

The following information can be found online at: <http://redistricting.lls.edu/where.php> : a page created by Loyola of LA law professor that links to redistricting resources and provides the general summary below.

This information was shared with staff by a county committee member and is for information purposes only. Other resources regarding this topic are available online.

- **[Redistricting Criteria](#)**

Those who have the redistricting pen don't have a blank slate for drawing the lines. Various rules and constraints limit where district lines may or may not be drawn. For additional resources on these criteria, see (<http://redistricting.lls.edu/resources.php>)

- ***Federal criteria***

Two federal rules govern redistricting in every state.

- **Equal population**

The U.S. Constitution requires that each district have about the same population: each federal district within a state must be about the same size, each state district within a state must be about the same size, and each local district within its jurisdiction must be about the same size.

The standard for **congressional districts** is quite strict, with equal population required "[as nearly as is practicable](#)." In practice, this means that states must make a good-faith effort to draw districts with exactly the same number of people in each district within the state. Any district with more or fewer people than the average (also known as the "**ideal**" population) must be specifically justified by a consistent state policy. And even consistent policies that cause a one percent spread from largest to smallest district will likely be unconstitutional.

**State and local legislative districts** have a bit more flexibility; they have to be "[substantially](#)" equal. Over a series of cases, it has become accepted that a plan will be constitutionally suspect if the largest and smallest districts are more than [ten percent](#) apart. This is not a hard line: a state plan may be [upheld](#) if there is a compelling reason for a larger disparity, and a state plan may be [struck down](#) if a smaller disparity is not justified by a good reason.

Some states hold their state districts to stricter population equality limits than the federal constitution requires. [Colorado](#), for example, allows at most five percent total deviation between the largest and smallest districts; [Montana](#)'s commission has set guidelines for itself aiming for no more than six percent total deviation (each district must be at most 3% larger or 3% smaller than the "ideal"). [Iowa](#) not only also limits its total population deviation to five percent, but also sets the average deviation at no more than one percent from the "ideal."

- [Race and ethnicity](#)

The other major federal redistricting rule concerns race and ethnicity. Sadly, redistricting has been abused to dilute racial and ethnic minorities' voice at the polls. One ploy is called "**cracking**": splintering minority populations into small pieces across several districts, so that a big group ends up with a very little chance to impact any single election. Another tactic is called "**packing**": pushing as many minority voters as possible into a few super-concentrated districts, and draining the population's voting power from anywhere else. Other tactics abound.

The federal [Voting Rights Act of 1965](#) was designed to combat tactics denying minorities the right to an effective vote, including redistricting techniques like those above. As federal law, the Voting Rights Act overrides inconsistent state laws, just like the constitutional equal population rule overrides other state laws. Two sections of the Act are particularly important to redistricting: section 2 and section 5.

## **Section 2**

### [Section 2 of the Voting Rights Act](#)

([http://www.justice.gov/crt/about/vot/sec\\_2/about\\_sec2.php](http://www.justice.gov/crt/about/vot/sec_2/about_sec2.php)) blocks 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 the denial is intentional, or an unintended end result. Courts essentially test whether the way that districts are drawn takes decisive political power away from a cohesive minority bloc otherwise at risk for discrimination.

There are three threshold conditions for a court finding that districts need to be redrawn because section 2 has been violated. (These are often called *Gingles* conditions, after the Supreme court's [Thornburg v. Gingles](#) case.) The first asks whether it is possible to draw a district so that a majority of voters belong to a geographically "compact" racial, ethnic, or language minority community. [Compactness](#) has never been precisely defined in this context, but generally refers to populations that are not particularly "far-flung," and where the boundaries are fairly regular, without extensive tendrils. This first *Gingles* condition basically tests whether a sufficiently large minority population is geographically distributed so that they could control a reasonable district.

The second *Gingles* condition tests whether the minority population usually votes as a bloc, for the same type of candidate. This is a nuanced test: not whether the community usually votes for Democrats or Republicans (or others), but whether they would, given a fair mix of candidates, vote for the same *type* of Democrats or Republicans (or others).

The third *Gingles* condition tests the potential competition: whether the rest of the population in the area usually votes as a bloc for different candidates than those preferred by the minority community. If so, this would mean that the minority's preferred candidate would almost always lose -- if the minority community's voting power were not specifically protected. Together, the second and third conditions are known generally as "**racially polarized**" voting.

If the three threshold conditions above have been met, courts then look to the "totality of the circumstances" to determine whether the minority vote has been diluted, drawing from the U.S. Senate's legislative report when the Voting Rights Act was passed. Most of these circumstances relate to the extent of historical or contextual discrimination. One factor that has been singled out as particularly important is rough [proportionality](#): whether minorities have the opportunity to elect representatives of their choice in a number of districts roughly proportional to the percentage of minority voters in the population as a whole. Section 2 does not guarantee proportionality. But if a minority group with 20% of a state's eligible population could already elect representatives in 20% of the state's districts, courts will be more hesitant to find a violation of section 2 even if the three *Gingles* conditions are met. And if the minority group does not have such an opportunity, courts will often be more prone to find a violation.

Courts have largely articulated Section 2's meaning after plans have been drawn and challenged, and so the tests above are framed retroactively. For those drawing the lines and seeking to avoid legal trouble, the usual technique involves protecting substantial minority populations in racially polarized areas, by drawing district lines so that those minorities have the functional opportunity to elect a representative of their choice.

## **Section 5**

### **[Section 5 of the Voting Rights Act](#)**

([http://www.justice.gov/crt/about/vot/sec\\_5/about.php](http://www.justice.gov/crt/about/vot/sec_5/about.php)) works a bit differently. While section 2 applies all over the country, section 5 only applies where a "test or device" was used to screen would-be voters, and where fewer than half of the eligible voters either registered or voted in 1964, 1968, or 1972. . . . [Not applicable to Santa Clara County]

- **Other use of race or ethnicity**

The Supreme Court has spent a lot of time discussing the extent to which race and ethnicity can be taken into account when drawing districts, just as it has looked closely at race-conscious decisions in other areas of the law. The exact rules are still in a bit of flux. That said, the firm consensus is that it is OK to include race or ethnicity among other factors when deciding where to draw district lines. Without a reason sufficiently compelling to withstand "strict scrutiny" by the courts, neither race nor ethnicity may be the "[predominant](#)" reason for a district's shape. (Courts have repeatedly implied that [compliance with the Voting Rights Act](#) is a sufficiently compelling reason.) But considering race and ethnicity as part of the overall mix, along with other race-neutral redistricting factors, is legally proper.

In practice, courts often assess the impact of race and ethnicity by first looking at how irregular a district appears, and then trying to determine whether race and ethnicity, or other factors, best explain the irregularities. The more a district's overall shape can be traced to other goals like those explained [here](#), (<http://redistricting.ils.edu/where-state.php>) the less likely it is that voters' racial or ethnic background will be the impermissibly driving force behind the lines.