

January 25, 2021

To Interested Parties  
From Matt Gehring  
Subject Redistricting Principles

This memo provides background on redistricting principles that have been used or proposed in Minnesota over the last several decades. It also lists some emerging principles that have gained traction in other states over the past decade.

The principles that follow are sorted based on type: those that are mandated by constitutional or federal law; those that are discretionary but traditionally followed in Minnesota; and other discretionary options.

### **Preliminary Consideration: Method of Enactment**

An important preliminary consideration in developing principles is whether they are to be enacted by law, or adopted by resolution of the legislature.

If enacted by statute, the principles will set a baseline to govern adoption of districts regardless of whether they are enacted legislatively or through a court process and apply to all districts going forward. Adoption by resolution binds only the legislature, for a single cycle of districts.

### **Part 1: Principles Required by Constitutional or Federal Law**

These are principles that must be included in Minnesota's principles to comply with the federal and state constitutions, and applicable federal laws.

#### **Equal Population**

Equal population is required to meet the U.S. Supreme Court's "one-person, one-vote" principle. This principle requires, effectively, exact equality for congressional districts, and substantial equality for legislative districts.

There are two components to equal population: the "ideal" population of a district, and the maximum deviation. The ideal population is the total state population divided by the number of districts. The deviation is the amount a district's population varies from the ideal.

- **Congressional districts.** Congressional districts must be "as nearly equal in population as practicable."<sup>1</sup>

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<sup>1</sup> Wesberry v. Sanders, 376 U.S. 1, 7-8 (1964).

- **Legislative districts.** As long as a rational state policy is involved, “some deviations from the equal population principle are constitutionally permissible.”<sup>2</sup> In Minnesota “de minimis deviation” has been a court-ordered goal for legislative districts.<sup>3</sup>

**Historic legislative district deviation in Minnesota**

Year	2010s	2000s	1990s
<b>Deviation principle adopted by legislature</b>	+/- 1%	+/- 2% (House proposed) +/- 0.75% (Senate proposed)	+/- 2%*
<b>Court-ordered deviation principle</b>	+/- 2%	+/- 2%	+/- 2%*
<b>Actual deviation in enacted plans</b>	House: +0.86/-0.75 Senate: +0.82/-0.61	House: +0.78/-0.79 Senate: +0.73/-0.61	House: +2.37/-2.90 Senate: +1.59/-1.83

\*This number reflects the principle adopted for districts enacted in 1991.

**Nesting of legislative districts**

The Minnesota Constitution requires that House districts nest within Senate districts. Congressional districts are not subject to this principle.

**District numbering**

The Minnesota Constitution requires that Senate districts be numbered in a regular series.

Traditionally, legislative districts are numbered chronologically beginning with House District 1A in the northwest corner of the state, West to East, then North to South. The 11-county metro area is bypassed, and numbered last, with Minneapolis and St. Paul the final cities to be assigned district numbers.

Over the past few decades, there has been debate about whether the metro area should encompass a seven- or 11-county area, and whether Minneapolis and St. Paul should be last.

Though not specified by the constitution, congressional districts are traditionally numbered chronologically starting in the Southwest corner of the state. Why this custom was developed opposite of legislative districts is unclear.

<sup>2</sup> Reynolds v. Sims, 377 U.S. 533, 579 (1964).

<sup>3</sup> Order Stating Redistricting Principles and Requirements for Plan Submissions, Special Redistricting Panel, A11-152, (Minn. Nov. 4, 2011).

## Convenient, contiguous territory

The Minnesota Constitution requires that Senate districts be comprised of “convenient, contiguous” territory. In practice, “convenient” territory has been treated as equivalent to a requirement of compactness.

- **Compactness.** An ideally-compact district would be one that is a perfect circle. There are multiple formulas for demonstrating mathematical compactness. Minnesota has never settled on a particular formula, and instead produces reports that analyze districts based on eight different measures. These numbers have never been a significant source of legislative debate, and prior court panels have not spent much time considering them either. In practice, judging compactness is as much a visual as it is statistical.
- **Contiguity.** A contiguous district means that a person can travel across the whole district without ever leaving it.

There are some cities and towns in Minnesota with that is not fully contiguous (White Bear Township is a commonly cited example), which can present challenges in drawing districts that preserve the entire territory into a single district.

Though there is variation across states about whether a district is contiguous if portions of it are separated by a body of water, at a minimum Minnesota needs to allow water-based contiguity to accommodate regions such as the northwest angle.

“Contiguity at a point” (for example, a figure-eight style district) has traditionally been considered not contiguous.

## Race, Ethnicity, and Language Minorities

Racial, ethnic, and language minorities are protected by the U.S. Constitution, 14<sup>th</sup> and 15<sup>th</sup> amendments, as well as the Voting Rights Act, Section 2.

The phrasing of this principle has varied somewhat in Minnesota. The most recent iteration from the 2011 Special Court Panel:

*“[Congressional] and Legislative districts shall not be drawn with either the purpose or effect of denying or abridging the voting rights of any United States citizen on account of race, ethnicity, or membership in a language minority group and must otherwise comply with the Fourteenth and Fifteenth Amendments to the United States Constitution and the Voting Rights of 1965, as amended, 42 U.S.C. sec. 1973-1973aa-6.”<sup>4</sup>*

There is much that can be said about this principle, and on the evolution of the Voting Rights Act over the past decade. In short, Supreme Court caselaw suggests that race can be one factor

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<sup>4</sup> *Id.*

considered in drawing districts, but it cannot be the sole or predominant factor. A district plan is subject to attack if it excessively concentrates minority populations (packing) or dilutes minority populations (cracking) as a way to reduce voting power.

Minnesota's redistricting districting software produces statistical reports on racial populations in each district based on data provided by the Census, highlighting those considered a "minority opportunity district" (a district with a total non-white population of 30% or more).

It is possible new federal standards for Voting Rights Act compliance will be enacted by Congress in the coming year, which could impact Minnesota's compliance.

## **Part 2: Traditional, Discretionary Principles**

These principles are not mandated by constitutional or federal law, but typically have been included in both court-ordered and legislatively-proposed principles.

### **Preservation of political subdivisions**

Phrasing of this principle has varied between court-ordered and legislatively-proposed principles, but the general idea is that counties, cities, and towns should be kept whole within a single district whenever possible. If not possible, the number of splits should be minimized.

Preserving subdivisions occasionally leads to an awkward result. In both the 2000 and 2010 plans, the court panel drew a boundary in Edina with the intent of preserving a school district boundary, but in practice lead to the boundary bisecting a large apartment building (so, a person's district would depend on where their bedroom was located in the building). This result was corrected in 2013 by legislative enactment,<sup>5</sup> but since the school district boundary has not changed, it is likely to recur again in the 2021 cycle.

### **Preserving Communities of Interest**

A community of interest is a geographic area of population where people share a common political or social interest. Preservation of communities of interest has traditionally been included as a second-tier principle (applied after all others are considered).

Phrasing of this principles have varied over the past several decades, primarily in the types of communities of interest that are called out as examples.

The 2011 court panel highlighted "social, geographic, political, cultural, ethnic, economic, or other interests" and allowed for other communities to be included if persuasively argued. In its order establishing Congressional districts, it highlighted "mining, timber, and tourism industries" in northeast Minnesota, tribal nations, suburban and exurban "character," and

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<sup>5</sup> See Minn. Stat. sec. 2.495.

highway and economic connections as either implicit or explicit communities of interest. It also recognized the cities of Minneapolis and St. Paul as clearly distinct communities.

It can be helpful to have measurable data to demonstrate a community's existence, but this is not necessarily required if testimony or other evidence is presented.

### **Incumbent Protection**

Minnesota's redistricting principles have traditionally included a principle prohibiting districts from being drawn for the purpose of protecting or defeating incumbents.

Consideration of a plan's impact on incumbents is a final consideration, after all other principles have been applied. The purpose is to determine whether there are excessive conflicts (two or more incumbents paired) or undue protection (very few are paired).

### **Part 3: Other Discretionary and Emerging Principles**

These principles are those that have been proposed elsewhere but have not appeared explicitly in an enacted principle set in Minnesota.

#### **Preservation of prior districts**

This principle directs that plans be drawn starting with the existing districts as the base, to the extent practical (as opposed to starting districts over from scratch). The benefit is continuity and minimized disruption for residents.

Some advocacy groups have alleged that this principle unduly favors incumbents, and there has been some caselaw about whether it is sufficiently race-neutral in heavily concentrated minority areas (the U.S. Supreme Court has held that it is, when other factors are considered).<sup>6</sup>

In practice, districts ordered by the court panels in Minnesota have adhered to this method of drawing districts, even though it is not explicitly stated in their orders setting principles.

#### **Impact on political parties**

In 2001, both the House and Senate proposed principles prohibited districts from being created to "unduly favor any political party." A method of measurement was not specified.

#### **Political competitiveness/bias**

The Senate's 2001 proposal required districts to be "politically competitive," where possible in compliance with other principles. A method of measurement was not specified.

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<sup>6</sup> *Abrams v. Johnson*, 521 U.S. 74 (1997).

This principle has been enacted in a handful of other states. Given demographic trends, it can be difficult to create competitive districts in every region of the state. If a competitiveness principle is included, it would benefit from a clear definition: what data or evidence is required to be used for measurement?

### **Proportionality/Symmetry**

A cousin of “competitiveness,” proportionality is an emerging principle that attempts to ensure that the number of districts won by a party is in proportion to the total vote share of that party on a statewide basis. To date, Ohio is the only state to adopt this principle formally.

As with competitiveness, a standard of measurement is important: how closely proportional do election outcomes need to be?

### **Use of political data**

A handful of states have prohibited the use of political data (election results, campaign databases, and the like) in developing districts. Depending on the structure of the restriction, this principle may make compliance with others impossible (such as ensuring competitiveness, or verifying a plan’s impact on incumbent officeholders).

### **Priority order of principles**

Because principles can conflict, some states have enacted a priority order for implementation. In Minnesota, a priority order was proposed in the House’s 2001 and 2011 principles.

### **Census dataset and prison populations**

Minnesota has traditionally used U.S. Census data, in the form it is provided to the state by the census. Bills have been introduced to sort state prison populations into their home districts, where data is available to do so.<sup>7</sup>

### **Principles for public engagement and transparency**

Though not explicit principles for drawing boundaries, considerations for the legislative process have gained importance, particularly with the emergence of redistricting commissions.

Examples of options include requiring a district plan to be posted for a period of time before it is voted on; requiring a hearing on a plan in each congressional district of the state; and authorization for members of the public to submit plans.

### **Other principles historically recognized or discussed related to Minnesota plans**

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<sup>7</sup> See 2011 HF 3536 (Champion); 2015 HF 1189 (Dehn); 2020 HF 3493 (Long).

- Preservation of Minneapolis neighborhoods (1970s)
- Preservation of at least one population center in each district (1970s)
- Ensuring one district is not wholly surrounded by another (1970s)
- Preservation of suburbs split into two House districts into a single Senate district (1980s)
- Impact of paired incumbents, by gender (2000s)