

Redistricting: Legal Framework Presentation

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June 2, 2021





Recent Changes to State Law

City Attorney's Office

- AB 849 (2019) codified the Fair And Inclusive Redistricting for Municipalities And Political Subdivisions (“FAIR MAPS”) Act (as amended by AB 1276 in 2020)
 - > Charter Cities: Elections Code §§ 21620 et. seq.
- Substantial change in state law regarding process, as well as criteria to be considered when drawing new districts.
- No change to federal law requirements.



New Process Requirements

City Attorney's Office

- FAIR MAPS Act requires at least four hearings before the Council adopts a final map.
 - > At least one public hearing (or workshop) must be held before the redistricting commission draws a draft map
 - > City Council must hold at least two hearings after the redistricting commission draws a draft map for Council consideration
 - > At least one hearing/workshop on a weekend or after 6 pm on weekday



Process cont'd.

City Attorney's Office

- Resident participation is key
 - > Five days' notice for public hearings; draft map must be published at least seven days before adoption
 - > Public access to demographic/mapping data and software
 - > Must accept testimony, proposed maps in writing and electronically
 - > City must create and maintain a website for 10 years that has specific information.
 - <https://www.cityofpasadena.net/city-clerk/redistricting/>



Redistricting Criteria

City Attorney's Office

- **Criteria to be considered, in order of priority:**
 - > **Equal Population:** The districts must be substantially equal in population as required by the United States Constitution.
 - California Constitution (Article XXI) requires “reasonably equal” districts.
 - > **Nondiscrimination:** Federal Voting Rights Act (Section 2) prohibits discrimination on the basis of race, color, or membership in one of the language minority groups identified in the Act.
 - > **FAIR MAPS Act criteria.**



Population Equality

City Attorney's Office

- **The Pasadena City Charter, Section 1201:**
 - > Council districts “shall be as nearly equal in population as practicable and such redistricting shall be compliance with applicable laws.”
- **California Elections Code Section 21621(a):**
 - > “Following each federal decennial census, and using that census as a basis, the council shall, by ordinance or resolution, adopt boundaries for all of the council districts of the city so that the council districts shall be *substantially equal in population as required by the United States Constitution.*



Equality cont'd.

City Attorney's Office

- Constitutional principle of “one person, one vote”
- Under federal law, “substantially equal” allows some deviation from absolute equality
 - > 10% population differences are okay
 - > Larger deviations might be okay, but not presumptively so
 - > Deviations exceeding 16.4% probably never justifiable



Equal Opportunity

City Attorney's Office

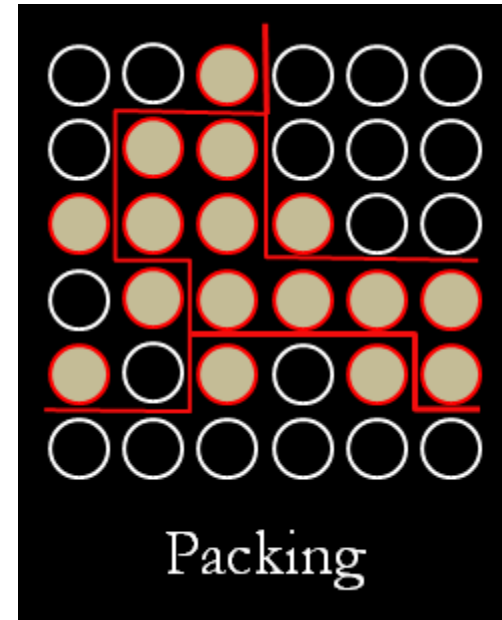
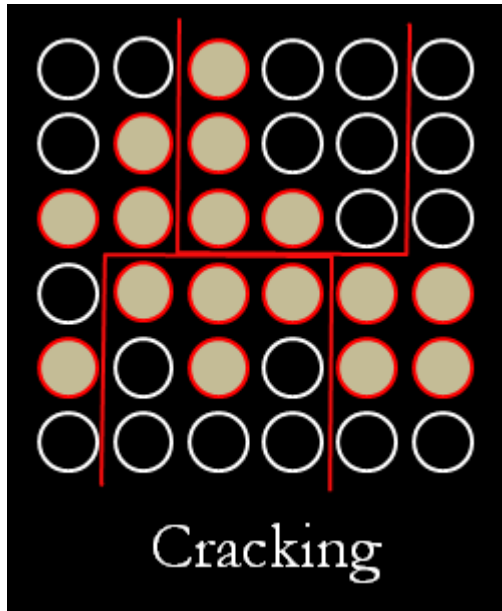
- **Federal Voting Rights Act prohibits:**
 - > Districts that have a racially discriminatory effect
 - > Districts that came about because of discriminatory intent
- **Section 2: no local government's redistricting map can deny or abridge the right to vote on account of race, color, or membership in a language minority group**



Equal Opportunity cont'd.

City Attorney's Office

- “Cracking” or “packing” votes





Equal Opportunity cont'd.

City Attorney's Office

- When claiming minority vote dilution, specific factors to consider:
 - > Sufficiently large and geographically compact minority group
 - > Minority political cohesion
 - > Racially polarized block voting (consistent relationship between race of voter and way in which the voter votes)



Equal Opportunity cont'd.

City Attorney's Office

- Although minority electoral success is relevant under the VRA, federal case law specifically rejects proportional representation
 - In other words, city has an obligation not to create majority-minority districts where the reason for doing so is predominantly racial, as opposed to political or traditional



FAIR MAPS Act changes

City Attorney's Office

FAIR MAPS Act requirements	Former requirements
<p>Mandatory and Prioritized</p> <p>(1) geographically contiguous</p> <p>(2) geographic integrity of local neighborhood or “local community of interest”</p> <p>(3) boundaries must be easily identifiable and understandable by residents, using natural and artificial barriers when possible</p> <p>(4) if practicable, and when not in conflict with prior criteria, encourage geographical compactness so nearby areas of population are not bypassed in favor of more distant populations</p>	<p>Discretionary</p> <p>(1) topography</p> <p>(2) geography</p> <p>(3) cohesiveness, contiguity, integrity, and compactness of territory</p> <p>(4) community of interest of the districts</p>



A Little More Detail

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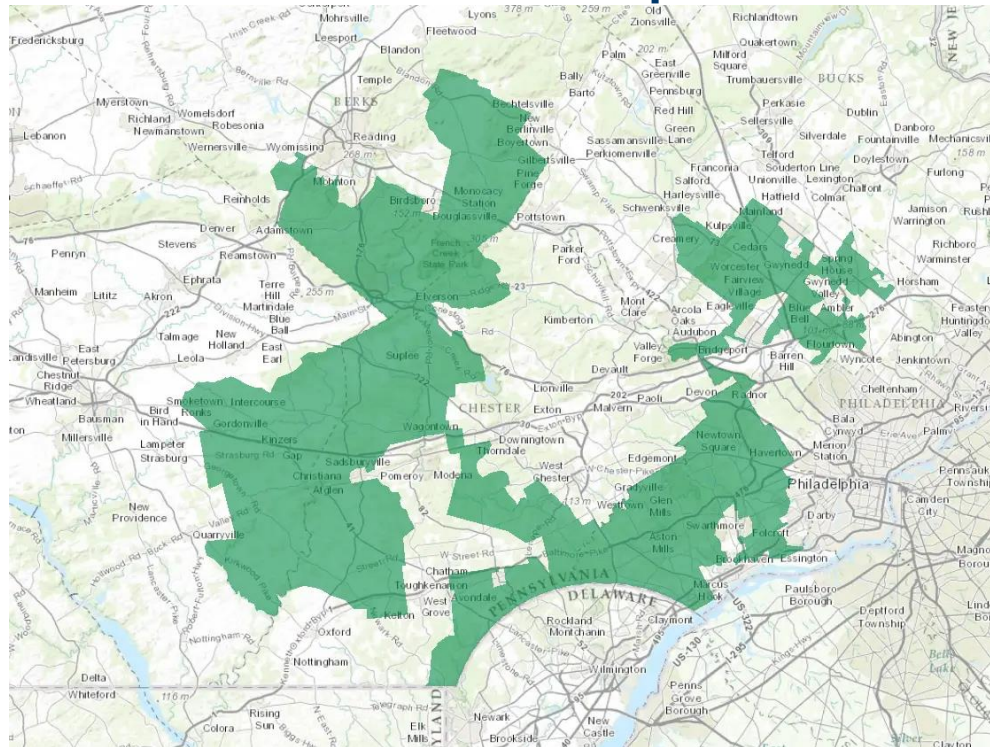
- “Contiguity”: territory within a given district is not separated by another district’s territory
- “Compactness”: district boundaries are of roughly equal distance from their center or that they reflect a regular geometric shape
- No express prohibition on consideration of a councilmember’s or candidate’s residence, but FAIR MAPS Act factors must take priority



PA: “Goofy kicking Donald Duck”

City Attorney’s Office

- Attempts to link up pockets of conservative voters to ensure GOP representation:





Baltimore: “praying mantis”

City Attorney's Office

- Democrats gerrymandering to capture wealthy donors:

