Redistricting: School’s In Session
Redistricting 401: Advanced Redistricting
Legal Principles Governing Redistricting

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Legal Framework

• The legal principles are complicated and cannot possibly be covered in ten minutes.

• NCSL has great resources available on the website.

• Much has changed since the last round of redistricting.

• Consult counsel.
Legal Framework

- **Federal**
  - 14\(^{th}\) Amendment
    - One-person-one-vote
    - Racial gerrymandering
    - Partisan gerrymandering
  - 1\(^{st}\) Amendment
  - Article I, Sections 2 and 4

- **State**
  - Constitutional and statutory requirements
  - Traditional criteria
    - Compactness
    - Contiguity
    - Political subdivisions
    - Communities of interest
    - Protecting incumbents
    - Political considerations
14th Amendment: One-Person-One-Vote

• Basic rules
  – As equal as possible for congressional districts
  – Up to 10% total deviation (+/- 5% for state legislative districts

• Is 10% a “safe harbor”?

• Who counts as a “person”?
14th Amendment: Racial Gerrymandering

• Basic rules
  – Race cannot be the predominant factor motivating the legislature’s districting decisions
  – If legislature defends use of race as compelled by the Voting Rights Act, it must have a strong basis in evidence to justify its belief
  – District-specific claims

• The Court decided several racial gerrymandering cases since 2010
  – *Alabama Democratic Conference v. Alabama*
  – *Bethune-Hill v. Virginia Board of Elections*
  – *Cooper v. Harris*
  – *North Carolina v. Covington*
  – *Abbott v. Perez*
14th Amendment: Partisan Gerrymandering

• Are partisan gerrymandering claims justiciable?
• Lots of anticipation about Gill v. Whitford, Benisek v. Lamone, League of Women Voters v. North Carolina
• All of these cases now on remand
• Future of the doctrine is unclear
Other Federal Constitutional Provisions

• First Amendment
  – “The First Amendment may be the more relevant constitutional provision in future cases that allege unconstitutional partisan gerrymandering.”
    ▪ Justice Kennedy concurring in Vieth v. Jubelirer

• Article I, Section 2
  – “The House of Representatives shall be composed of Members chosen every second Year by the People of the several States.”

• Article I, Section 4
  – “The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations.”
Voting Rights Act

• First round of redistricting without Section 5 of the VRA

• Section 2 of the VRA is still fully applicable
    ▪ The racial or language minority group “is sufficiently numerous and compact to form a majority in a single-member district.”
    ▪ The minority group is “politically cohesive,” meaning its members tend to vote similarly.
    ▪ The “majority votes sufficiently as a bloc to enable it…usually to defeat the minority’s preferred candidate.”
State Law Requirements

- CHECK YOUR OWN STATE REQUIREMENTS!

- Compactness (a measure of a district’s geometric shape)

- Contiguity (all parts of the district must be connected)

- Keeping political subdivisions whole (such as city and county lines)

- Preserving communities of interest (such as neighborhoods or regions where the residents have common political interests)

- Preserving the cores of prior districts (to provide continuity of representation)

- Incumbent protection (by avoiding contests between incumbents that could result if a new district included residences of two or more sitting representatives)

- Political considerations
Drawing the Lines

• There are multiple competing considerations to balance.
• The law is complicated and in some respects unsettled.
• NCSL has lots of resources to help.
• Talk to counsel and staff experienced in redistricting.
Questions?

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Jessica Ring Amunson is co-chair of Jenner & Block’s Appellate and Supreme Court Practice and chair of the firm’s Election Law and Redistricting Practice. An experienced litigator, Ms. Amunson has argued before the U.S. Supreme Court and multiple federal and state courts of appeals and has filed dozens of briefs in those courts. She has successfully represented clients in matters involving federal constitutional claims, statutory interpretation questions, administrative law issues, and large commercial disputes. Ms. Amunson regularly counsels clients on Supreme Court strategy.

As chair of the firm’s Election Law and Redistricting Practice, Ms. Amunson represents clients, including elected officials, in matters involving redistricting, voting rights, and campaign finance in the U.S. Supreme Court, before the Federal Elections Commission, and in courts around the country. She has litigated election law and redistricting matters in a number of states, including litigation involving disputed elections. She has represented clients on the merits or as amici in every major redistricting case before the U.S. Supreme Court in the most recent redistricting cycle.

Ms. Amunson has been repeatedly recognized for her extensive knowledge of election law. She serves on the Advisory Committee to the Voting Rights Institute and is a member of the Litigation Strategy Council for the Campaign Legal Center.
Thank You!