
Redistricting Legal Requirements: Part 2

Federal, State, and Local Considerations

*August 11, 2021 - Advisory Redistricting Commission
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Today's Goals

- ▶ Understand the Federal Legal Requirements and limitations from statutes and existing case law.
- ▶ Review the State Legal Requirements under AB 849 and solidify our understanding of “Communities of Interest.”
- ▶ Reaffirm our Local BOS Redistricting Principles.
- ▶ Review Brown Act limitations.

Federal Law Overview

1) Population Equality:

Unlike Congressional Districts, local electoral districts do not require perfect equality – some deviation is acceptable to serve valid governmental interests, such as:

- Existing Political Subdivisions
- Maintaining Communities of Interest
- Geographic compactness

▶ Total population deviation of less than 10% is presumptively constitutional. (Caveat: the presumption *can* be overcome!) Let's aim for about 5% or less!

▶ See *Reynolds v. Sims* (1964) 377 U.S. 533

Federal Law Overview

2) Voting Rights Act of 1965:

Landmark legislation passed during the Civil Rights Movement to ensure that prohibited racial discrimination in voting and voting access.

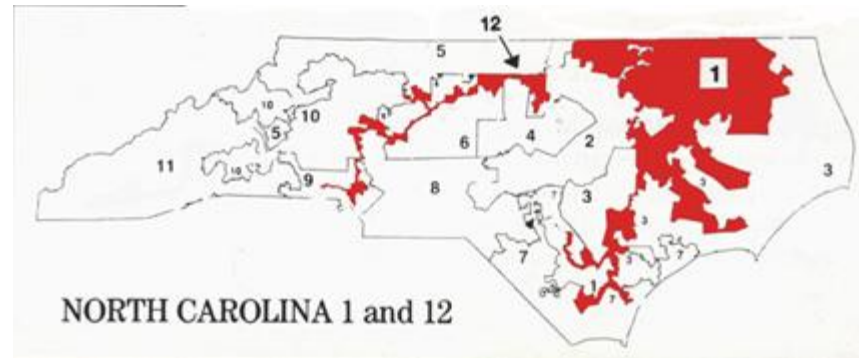
- Section 2: prohibits state and local governments from diluting racial and language rights by denying them an equal opportunity to vote, nominate, and elect candidates of their choice.
- Sections 4 and 5: Prohibited certain jurisdictions (largely in the South) from implementing any changes in voting law without prior approval from the DOJ or Court.
 - But struck down by the U.S. Supreme Court in *Shelby County v. Holder* (2013) 570 U.S. 529.
 - At least 8 U.S. Supreme Court cases related to this law.

Federal Law Overview

3) Racial Considerations – but NO Gerrymandering!

The 14th Amendment permits *some* consideration of race in the redistricting process but prohibits its use as the “predominant” criterion in drawing districts. (See e.g., *Easley v. Cromartie* (2001) 532 U.S. 234; *Shaw v. Reno* (1993) 509 U.S. 630.)

- Bizarre district shapes can be evidence of predominate racial considerations.



- Also be aware of “Packing” and “Cracking” of groups of people. Packing purposefully concentrates a group of voters all into one district, while cracking dilutes their voting power across more than one district.

California State Law

- ▶ AB 849 (2019) – Cal. Legislature passed “FAIR MAPS” Act
“Fair and Inclusive Redistricting for Municipalities and Political Subdivisions Act”

AB 1276 (2020) – modifying AB 849, with additional changes and legal requirements.
- ▶ California Elections Code section 21500 – Counties “shall” when adopting supervisorial districts:
 - Ensure Population Equality, adjusting for incarcerated persons;
 - Comply with U.S. Constitution, Cal. Constitution, and the VRA of 1965; and
 - Follow State Criteria, in order of priority

AB 849 State Criteria

- ❖ Under Elections Code section 21500(c): “to the extent practicable” supervisorial lines “shall” follow in order of priority:
 1. Geographic Contiguity, share a common border (“touching corners” or separated by water does not meet criteria.)
 2. **Geographic integrity of any local neighborhood or “community of interest” to minimize divisions.**
 3. Geographic Integrity of city or census designated places (CDPs) geography shall be respected to minimize division.
 4. “Easily identifiable and understandable” district boundaries bounded by utilizing natural and artificial barriers, streets, or county boundary lines.
 5. Geographical compactness, but not favoring “nearby areas of population over more distant populations”.
- ❖ SHALL NOT favor or discriminate against a political party.

AB 849 – Local Community of Interest

- ▶ Elections Code section 21500(c)(3) provides a definition:

A “community of interest” is a population that shares common social or economic interests that should be included in a single supervisorial district for the purposes of effective and fair representation.

Communities of interest do not include relationships with political parties, incumbents, or political candidates.

- Goal: to minimize division of neighborhoods and communities of interest.

AB 849 – Local Community of Interest

- ▶ Examples: What can this include?
 - *Civic organizations and other social groups*
 - *Shared economic interests:* agriculture, commercial areas, major employers, a “downtown” business district, etc.
 - *Lifestyle activities:* shared social gatherings, recreation areas, shopping areas, etc.
 - *Demographic:* income, education, language, housing, immigration status, etc.
 - *Geographic:* urban, suburban, rural, mountains, coastal, etc.
 - *Political subdivisions:* school districts, HOAs, neighborhoods in unincorporated areas, etc.
 - *Area Specific Issues or Needs:* public safety, wildfires, air or noise pollution, transit, etc.

AB 849 – Local Community of Interest

Apply and identify communities by asking questions during the Public Workshops and Hearings –

- *Where is your community located? What do you see as the boundaries?*
- *What are the bonds and common links of your community? What shared and common interests bring you together?*
- *Why should your community be kept together? Or why are you okay with being separated from another area?*
- *What questions can you think of to ask?*

County of Santa Cruz Principles

In 2001, the County of Santa Cruz Board of Supervisors adopted four principles for consideration (to the extent allowed by law, since revised):

1. To the extent possible, the current district boundaries will be preserved;
2. The public will have all the opportunities provided by law to participate in the redistricting process and provide input to the Board;
3. Communities of interest will be preserved to the extent possible;
4. Each supervisor will have the opportunity to suggest changes to their district to the extent such changes are necessary...

Brown Act Reminders

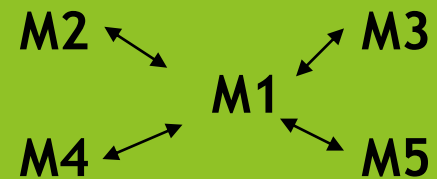
To ensure compliance with both the letter and the spirit of the law to ensure public participation:

- Conduct as much discussion and consideration during public meetings and hearings as possible;
- Please watch out for unintentional “meetings” = 3+ members

“Daisy Chain”

M1 → M2 → M3 → M4 → M5

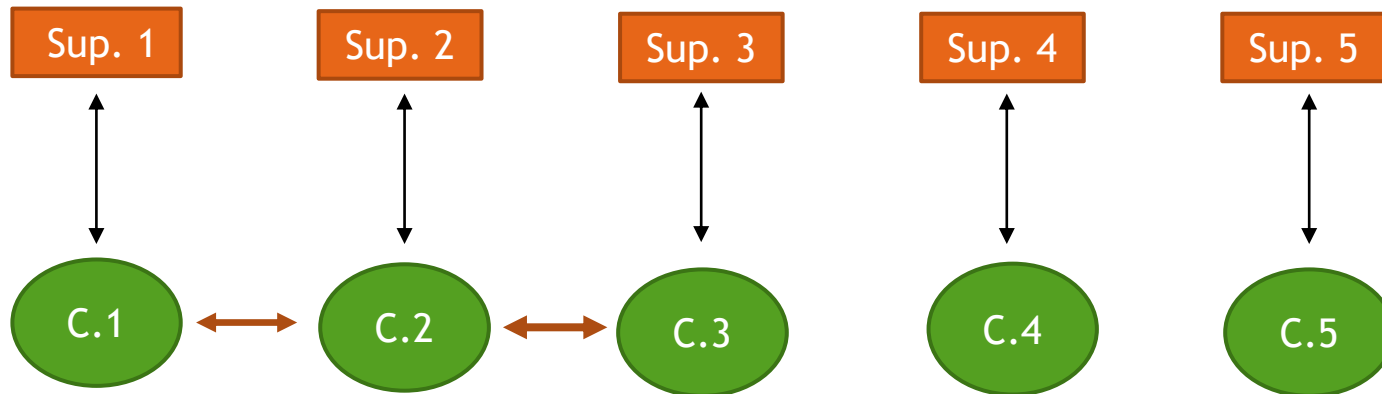
“Hub and Spoke”



- Avoid Appearance of “back door dealings” or “secret negotiations”

The Brown Act - Watch out for “Meetings by Proxy”

- ▶ Proxy: Accidental (or intentional) meeting held by sharing information with and among your elected officials that constitutes more than a quorum.



Thank you for your service!

Please feel free to ask questions.

Looking forward to this next chapter in our Redistricting Process!

