

OREGON REDISTRICTING IN 2011

The 2010 Census has been completed, and the population counts are being released to state and local governments. The 2011 task for Oregon officials is to adjust the geographic lines for legislative seats, city council wards, and other elective board positions in conformity with redistricting principles and criteria found in federal and Oregon law.

This report provides information about the census results for Oregon, the impacts of the legal requirements and the political environment on the redistricting process, and opportunities for citizens to become involved. The material is drawn from several sources: an essay prepared by Oregon Common Cause, the 2007 report of the League of Women Voters of Oregon Education Fund, and recent research by the state and local League of Women Voters.

I. EXCERPTS FROM A REPORT BY OREGON COMMON CAUSE ¹

“WHAT and WHY

Redistricting is the process of drawing new legislative and congressional district lines so they are of equal (or very close to equal) population to achieve the goal of one person, one vote. This is done using new population data from the U.S. Census. In Oregon there are 60 State House districts and 30 State Senate districts. Every 10 years these district boundaries are redrawn, which can mean their geographic size will likely grow or shrink to ensure that the population in each district is the same or only slightly varies in population.

“Oregon’s population grew 12 percent to 3,831,074 residents as counted during the 2010 Census. Dividing total population by sixty results in a population target for each house district of 63,851 residents, or close to that number since some deviation is allowed if needed to meet other redistricting criteria. Since senate districts include two house districts, their target population is 127,702....

“In 2001’s redistricting process the population target for a house district was 57,023 residents. Since then overall population has increased, but that growth hasn’t been equally distributed. For example, Washington County has gained population at a higher rate than the state average especially compared to many rural counties. Since each legislative district has to have equal population that means that Washington County districts will be smaller and districts in much of eastern Oregon will grow larger in terms of land mass.

“There are five Congressional districts in Oregon. The U.S. House of Representatives has 435 members and the number of districts in each state is determined every 10 years based on population. This process is called reapportionment and can mean

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that states whose population growth is higher than the national average may gain a congressional district while states that have lost population or are slower growing may lose one or more districts. Oregon neither gained nor lost a congressional district in the reapportionment based on the 2010 Census.”

“GERRYMANDERING AND OREGON’S 2011 POLITICAL DYNAMICS

Gerrymandering is a frequently used redistricting term from the name of a Massachusetts governor, Elbridge Gerry, who signed a redistricting bill that included an oddly shaped district resembling a salamander, reportedly drawn to give political advantage to his party.

“Gerrymandering generally refers to the manipulation of district lines to affect political power. Racial gerrymandering has historically meant drawing district lines to disenfranchise minority populations, but can mean increasing the chances for electoral success by a candidate of color. Partisan gerrymandering is drawing district lines in favor of a political party. Incumbent protection or “sweetheart gerrymandering” is when the two major political parties draw district lines that enables each party to maintain districts it controls at the time redistricting is done.

“The politics of the 2011 redistricting are obviously affected by the tie between the two parties in the Oregon House and the narrow advantage that Democrats have in the Oregon Senate. That the Senate Redistricting Committee includes equal numbers of Democrats and Republicans (even though the full Senate is not equally split) appears to indicate a genuine interest in a bipartisan redistricting process with the House Redistricting Committee. This political environment could result in “sweetheart gerrymandering” to the detriment of consideration of other redistricting criteria. A legislative redistricting bill, however, must still be signed by Governor Kitzhaber.”

“WHO and WHEN

As in most states, Oregon legislators are given the initial authority for redistricting or drawing new legislative and congressional district maps. This means that legislators are picking their voters, which contributes to redistricting being an intensely partisan activity. Redistricting commissions are used in some states with a variety of membership configurations and methods of selection. Though public trust is potentially undermined when elected officials draw district lines, it should be noted that drawing new district maps is still a political process even when the task is given to a redistricting commission.

“July 1st is the deadline for legislative redistricting, a very tight timeline since detailed Oregon census data is expected to be available in mid to late March. As has frequently occurred in Oregon, if legislators can’t agree on a plan or the governor vetoes their

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bill, the Secretary of State becomes responsible for redrawing legislative districts. Federal courts are the back up to ensure that congressional districts are drawn if the legislature can't agree on a plan or their bill for those districts is vetoed. The tight timeline continues, for example, the Secretary of State has only six weeks between July 1st and August 15th to prepare a new legislative redistricting plan.

“If legal challenges are made to a legislative redistricting plan, the Oregon Supreme Court must wrap up its review by November 15th. If the Secretary of State has stepped in to draw legislative districts and that plan is challenged, the Oregon Supreme Court must complete its review by December 15th. There are no deadlines for action by federal court if the legislature cannot agree on a congressional redistricting plan.”

(NOTE TO READER: See Appendix A for a chart laying out the Oregon timelines.)

“WHY IS REDISTRICTING IMPORTANT IN OREGON

The Brennan Center for Justice handout on Why Redistricting Matters identifies the following redistricting problems. Oregon law, however, mitigates some of these problems.

- * Politicians choose their own voters, which can lead to elected officials drawing district lines that keep incumbents of both parties safe.

- * Packing partisans or drawing districts so that voters from one party are “packed” so that candidates from that party will be successful there but have less opportunity to be competitive in other districts.

- * Eliminating incumbents and/or eliminating challengers.

- * Diluting minority votes to decrease opportunities for election of candidates of color.

- * Splitting communities so that no representative feels responsibility for concerns of some district residents.

“One mitigating factor to redistricting problems is that Oregon law (see criteria list below) forbids drawing district lines to benefit incumbents or for political advantage. Oregon also does not allow diluting the voting strength of minorities. Another Oregon consideration is that the legislature has frequently failed to adopt successful district maps, or the governor vetoed redistricting bills. The Secretary of State did redistricting in 1991 and 2001 and adjustments to legislative plans have also been frequently required.”

“OREGON CRITERIA

Criteria for redistricting in Oregon are in ORS 188.010 and outlined below:

Each districts, as nearly as practicable, shall:

- * Be contiguous;

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- * Be of equal population;
- * Utilize existing geographic or political boundaries;
- * Not divide communities of common interest; and
- * Be connected by transportation links.
- * No district shall be drawn for the purpose of favoring any political party, incumbent legislator or other person.
- * No district shall be drawn for the purpose of diluting the voting strength of any language or ethnic (sic) minority group.
- * Two state House of Representative districts shall be wholly included within a single state senatorial district.”

“LEGAL CONSIDERATIONS and RACE

Though both federal and Oregon law bans the dilution of minority voting strength, there are legal cautions related to drawing district maps to facilitate the electoral success of candidates of color. It is legal to draw “majority-minority” or “minority opportunity” districts. In one U.S. Supreme Court decision, however, Judge Sandra Day O’Connor wrote that “appearance matters” and was concerned about the map being “so bizarre on its face that it is ‘unexplainable on grounds other than race.’” Other federal litigation indicates that race may be a motivating factor but not the predominant consideration in redistricting. Race can also not be used as a proxy for political affiliation. It is worth repeating, however, that it is legal to draw “majority-minority” or “minority opportunity” districts....”

GETTING INVOLVED

Public hearings are not required, but have been prominent parts of line drawing by both the legislature and the Secretary of State. The legislative process takes the form of passing a bill that describes district maps.... Participating in either legislative or Secretary of State hearings is very important to be sure there is local input on what constitutes communities of interest....”

“DEFINING COMMUNITIES OF INTEREST

Probably the most difficult aspect of redistricting is deciding what constitutes communities of interest. Political jurisdictions, particularly cities and counties, are of particular importance in thinking about communities of interest, as seen in past guidelines below. But communities of interest are more than just political boundaries, especially when a district will be smaller or larger than a city or county and require other input for line drawing....”

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II. EXCERPTS FROM A STUDY OF THE LEAGUE OF WOMEN VOTERS OF OREGON EDUCATION FUND ²

“Criteria

Various criteria are specified for redistricting in different states, but all criteria can be separated into two categories: (1) criteria required by various court cases or federal law, and (2) generally used criteria. The following criteria are those often specified in federal or state constitutions and laws. The various criteria conflict with each other, so in most states the redistricting criteria must be prioritized. Some political scientists and politicians believe that the criteria should be prioritized by their effect on the competitiveness of districts.”

“Equal Population

In a series of cases, the U. S. Supreme Court has ruled that congressional and state legislative districts must be of equal population size. In subsequent cases, the Supreme Court has ruled that congressional districts must be perfectly equal in population, though small deviations are allowed if there is a compelling state interest. Texas’ 1991 plan with 0.82% deviation was upheld, while a Kansas plan with 0.92% deviation was rejected, because a compelling state interest was judged to be present in one case, but not the other.

“For state legislative districts, the U. S. Supreme Court has generally allowed larger deviations, upwards to 10%. Some state constitutions have specific equal population clauses, and state supreme courts have interpreted the state constitutions to require less than a 10% deviation.

“Population equality constrains gerrymandering, since there are fewer maps that can be created with equal population. However, allowing some flexibility in equal population can allow more competitiveness in districts and help meet other redistricting goals.”

“Voting Rights Act

Under certain circumstances, the federal Voting Rights Act (VRA) requires the drawing of special districts that have a majority of a minority population group. If a minority population is large enough to draw a district around it, and if the population has racially polarized voting patterns (i.e., racial groups voting for candidates along racial lines), then a special majority-minority district is required. Originally, the 1965 VRA was designed to protect African-Americans, but was extended in 1982 to include “language minorities” such as Hispanics.

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“The effect of the VRA is to require racial and ethnic gerrymandering, in that it produces non-competitive elections within the majority-minority districts. Because minorities tend to vote at lower rates than non-minorities, then majority-minority districts need to contain a super-majority of minority voters in order for minorities to be able to elect a candidate of their choice. Furthermore, such an area usually already contains similarly partisan non-minority voters, so the result is a highly “safe” partisan district....”

“Contiguous

Contiguity means that all parts of a district must be connected. Sometimes this is further specified as being connected by land or connected by more than a single point. Contiguity is the most widely accepted criterion for drawing districts. Every state constitution requires contiguity, as does the federal law that mandates single-member districts for Congress.”

“Single Member vs. Multi-Member Districts

The same law that specifies the process for reapportioning Congress after each census also requires that states draw a single district for each member of the House of Representatives. There is no such requirement for state legislative districts and some states (including Oregon and Washington) have or have had multi-member districts....”

“Compact

Compactness is another criterion for redistricting that is often encoded into state constitutions. It encapsulates, together with contiguity, the notion that a district should not have an odd shape. It also allows representatives to more efficiently communicate with their constituents. However, there is no accepted definition for compactness, and the federal courts have declined to adopt a more specific standard. Furthermore, it is still possible to have gerrymandered districts that are relatively compact in shape....”

“Respect for Communities of Interest

Communities of interest may be defined by shared socio-economic, ethnic, geographic, or other interests. The definition should not include any relationship between a community and a political party, incumbent or candidate. Basing districts on communities with shared interests allows an elected public official to better represent these interests. This criterion promotes the representation of diverse views in a legislature, but may make compromise more difficult. Sometimes communities of interest correspond to existing boundaries, but this is not always the case, as communities of interest may sometimes be bounded by something as mundane as a road. The U.S. Supreme Court has accepted varying definitions of “communities of

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interest,” but state legislatures seldom define it. This criterion may require states to hold citizen meetings in locations across a jurisdiction in order to determine where communities of interest exist. To satisfy this criterion, the redistricting process may engage traditionally underrepresented communities by drawing lines that do not result in the dilution of their voting strength.

“There is a risk that communities of interest could be used as pretexts to justify district boundaries that do not further other legitimate objectives. In particular, competitiveness can be greatly reduced when too much weight is given to communities of interest or existing political boundaries and geographic barriers.... “

“Respect for Existing Political Boundaries

This criterion is often included as a way to identify communities of interest because existing political boundaries are easy to identify on a map. This criterion also reduces the proliferation of political boundaries that confuse voters and make election administration more difficult. Sometimes communities of interest correspond to existing boundaries, but this is not always the case.”

“Respect for Geographic Barriers

Geographic barriers like mountains, rivers, lakes or freeways often separate communities of interest. Respecting geographic barriers makes it easier for candidates and public officials to communicate with their constituents.”

“Connection via Transportation Links

This criterion is also sometimes used to help identify communities of interest and to promote easier communication between candidates, public officials and their constituents.”

“Nesting

Nesting is where two or more adjacent smaller districts are wholly contained within the jurisdiction of a larger district. The current districting of Oregon nests two state representative districts within each state senate district. With Oregon’s current five congressional districts and 30 state senate districts, six state senate districts could be neatly nested within each congressional district....”

“Not Favor Any Incumbent or Candidate

Those drawing the redistricting maps are prohibited from knowing the location of incumbents’ or candidates’ residences. Not prohibiting this can allow incumbent protection gerrymandering or allow the punishing of some incumbents for partisan disloyalty. This and the following criteria seek to remove political considerations from redistricting, which might compromise partisan fairness and electoral choice. These

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improve competitiveness by limiting these two powerful interests, incumbent and partisan, both of which prefer safe districts....”

“Not Favor Any Political Party

This criterion prohibits the consideration of voter registration and voting history data in defining redistricting maps. However, this could have a negative effect on competitiveness, since political data is necessary to determine the competitiveness of a district.”

“Competitiveness

If political data is used, then competitiveness among major political parties is the objective. This is also sometimes known as ‘partisan fairness.’ Competitiveness can be defined in various ways, but all definitions require the detailed use of voter registration or voting history data down to the precinct level. One definition is that a district has a history of being won by a margin of 10% or less. Another definition is that a district contains no more than a seven percent difference in the registration of voters of the two major parties. The modern use of computers makes these calculations easy....”

III. ACTION AT THE OREGON LEGISLATURE BY THE LEAGUE OF WOMEN VOTERS OF OREGON

The Oregon House and Senate Redistricting committees have held joint hearings across the state, asking citizens to suggest local communities of interest which should be considered in the process. At these meetings, the Legislature’s mapping and technology expert has provided detailed area maps, using census blocks and tracts to illustrate the population shifts.

The League of Women Voters of Oregon (LWVOR) has been tracking the work of the 2011 Oregon legislature on redistricting and testifying in support of League positions using its Redistricting in Oregon position, which was adopted in 2007. The position summary from the LWVLC 2010-11 Directory reads as follows: ³

Redistricting in Oregon Method should advance the purposes of a representative democracy by allowing citizens meaningful choices and by holding government accountable to the people. Plan should adhere to all legal requirements such as districts must have equal population, be contiguous, fulfill provisions of the Voting Rights Act, and also promote competitiveness and partisan fairness. Plan should be developed independently of the Legislature. The Oregon Supreme Court should rule on any challenge. Oregon should conduct redistricting only once during each decade following the federal census.

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In addition to the statutory criteria (see page 3 above), the LWVOR is seeking legislative consideration of other principles including the use of race as a factor to facilitate electoral options and representation for a growingly diverse population, increased transparency through more public input, and the use of the full range of allowed (but not required) criteria.

IV. LOCAL GOVERNMENT REDISTRICTING ACTIVITY

Local governments such as cities, counties, and special districts must also establish new geographic boundaries for wards or other elective areas if the 2010 census figures show a lack of compliance with legal requirements due to population shifts or uneven growth. A variety of approaches to this task are being used by Lane county and three of its cities.

Lane County has appointed a Redistricting Task Force of seven citizens with the responsibility to make a recommendation to the Board of Commissioners for new district boundaries. The new boundaries must be adopted by November 12, 2011. A public hearing will likely occur in October 2011. ⁴

The City of Eugene will not establish such a task force for redistricting its eight wards. However, the Council decision will be informed by a comprehensive public outreach program which may include consulting with some community groups such as the League, the Chamber of Commerce, and neighborhood associations regarding the process. The Council will adopt the new ward boundaries by December 31. ⁵

The City of Springfield has no plans at this point to create a citizen redistricting committee. The Council will use preliminary work by the Lane Council of Governments and will finalize the new boundaries by December 31. ⁶

The City of Cottage Grove redrew its ward boundaries before the 2010 elections in response to population shifts shown in various government records. It has not yet determined if the boundaries will need to be changed again because of the census results. ⁷

V. DISCUSSION QUESTIONS

1. One of the redistricting problems cited by the Brennan Center for Justice is “Politicians choose their own voters, which can lead to elected officials drawing district lines that keep incumbents of both parties safe.” How does this occur and how can citizens prevent this problem from happening?

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2. In reviewing the various criteria, both those required by law and those used by former Secretaries of State, are there other criteria which should be considered, particularly in light of the census data on Oregon's increasing diversity?
3. Another problem according to the Brennan Center for Justice is "Diluting minority votes to decrease opportunities for election of candidates of color." What strategies can prevent such an outcome?
4. How important will it be for citizens to participate in redistricting hearings locally and before the Oregon Legislature on the actual mapping changes that are put forward?
5. Should the Lane County and Oregon Leagues give testimony regarding citizen involvement if opportunities for the public to participate are limited?
6. There are initiatives being drafted which would replace the current Oregon method of redistricting with a system using a panel of retired judges or some other form of "non-political" commission. How should the League react to such proposals?

Material compiled and written by Kappy Eaton and Pat Hocken.

ENDNOTES

1. Oregon Common Cause, *Redistricting Basics*, downloaded from <http://www.commoncause.org/site/pp.asp?c=dkLNK1MQLwG&b=6549765> on March 26, 2011.
2. League of Women Voters of Oregon Education Fund, *Redistricting in Oregon*, 2007, pages 13-15.
3. League of Women Voters of Lane County, *2010-2011 Directory*, page 35
4. Lane County, Oregon, press release dated March 17, 2011, downloaded from <http://www.lanecounty.org/Media/News/Pages/BoardSeeksApplicantsforRedistrictingT askForce.aspx> on March 31, 2011.
5. City of Eugene, Frequently Asked Questions about City of Eugene Ward Redistricting, January 2011, downloaded on April 7, 2011 from http://www.eugene-or.gov/portal/server.pt?in_hi_opt_comm_community=319&in_hi_space=SearchResult&in_hi_control=bannerstart&in_hi_userid=2&in_tx_query=ward+redistricting+FAQ.
6. Telephone interview on April 7, 2011 with the City Manager's office of the City of Springfield.
7. Telephone interview on April 7, 2011 with the City Manager's office of the City of Cottage Grove.