

Legal Guide for Redistricting Group
Redistricting

October 17, 2011

by

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I. INTRODUCTION

This document is a guide regarding legal requirements and constraints in redistricting Minneapolis Wards (“Wards”) and Park and Recreation Board (“Park Board”) districts. Section 2 of this document discusses timelines, processes and requirements for the redistricting of Wards and Park Board districts. Section 3 discusses the Equal Protection Clause of the 14th Amendment to the United States Constitution. Section 4 discusses Section 2 of the Voting Rights Act. Section 5 discusses the holding of a case rejecting a challenge against existing Minneapolis Wards.

II. TIMELINES, PROCESSES AND REQUIREMENTS FOR THE REDISTRICTING OF WARDS AND PARK BOARD DISTRICTS

A. REDISTRICTING TIMELINES AND PROCESSES

The Minneapolis City Charter provides that the Minneapolis Charter Commission, with the assistance of an Advisory Group of not more than 9 members, shall redistrict the Wards and Park Board districts within the timeline required for redistricting after a U.S. Census. See generally Mpls. Charter, Chapter 1, Section 3 and Mpls. Charter, Chapter 16, Section 1. Specific timelines and processes are provided below:

- The Wards may not be redistricted before the Legislature redistricts. Wards must be redistricted within 60 days after the Legislature has redistricted or at least 19 weeks before the state primary in 2012 (April 3, 2012), whichever is first. See M.S. § 204B.135.
- The Park Board districts may not be redistricted before the Legislature redistricts. The Park Board districts must be redistricted within 80 days after the Legislature has redistricted or at least 15 weeks before the state primary in 2012 (May 1, 2012), whichever is first. See M.S. § 204B.135.
- Following the adoption of a Ward boundary plan, the Minneapolis City Council must reestablish precinct boundaries in the City within 60 days after the Legislature has redistricted or at least 19 weeks before the state primary in 2012 (April 3, 2012), whichever is first. See M.S. § 204B.14.
- If the adoption of the legislative redistricting plan or the resolution of any court challenge to the redistricting plan occurs less than 19 weeks before the state primary in 2012 (i.e., after April 3, 2012), the following schedule must be followed:
 1. Precincts must be reestablished no later than 28 days after the adoption of the legislative plan;
 2. Wards must be redistricted no later than 28 days after the adoption of the legislative plan;

3. Local government election districts (e.g., Park Board districts) must be redistricted no later than 42 days after adoption of the legislative plan.

See Minnesota Rules, Rule 8255.0010.

- The Redistricting Group is comprised of the Minneapolis Charter Commissioners and the Advisory Group members. See Section 1 of the Procedural Rules for the Redistricting Group (hereinafter, “Procedural Rules”).
- The Redistricting group shall redistrict the Ward and Park Board districts at the same time. Once the first draft of all the redistricting plans for the Wards and Park Board districts have been completed, the Charter Commission will hold at least 2 citywide hearings for public input. The Redistricting group will consider the public comments while drafting the proposed redistricting maps. Upon completion of the proposed redistricting maps approved by the Redistricting Group, the Redistricting Group shall publish the maps for at least 7 days and then hold at least two public meetings for citizens’ input. Neighborhoods delineated by the City’s Planning Department shall be solicited for input too. The Redistricting Group will consider the public comments while drafting redistricting maps. The Redistricting Group will recommend and forward proposed final maps to the Minneapolis Charter Commission for its consideration. Before adoption of Park Board districts, the Charter Commission shall notify the Park Board of the proposed plan and consider any recommendations of the Park Board. See Procedural Rules, Sections 13 and 14; Sections Q, R and T of Recommended Principles for Redistricting Minneapolis Wards and Park Districts after the 2010 Census (May 2011) (hereinafter, “Recommended Principles”); Mpls. Charter, Chapter 16, Section 1.
- Upon approval of the final Minneapolis Ward redistricting map by a majority of the Charter Commissioners voting at a duly called meeting of the Charter Commission, the Charter Commission will file the map with the Minneapolis City Clerk. See Recommended Principles, Sections I.S.
- Upon approval of the final Park Board redistricting map by a majority of the Charter Commissioners voting at a duly called meeting of the Charter Commission, the Charter Commission will file the map with the Park Board. See Recommended Principles, Section I.T.
- If the District Court finds a map to be improper and returns it to the Charter Commission, the Redistricting Group will be reconvened to redraft the map. See Recommended Principles, Sections I.S. and I.T.

B. REDISTRICTING REQUIREMENTS

- The population to be used is the official population, as stated by the census tracts and blocks in the official U.S. Census. See Mpls. Charter, Chapter 1, Section 3.
- The Redistricting Group may compute the population of any part of a census tract by use of other pertinent data or by special enumeration of any block or blocks when necessary to modify census data. See Mpls. Charter, Chapter 1, Section 3.
- The Redistricting Group must first establish a “population quota” for each Ward by dividing the City’s total population by 13. In no case shall any Ward, when readjusted, have a population more than 5% over or under such “population quota.” See Mpls. Charter, Chapter 1, Section 3.
- The Redistricting Group must first establish an “ideal population” for each Park Board district by dividing the City’s total population by 6. In no case shall any Park Board district, when readjusted, have a population more than 5% over or under the “ideal population.” See 1992 Laws of Minn., Chapter 362.
- The 14th Amendment of the U. S. Constitution, the Equal Protection Clause, has been interpreted as requiring Wards or districts to be “as nearly of equal population as is practicable.” See Reynolds v. Sims, 377 U.S. 533, 577-81 (1964). A population deviation of under 10% is considered a minor deviation from equal population. A plan with a deviation larger than 10% may lead a court to presume there is discrimination. Such a large deviation must be legally explained away by those performing the redistricting. See Voinovich v. Quilter, 507 U.S. 146, 160-61 (1993). Because a 5% deviation from the “population quota” or “ideal population” would yield a maximum overall range of 10%, the 5% deviation should satisfy Equal Protection requirements, as long as other boundary standards are met. It is not necessary to choose the redistricting plan with the lowest population from the “population quota” or “ideal population,” as long as all legal factors are addressed and those performing the redistricting can justify the choice. See Fay v. St. Louis County Board of Commissioners, 674 N.W.2d 433, 438-39 (Minn. Ct. App. 2004).
- Subject to applicable law and the overriding principles of fairness and equity and in the interest of continuity, the Redistricting Group will change the boundaries of the Wards or Park Districts as little as possible. See Recommended Principles, Section I.N.
- Each Ward and Park Board district must consist of compact and contiguous territory, not more than twice as long as it is wide. A lake within a Ward or Park Board district will not violate the contiguity or compactness principles. See Mpls. Charter, Chapter 1, Section 3 and 1992 Laws of Minn., Chapter 362. The length and the width should be measured from the northernmost to the southernmost point and from the easternmost to the westernmost point on the proposed Ward or Park Board district. See Johnson-Lee v. City of Minneapolis, No. 02-1139, 2004 WL 2212044 (D. Minn. Sept. 30, 2004).

- The principle of compactness means that the Ward or Park Board district should have a border or perimeter that is short in relation to the area. See BLACK'S LAW DICTIONARY 351 (4th ed. 1968) (defining "compact"). Thus, a perfect square would be very compact. On the other hand, sprawling or bizarre shapes would not be compact, and could lead a court to conclude that race or political persuasion, and not other districting principles, was the legislature's dominant and controlling rationale in drawing the boundaries. See Bush v. Vera, 517 U.S. 952, 976-82 (1996).
- The requirement that Wards and Park Board districts must be contiguous means that the territory of any given Ward or Park Board district must not be divided into parts separated by areas outside of the Ward or Park Board district. Wards or Park Board districts that contain areas that connect at only a single point are not contiguous. See Shaw v. Reno, 509 U.S. 630, 646 (1993); Larios v. Cox, 300 F.Supp.2d 1320 (2004), aff'd, 542 U.S. 947 (2004).
- Whenever possible, Ward and Park Board district boundaries shall follow the centerline of streets, avenues, alleys and boulevards. See Mpls. Charter, Chapters 1, Section 3 and 1992 Laws of Minn., Chapter 362.
- As nearly as practicable, Ward and Park Board district boundaries shall run due East and West or North and South. See Mpls. Charter, Chapters 1, Section 3 and 1992 Laws of Minn., Chapter 362.
- Wards shall retain the same numerical designation as the currently existing Ward from which the newly drawn Ward receives the largest portion of its population. See Mpls. Charter Chapters 1, Section 3.
- Park Board districts shall retain, to the extent possible, the same numerical designation as the currently existing Park Board district from which the newly drawn Park Board district receives the largest portion of its population. See 1992 Laws of Minn., Chapter 362.
- The Redistricting Group will keep communities of interest in one Ward whenever possible. See Recommended Principles, Section I.M.
- The Redistricting Group should attempt to preserve communities of interest when redistricting Park Board districts where that can be done in compliance with other redistricting standards of 1992 Laws of Minnesota, Chapter 362. See 1992 Laws of Minn., Chapter 362.
- Communities of interest include citizens with similar social, geographic, political, cultural, economic or other interests.

- To comply with the Voting Rights Act, avoid a plan which denies or abridges the rights of racial and language minorities. See 42 U.S.C. § 1973. With respect to a minority which is sufficiently large and compact to constitute a majority of voting age population in a Ward or district, that is politically cohesive, and whose preferred candidate would usually be defeated in voting by the majority, a plan probably must be created which gives the minority a fair chance to win. Thornburg v. Gingles, 478 U.S. 30 (1986); Grove v. Emison, 507 U.S. 25 (1993). Be aware that there is special language related to Park Board redistricting which is similar to the Voting Rights Act. While this special language states that Park Board districts must increase the probability that members of the minority will be elected, please follow the requirements of the Voting Rights Act and also consider factors other than race when redistricting. See 1992 Laws of Minn., Chapter 362.
- Race may be considered in drawing the Ward and Park Board district boundaries so that the political power of a racial or language minority is preserved and its voting power is not diluted. However, there is no requirement in the Constitution or the Voting Rights Act of proportional representation of racial or ethnic minorities. See Thornburg v. Gingles, 478 U.S. 30, 37 (1986); 42 U.S.C. § 1973(b); City of Mobile v. Bolden, 466 U.S. 55 (1980).
- No readjustment of a Ward shall apply to any City election if the adopted plan goes into effect after the first date for filing for such elections. The first date for filing is May 22, 2012. See Mpls. Charter, Chapter 3, Section 1.
- All Minneapolis Council Members may complete their term for which they are elected or appointed, even if their Ward boundary changes. See Mpls. Charter, Chapter 3, Section 1 and M.S. § 205.84.
- If a Ward redistricting plan is litigated and there is insufficient time to determine the issues, the Court may either postpone the effective date of the plan or order that the proposed redistricting plan be effective for the next election without prejudice to the issues with respect to subsequent elections. See Mpls. Charter, Chapter 3, Section 1.
- The Charter Commission shall propose a plan to the Park Board at least 21 days prior to the opening of filings for City office (i.e., by May 1, 2012). See Mpls. Charter, Chapter 3, Section 1. State law may override this provision if there is a conflict.
- The Charter Commission shall adopt the Park Board district boundaries no later than 14 days prior to the opening of filings for City Offices (i.e., by May 8, 2012). See Mpls. Charter, Chapter 3, Section 1. State law may override this provision if there is a conflict.
- Park Board districts cannot be redistricted until precinct boundaries are reestablished See M.S. § 204B.135.
- The 6 Park Board district boundaries will not divide precincts. See Charter, Chapter 16, Section 1.

- Park Board district boundaries shall be set, as nearly as practicable, as follows:

District 1: Ward 1, Precincts 1 to 11; Ward 2, Precincts 1 to 9; Ward 3, Precincts 1 to 5

District 2: Ward 3, Precincts 6 to 12; Ward 4, Precincts 1 to 13; Ward 5, Precincts 1 to 9

District 3: Ward 2, Precincts 10 to 14; Ward 3, Precincts 13 and 14; Ward 6, Precincts 1 to 20; Ward 9, Precincts 1, 2, and 4 to 10; Ward 12, Precinct 2

District 4: Ward 5, Precincts 10 to 12; Ward 7, Precincts 1 to 16; Ward 8, Precincts 1 to 5; Ward 9, Precinct 3; Ward 10, Precincts 1 to 8

District 5: Ward 8, Precincts 14 to 16; Ward 9, Precincts 11 to 14; Ward 11, Precincts 4 to 16; Ward 12, Precincts 1 and 3 to 16

District 6: Ward 8, Precincts 6 to 13; Ward 10, Precincts 9 to 15; Ward 11, Precincts 1 to 3; Ward 13, Precincts 1 to 18

See Charter, Chapter 16, Section 1.

III. EQUAL PROTECTION CLAUSE OF THE 14th AMENDMENT

A districting plan must not violate the Equal Protection Clause of the 14th Amendment of the United States Constitution. When drawing a district, the Redistricting Group must avoid creating a political or racial gerrymander (i.e., division of the Wards or districts to give one political party or one racial group an unfair advantage).

You may consider race in drawing districts. As the U.S. Supreme Court recognized in Shaw v. Reno, 509 U.S. 630 (1993):

[R]edistricting differs from other kinds of state decision making in that the legislature always is *aware* of race when it draws district lines, just as it is aware of age, economic status, religious and political persuasion, and a variety of other demographic factors. That sort of race consciousness does not lead inevitably to impermissible race discrimination. . . . [W]hen members of a racial group live together in one community, a reapportionment plan that concentrates members of the group in one district and excludes them from others may reflect wholly legitimate purposes. The district lines may be drawn, for example, to provide for compact districts of contiguous territory, or to maintain the integrity of political subdivisions.

Shaw, 509 U.S. at 646.

While the Redistricting Group can consider race, race cannot be the predominant factor used in redistricting decisions. Shaw v. Reno, 509 U.S. 630, 646 (1993); Miller v. Johnson, 515 U.S. 900, 915-17 (1995). To determine if race is a predominant factor in redistricting boundary lines, the court will look at whether the Redistricting Group subordinates traditional, non-racial districting principles, including but not limited to compactness, contiguity, and respect for communities defined by actual shared interests, to racial considerations. Miller v. Johnson, 515 U.S. 900, 915-17 (1995)

A “bizarre shape” could be used as evidence that race was the predominant motive in drawing district lines. Miller v. Johnson, 515 U.S. 900, 913-14 (1995). To avoid districts with bizarre shapes, the Redistricting Group should draw districts that are compact and contiguous and should consider other redistricting factors required by law and the Redistricting Principles.

If a Plaintiff can prove that race was a predominant factor in a redistricting decision, the district will be subject to strict scrutiny and the Court could determine that the district boundaries are improper. Shaw v. Reno, 509 U.S. 630 (1993); Miller v. Johnson, 515 U.S. 900 (1995); Bush v. Vera, 517 U.S. 952, 977 (1996). To survive strict scrutiny, a racial classification must be narrowly tailored to serve a compelling governmental interest. Shaw v. Reno, 509 U.S. 630, 657 (1993). Racially polarized voting (i.e., a race voting as a bloc for one candidate) is not a justification in itself to allow the Redistricting Group to use race as a predominant factor in redistricting.

The Redistricting Group can consider race, but other factors should be considered, such as Charter and legal requirements, Redistricting Principles, and communities of interest.

IV. SECTION 2 OF THE VOTING RIGHTS ACT

The Voting Rights Act, 42 U.S.C. §§ 1973 – 1973aa-5 (2011), prohibits the denial or abridgement of the right to vote based on race, color or membership in a language minority. The Voting Rights Act provides, in part, as follows:

No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or [because he is a member of a language minority group].

42 U.S.C. § 1973(a); 42 U.S.C. § 1973b(f)(2).

A language minority group is defined as persons who are American Indian, Asian American, Alaskan Natives, or of Spanish Heritage. See 42 U.S.C. § 1973l(c)(3). Nothing in the Voting Rights Act establishes a right to have members of a protected class elected in numbers equal to their proportion in the population. See 42 U.S.C. § 1973(b).

The Voting Rights Act is violated if, based on the totality of circumstances, it is shown that the political processes leading to the nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected in the Voting Rights Act. See 42 U.S.C. § 1973(b).

A three-part test was set out by the U.S. Supreme Court for Voting Rights Act claims in Thornburg v. Gingles, 478 U.S. 30 (1986). This test requires a minority group to prove that:

1. It is sufficiently large and geographically compact to constitute a majority in a single member district (i.e., a Ward or Park Board district).
2. It is politically cohesive.
3. In the absence of special circumstances, such as the minority candidate running unopposed, the majority votes sufficiently as a bloc to enable it to defeat the minority's preferred candidate.

See Gingles, 478 U.S. at 50-51.

The first part of the test is satisfied if the minority group could be drawn into a district so that the district has a minority population that is more than 50 percent of the voting age population in the district. Bartlett v. Strickland, 129 S.Ct. 1231, 1249 (2009).

Once this three-part test is met by the minority group, a court must apply the "totality of the circumstances" test to determine if the political processes leading to the nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected in the Voting Rights Act. The following factors will be considered by the court when performing this "totality of circumstances" test:

1. The extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process;
2. The extent to which voting in the elections of the state or political subdivision is racially polarized (i.e., each race votes as a bloc for a candidate);
3. The extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;
4. If there is a candidate slating process where the members of the minority group have been denied access to that process;

5. The extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process;
6. Whether political campaigns have been characterized by overt or subtle racial appeals;
7. The extent to which members of the minority group have been elected to public office in the jurisdiction;
8. Whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group; and
9. Whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous.

See Thornburg v. Gingles, 478 U.S. 30, 36-37 (1986).

Often, a claim under the Voting Rights Act is based on a dilution of voting power. A minority group's voting power can be diluted if the minority group is packed or cracked/fractured. Packing occurs when: (1) a minority group is concentrated into a district so that the minority group constitutes an overwhelming majority, thereby wasting some of the minority votes; and (2) if by dividing that large racial group among two or more districts, a minority group could constitute a majority of voting age population in more than one district.

Cracking or Fracturing occurs when: (1) a block of minority voters are divided between districts; and (2) as a result of that division, the number of districts containing minority voters that make up a majority of voting age population is reduced.

To avoid Packing and Cracking/Fracturing, the Redistricting Group should consider various options for determining how minority groups will be kept together or divided, taking into consideration other requirements, such as compactness and contiguity, equal population, and communities of interest.

When drawing boundaries, the Redistricting Group should: (1) consider the Gingles three-part test; (2) consider the Gingles totality of circumstances test; (3) avoid packing or cracking minority groups; and (4) follow the Charter and legal requirements, including considering communities of interest.

V. CHALLENGE TO EXISTING MINNEAPOLIS WARDS

The City of Minneapolis Wards created after the 2000 U.S. Census were challenged in court. Two Minneapolis City Council members and 14 citizens (“Plaintiffs”) brought a lawsuit claiming generally that the redistricting plans were racist and unfair. Johnson-Lee v. City of Minneapolis, No. 02-1139, 2004 WL 2212044 (D. Minnesota Sept. 30, 2004). One claim was that the redistricting plan packed African American voters into Ward 5, operating to dilute African American voting power in other Wards. Another claim was that the redistricting plan cracked Native American influence in Ward 6 by splitting Native Americans between Wards 6 and 9. The Court used the Gingles analysis, which required the Plaintiffs to demonstrate three conditions: (1) the minority group is sufficiently large and geographically compact to constitute an effective majority in a single-member district; (2) the minority group is politically cohesive; and (3) the majority votes sufficiently as a bloc to enable it usually to defeat the minority’s preferred candidate. See Thornburg v. Gingles, 478 U.S. 30, 49-51 (1986). A single-member district is one where only one person is elected to an election district.

Assuming that African American and Native American voting is politically cohesive, the Court found that the Plaintiffs did not demonstrate the other two Gingle conditions. With respect to the Native Americans, the Court found that there was no way to create a district where Native Americans were the majority of voting age population. Therefore, the Plaintiffs did not demonstrate the first Gingles condition with respect to the Native American claim.

With respect to the African Americans, the Court found that the Plaintiffs did not identify any minority-preferred candidates, beyond pointing out that white candidates have been elected over minority candidates in Wards with significant minority populations. Plaintiff must prove, on an election-by-election basis, which candidates are minority-preferred; inferences based solely on race are insufficient to establish which candidate is minority-preferred. See Clay v. Board of Educ. of City of St. Louis, 930 F.3d 1357, 1361 (8th Cir. 1996). Plaintiff failed to prove which candidates were minority-preferred and therefore failed to demonstrate the third Gingles condition.

The Johnson-Lee Court also determined how to measure the length and width of a Ward. Mpls. Charter, Chapter 1, Section 3, provides as follows: “Each Ward shall consist of contiguous compact territory not more than twice as long as it is wide, provided that the existence of any lake within any Ward shall not be contrary to this provision.” The Court determined that the length and width of the Wards should be measured from the northernmost to the southernmost point and from the easternmost to westernmost point on the proposed Ward. Because the Park Board districts are subject to the same requirement, Park Board districts should also use the same measurement of length and width. The Court determined that none of the Wards violated the requirement to be not more than twice as long as wide.

The Johnson-Lee Court also placed importance on the concept of communities of interest. The Plaintiffs complained that the new Wards drew two Council Members out of their Wards. A tentative plan had split the Little Earth Housing Project between two Wards. During a public hearing, the split of Little Earth was brought up as a concern. After the hearing, the Redistricting

Commission decided to keep the Little Earth community intact. The Court found, with approval, that the protection of incumbents was not as important to the Redistricting Commission as keeping communities of interest, like Little Earth and other neighborhoods, intact.

The Plaintiffs in the Johnson-Lee Court complained that all of the Ward boundaries were bizarre shapes. The Court found that none of the Wards had bizarre shapes.

The Johnson-Lee Court ultimately found in favor of the City of Minneapolis on all challenges to the Ward redistricting plan.

VI. SOURCES

How to Draw Redistricting Plans That Will Stand Up in Court (October 21, 2010)
Peter S. Wattson, Senate Counsel, State of Minnesota

Legislative Guide to Redistricting (February 2011)
House Redistricting Office
Oklahoma House of Representatives

VII. APPENDIX

Minnesota Statutes Relating to Redistricting

204B.09 Time and Place of Filing Affidavits and Petitions
204B.135 Redistricting of Election Districts
204B.14 Election Precincts
204B.16 Polling Places; Designation
204D.03 Timing of State Elections
205.84 Redistricting; Cities with Wards

Minnesota Rules

8255.0010 Alternate Dates for Completion of Local Redistricting
8255.0020 Establishment of Precinct Boundaries Lacking Recognizable Physical Features

1992 Laws of Minnesota, Chapter 362

Park and Recreation Board Districts

Minneapolis City Charter

Chapter 1, Section 3 – City and Ward Boundaries
Chapter 16, Section 1 – Parks and Parkways