec. 2.035), while others provide for an advisory group to

Redistricting Criteria

Of course, it goes without saying that the overriding and constant consideration in drawing new district lines is equality of population. A basic principle universally referenced in case law is that legislative districts should be "compact" and "contiguous" and avoid the "legislative evil commonly known as the 'gerrymander.'" *Preisler v. Doherty*, 284 S.W.2d 427, 435 (Mo. banc 1955).

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 existing neighborhood boundaries; (4) retention of precinct boundaries; (5) cohesion of other existing communities of interests; (6) desire to retain historic boundaries; and (7) consideration of incumbency.

How Equal Is Substantially Equal?

As stated above, local districts, wards or zones must have substantial equality of population among the various districts. When applying this standard to state and local districts, courts have generally acknowledged a concept that,

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while numeric equality is the goal, consideration of the kinds of criteria listed above, if supported by facts in the record, can allow a “*de minimus*” total deviation of not more than 10% between the largest and smallest districts. The formula courts have almost universally and exclusively adopted in determining an “acceptable” population deviation from the ideal is based on a Supreme Court opinion in *White v. Regester*, 412 U.S. 755 (1973) that can be described as follows:

The combined percentage of deviation of the most populous district and the percentage of deviation of the least populous district from the ideal district population may not exceed 10% and all other district populations must fall within that narrow range.

For example, 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. The formula is (population of largest district – ideal population) ÷ ideal population + (population of ideal district – population of smallest district ÷ ideal population) = total deviation.

In this example, Ward 3 has the largest population (5,275) and exceeds the ideal population by 275 (5,275 – 5,000) that is a deviation 5.5% (275 ÷ 5,000). Ward 2 has the smallest population (4,600) and falls short of the ideal population by 400 (5,000 – 4,600) that is a deviation of 8% (400 ÷ 5,000).

The plan for these four wards then has a total deviation of 13.5% (5.5% + 8%) and lies outside the range that satisfies the one person, one vote “substantially equal” standard.

Note that the goal of redistricting is *equality* and setting out to draw a map with a 10% deviation is a dangerous approach. Without a proper justification, using a 10% 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.

Who Counts?

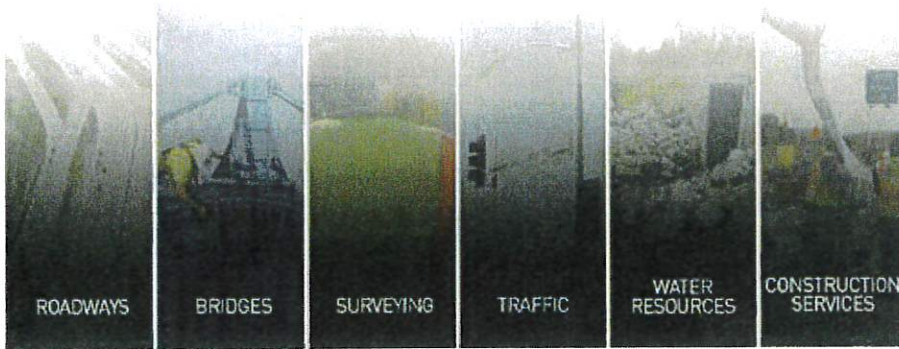
It is important to remember that members of a city council or board of aldermen represent people, not voters. Who is counted includes all persons living in an area on Census Day, April 1.

- 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.
- Incarcerated persons are counted as population of the location where they are incarcerated. (Some states have changed

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their procedures for allocating incarcerated persons for legislative and congressional redistricting purposes, but Missouri has not.)

- Students residing in an area to attend school, whether on campus or nearby, are counted where they live on April 1, not where their family home might be.

Ultimately, the Census counts all people, not just eligible voters. Even if there is a large difference between voting age people in districts that are substantially equal in total population, a city can safely act on the basis of census data total population figures. Efforts to cherry-pick what census data to use and efforts to use non-census data in lieu of reported census figures, are fraught with risk and it is likely that plans based on such alternative data will be challenged in court and thrown out by a judge.

Voting Rights Act Of 1965

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. The protections guaranteed by the Act are directly implicated by redistricting.

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

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

- (1) The racial group is sufficiently large and geographically compact to constitute a majority in a single-member district;
- (2) The racial group is politically cohesive; and
- (3) The majority votes as a bloc to enable it to usually defeat a minority group’s preferred candidate.

Although these factors are not sufficient to unqualifiedly establish a violation of the Voting Rights Act without a case-by-case determination of unique local circumstances, it seems few redistricting plans where all three factors are found will survive legal challenge.

Clean Missouri Redistricting Plan

On Tuesday, Nov. 4, 2020, Missouri voters passed Amendment 3 that ended the state legislative district redistricting system that voters previously passed in 2018, widely known as “Clean Missouri.” The Clean Missouri plan would have empowered a demographer to draw state House and Senate districts. However, because voters passed Amendment 3, either bipartisan commissions or, potentially, appellate judges will draw state legislative maps.

Neither the Clean Missouri 2018 process nor the 2020 revisions, however, have any bearing on local government redistricting procedures or standards. The constitutional one person, one vote and substantial equality requirement and the procedures and considerations referenced in this article continue to govern municipal redistricting.

Conclusion

For a vote to count for something, it must have the potential to affect something. Traditional redistricting factors will guide a city through the redistricting process, helping it support its map. A deviation of less than 10% between the largest and smallest districts and sensitivity to minority voter interests will help, although not guarantee, a lawful map and a successful redistricting effort.

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This article was updated from an MML Review Article in May 2011, authored by Bill Geary.

End Notes:

¹ *Town and village trustees and the governing bodies of some charter cities are elected at large without the use of wards or districts, so there is nothing to redistrict in those communities.*