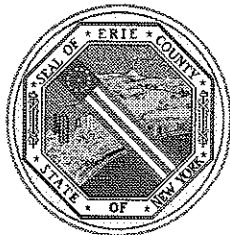


ERIE COUNTY LEGISLATURE



MARIA R. WHYTE
LEGISLATOR - 6th DISTRICT
MAJORITY LEADER

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February 16, 2011

Mr. Robert Graber, Clerk
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, N.Y. 14202

GA

RE: Erie County Reapportionment Commission

Dear Mr. Clerk:

Attached please find a three page report produced by the Brennan Center for Justice regarding reapportionment.

Please direct this item to the Chair of the Reapportionment Commission.

Thank you for your attention to this matter.

Sincerely,

Maria R. Whyte
Maria R. Whyte

6E-2

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FOR JUSTICE

HOW TO DRAW THE LINES — STEP BY STEP

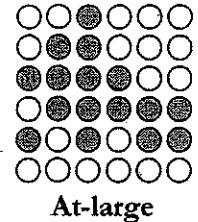
1. Figure out about how big each district should be. Take the total number of people living in the state, from the latest census numbers. Divide by the number of districts in the state, to get the average population. Each congressional district has to have almost exactly that average number of residents. State legislative or local districts can have a little more variation: some states allow up to 10% variation between the largest and smallest districts, and some have constraints that are a bit tighter (check state law to be sure).
2. Look for districts to ensure compliance with the Voting Rights Act. Look for populations of racial or language minorities that are relatively close together, where minority voters would vote for a different candidate than most of the majority population, if given the choice. If there are enough minority voters to make up a majority in a reasonably compact district, make sure not to dilute that population's voting power — either by “cracking” them into several districts or by over-“packing” them into one district that dilutes their power elsewhere. If you are in an area covered by section 5 of the Voting Rights Act, you also must make sure that your plan, intentionally or not, doesn't leave minority voters worse off than they would otherwise be. Lay the old district lines on top of a map with the most current demographic information from the census, and figure out the districts where minority populations, voting together, could effectively control the outcome of the election. Your new plan has to have at least as many districts where minority voters have the opportunity to elect their chosen candidates.
3. Look to the requirements of state law. Each state has different rules for how to draw districts, both for the state legislature and for Congress. Districts generally have to be contiguous, with all parts of the district physically adjacent. Most states also require that districts are reasonably compact, and ask that lines (at least for state legislatures) try to follow political boundaries like counties or cities or political precincts. Many states ask redistricting bodies to consider communities of interest, so that voters with a common legislative interest have representatives they can hold accountable to them. So find your state laws, and see what they ask you to take into account.
4. Identify communities of interest. Electoral districts should give meaningful representation to the people within those districts. One way to make sure this happens is to assure that legislative districts represent real communities of interest. A “community of interest” is a group of people concentrated in a geographic area who share similar interests and priorities — whether, social, cultural, economic, religious or political. Community members are best positioned to define and determine their own community of interest, so you should think carefully about where the boundaries of substantial communities are located, and ask your friends, family, neighbors and community leaders to do the same. Share what you discover with others in community meetings and at public hearings so that lines can be drawn with an eye to ensuring coherent and cohesive representation.
5. Draw away. The next step is to actually start drawing. Commercial software is available that helps with this process, to figure out how many residents with what demographics are within any given set of boundary lines, recalculated as you change the boundaries. Some states — and some civic organizations — may have licensed versions of this software for public use, and free public open-source software for redistricting is on the near horizon.
6. Ask for feedback. Get feedback from the public, both before draft maps are offered, and after you have a proposal but before the map is final. The lines proposed may well have unanticipated consequences, and it may be possible to accommodate many constituent concerns about these consequences (leading to happier voters) without sacrificing the interests behind the proposed districts.

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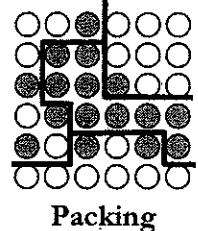
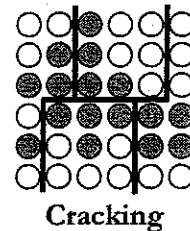
MINORITY REPRESENTATION

Many redistricting techniques, sadly, have been abused in order to dilute minority voting power. To illustrate, imagine the jurisdiction at the right, with 16 minority voters, 20 voters from the majority group, and four legislative seats to divvy up. Also imagine that in this area, minority voters and majority voters predictably vote for different candidates.

One way to deny minority voters representation is to ask each voter to cast one vote for each of the four seats, in an “**at-large**” election with no districts at all. The minority voters will predictably lose each and every seat, 16-20.



Districts can help, but they can also harm. One tactic is to fracture minority populations into multiple districts in order to break up their voting power. Another tactic is to consolidate as many minority voters as possible in just a few districts, in order to limit the population's voting power in the legislature as a whole. “**Cracking**” and “**packing**” in this way can reliably limit minority representation.



The federal **Voting Rights Act of 1965** was designed to combat discrimination used to deny minorities the right to an effective vote, including redistricting techniques like those above. As federal law, the VRA overrides inconsistent state laws or practices. Two sections of the VRA are particularly important to redistricting: section 2 and section 5.

Section 2 of the Voting Rights Act

Section 2 of the VRA makes it illegal to draw district lines that deny minority voters an equal opportunity “to participate in the political process and to elect representatives of their choice.” It applies whether this denial is intentional, or an unintended result of the way lines are drawn. Courts applying the Act essentially test whether the way that a district is drawn takes decisive political power away from a cohesive minority bloc that has otherwise suffered discrimination in the region.

Section 2 prohibits lines used to dilute minority voters' power, if:

- A minority community can fit reasonably in a **geographically compact** district;
- Voting age minorities would represent a **majority of the voters** in that district;
- The minority population would usually **vote for the same candidate**;
- The majority population would usually **vote for a different candidate**; and
- The minority vote is not otherwise protected given the “**totality of the circumstances.**”

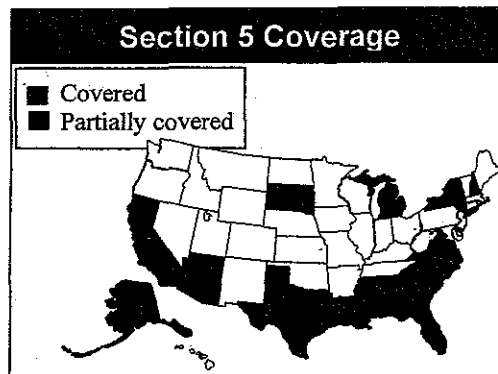
The usual technique to protect the minority population in this situation is to draw a district so that those voters represent a majority of the voters in a district (i.e., a “**majority-minority**” district). In some circumstances, it may also be possible to protect the minority population without drawing districts, by using different rules for ranking and electing candidates, like choice voting (what they use for Oscar nominations) or cumulative voting (what many corporate boards use for their elections). Some cities (and particularly school boards) prefer to have rules like these rather than dividing a city up into districts.

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Section 5 of the Voting Rights Act

Section 5 of the VRA works a bit differently. First, unlike section 2, it is temporary: it was last renewed in 2006, and is scheduled to come up for renewal again in the future.

Second, while section 2 applies all over the country, section 5 only applies in areas that had low levels of voter registration or participation historically — much of which was tied to disenfranchisement of minority voters. Nine states, and parts of seven others, are “covered jurisdictions” under section 5. (Coverage isn’t forever: in a procedure known as “bailout,” a covered jurisdiction can ask the federal trial court in Washington, D.C. to be released from Section 5, after ten years of steps to improve opportunities for minority voting.)



In a covered jurisdiction, the government may not change district lines without getting the changes **precleared** by the Justice Department or federal court. New district lines will usually be precleared if:

- The new map is **not intended to dilute** minority votes; and
- The new map leaves the current population of minority voters **no worse off** overall, in terms of political control, than the minority population would be if the old lines were kept in place.

The Constitution and other considerations of race

So the Voting Rights Act protects many populations of minority voters large enough to form a district’s majority, and also stops governments from backsliding to take away opportunities that minority voters had before. What about new groups of minority voters that aren’t quite big enough to be protected by the Voting Rights Act?

The courts have spent a lot of time discussing the extent to which governments can take race into account in redistricting, as in other areas. Those who are drawing district lines **can** include race in their decisionmaking about where the lines should be placed. Under federal law, without a constitutionally compelling reason, race may not be the “**predominant**” reason for a district’s shape. But considering race as part of the overall mix, along with race-neutral redistricting factors like political preference and community interests and geographic considerations and the like, is proper.

Courts generally assess the impact of race by looking at how irregular a district’s shape is, and then trying to figure out whether race, or other factors, best explain the irregularities. The more a district’s overall shape can be traced to other goals like those above, the less likely it is that voters’ race will be found to be the impermissibly driving force behind that district’s lines.