

Redistricting: Legal Considerations

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NORTH CAROLINA
STATE BOARD OF ELECTIONS

What is Redistricting?



- The process of redrawing district boundaries every ten years, following the decennial United States Census
- Done to ensure that voting power and representation are distributed equally, based on population
- Congressional and legislative redistricting performed by General Assembly; county, municipal, school board redistricting performed by General Assembly or governing body (or process prescribed in court order/consent decree in some cases)

Why Do We Redistrict? Legal Basis

- Both the US and State Constitutions require it:
 - US House of Representatives: “Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed.” (U.S. Const., Article I, Section 2 and Amendment XIV, Section 2)
 - NC Senate and NC House: General Assembly must redistrict “at the first regular session convening after the return of every decennial census of population taken by order of Congress” (N.C. Const., Article II, Sec. 3 & 5)



Why Do We Redistrict? Legal Basis

- State law also allows/requires it:
 - Municipalities and school boards: Governing bodies can redistrict “from time to time” and generally only to account for annexed/deannexed territory or to correct population imbalances as shown by federal census (G.S. 160A-23 and 115C-37)
 - Counties: If county board of commissioners is divided into districts, it may redefine electoral boundaries to address “substantial inequality of population among the districts” and district boundaries must be “as nearly equal as practicable” and “composed of territory within a continuous boundary” (G.S. 153A-22)



Legal Considerations

- Equal population
 - Population equality among districts – “One Person, One Vote” principle
 - Congressional districts – NO safe range of population deviation
- Legislative districts –
 - NC Constitution interpreted by *Stephenson v. Bartlett* to require +/- 5% deviation

District	2010 Pop	Ideal Pop	Deviation	Deviation %
1	733,498	733,499	-1	0.00%
2	733,499	733,499	0	0.00%
3	733,499	733,499	0	0.00%
4	733,499	733,499	0	0.00%
5	733,499	733,499	0	0.00%
6	733,498	733,499	-1	0.00%
7	733,499	733,499	0	0.00%
8	733,498	733,499	-1	0.00%
9	733,499	733,499	0	0.00%
10	733,499	733,499	0	0.00%
11	733,499	733,499	0	0.00%
12	733,499	733,499	0	0.00%
13	733,498	733,499	-1	0.00%
Total:	9,535,483			

Source: NC General Assembly

How Is “Substantial Inequality” Determined?

- Take population of that jurisdiction and divide by number of districts. That gives you the ideal population. Apply the 2020 census numbers to current (old districts) and calculate population deviation.
- For example, Electiontown, NC has 4 electoral districts and a 2020 census population of 10,000.

District	2020 Ideal Population	Current District Population	% change
A	2,500	2,700	+8%
B	2,500	2,300	-8%
C	2,500	2,650	+6%
D	2,500	2,350	-6%



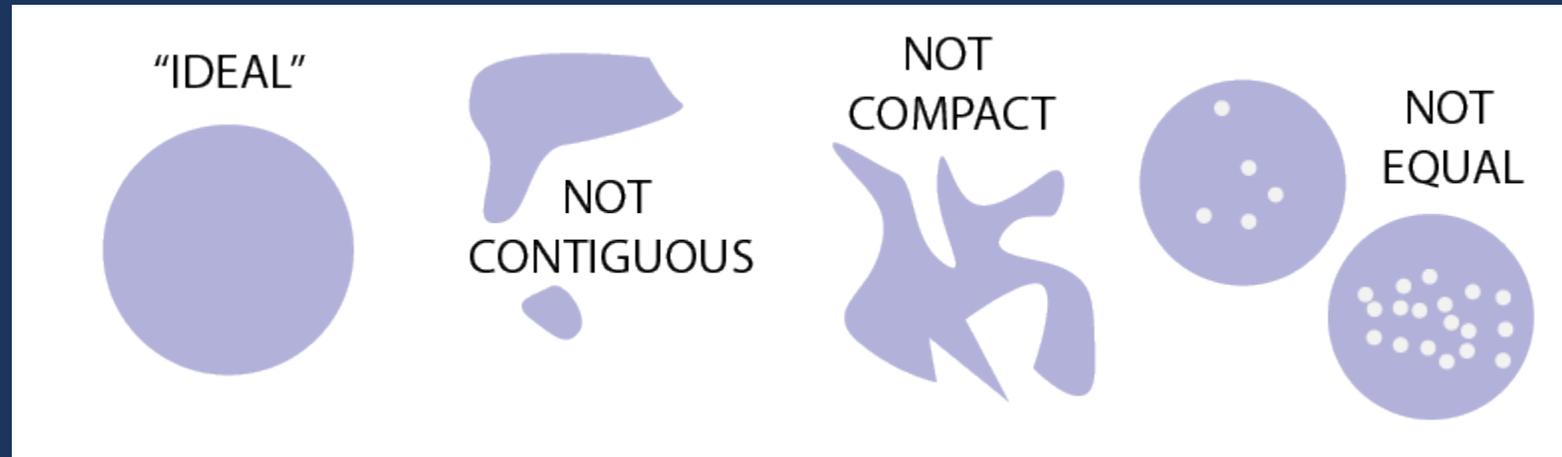
How Is “Substantial Inequality” Determined?

- 10% Threshold
 - Riskier standard – 10% establishes prime facie violation of one person, one vote principle and the jurisdiction now has to prove that there is a rational and legitimate policy for inequality in the districts
- +/- 5% Threshold
 - Based on NC-specific case law
 - More conservative calculation



Legal Considerations

- Compactness
- Contiguity
- Preserve communities of interest
- Minimize split precincts



Source: sciencefriday.com

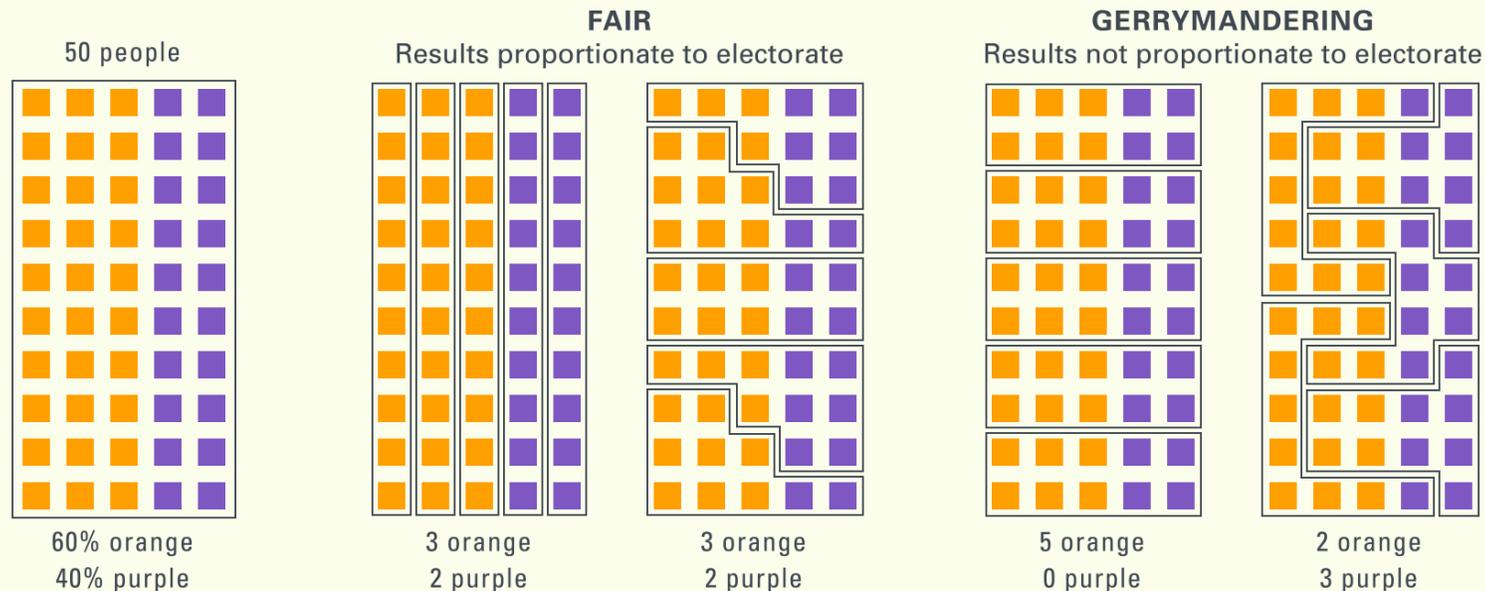


Restrictions on Redistricting: Racial and Political Gerrymandering

GERRYMANDERING

How differently drawn district maps produce different electoral results

FOUR WAYS TO DIVIDE 50 PEOPLE INTO 5 DISTRICTS:



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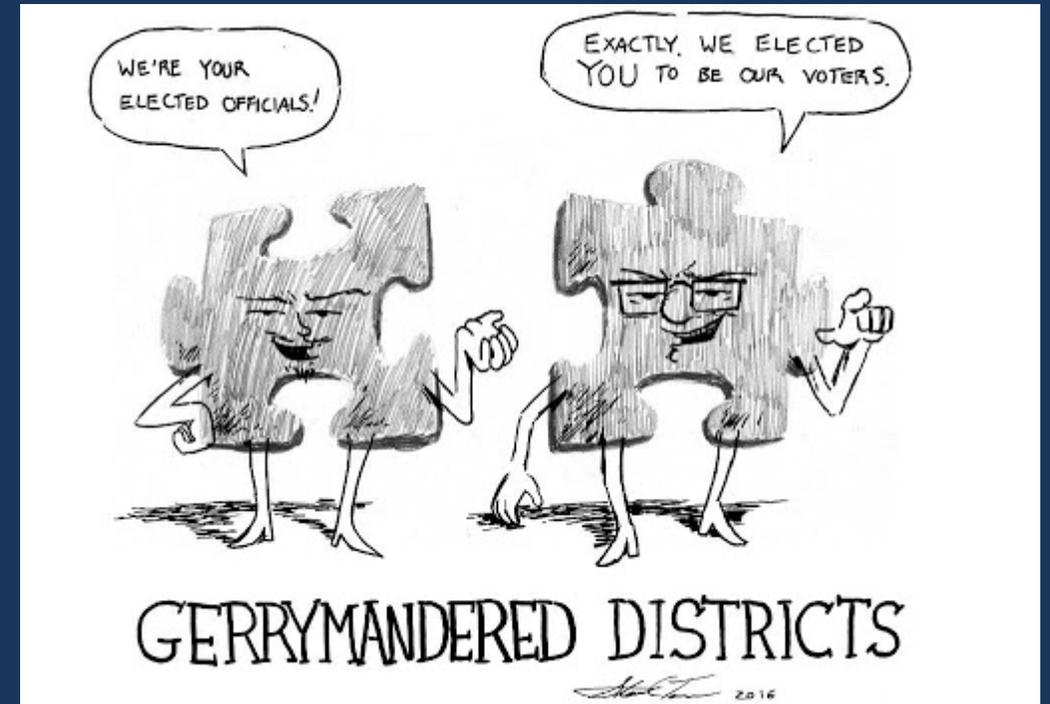
Restrictions on Redistricting: Racial and Political Gerrymandering

- Equal Protection Clause is violated when race is the “predominant consideration” in drawing district lines and the legislature subordinates “traditional districting principles” to race in order to create minority districts without a compelling state interest
- When question is whether this is a racial or political gerrymander, ask: Could the same legitimate political objectives be achieved in other ways that are consistent with traditional redistricting principles? Would those alternatives have brought about significantly greater racial balance?



Restrictions on Redistricting: Racial and Political Gerrymandering

- Political gains generally a valid aim of redistricting
 - Including protecting or enhancing position of a political party, interest group, incumbent, or potential candidate
 - However, these claims are still justiciable



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Redistricting Process (Delayed)

First, states and local governments must receive the Census data

2020 Census data delivery timeline

	Apportionment data (used for determining seats in Congress)	Redistricting data (used for redrawing congressional and legislative districts)
Original Schedule (pre-pandemic) (based on statutory deadlines)	By 12/31/20	By 4/1/21
Revised Plan (as of 1/27/21 and 2/12/21)	Expected by 4/30/21	Expected mid to late August, 2021 (Legacy format, no tables) Expected by 9/30/21 (tables)

Source: National Conference of State Legislatures



Redistricting Process

- For Congressional and legislative redistricting, General Assembly must enact legislation
 - Same legislative process as any other bill
 - BUT not subject to gubernatorial veto (if bill contains no other matter)
- For counties, municipalities, school boards*:
 - Local governing body can redistrict using statutory process OR
 - General Assembly can enact legislation (local acts)

* Unless boundaries were set by court order or consent decree and provides an alternative method for revision



Does Governing Body Need to Consider Redistricting?

- At-large elections – If everyone in that jurisdiction votes for all the members, redistricting is not required
- Residency districts – Candidates must live in the district but all the voters of the jurisdiction vote for that seat. No redistricting or “one person, one vote” problem because all voters in jurisdiction are voting for the same candidates
- Electoral districts – Candidate must live in the district and only the voters who live in that district can vote for that seat. Redistricting may be required after 2020 census (depending on what the data show).



Municipal Redistricting: Special Rules Following Census

G.S. 160A-23.1

- After receiving census data, city councils which elect by district or which use residency districts must evaluate existing district boundaries to determine whether they can lawfully hold the next election without revising districts to correct population imbalances. Can delay election to 2022 if resolution adopted prior to third business day before filing begins.
- BUT – what if data is not available??

Municipal Redistricting: Special Rules Following Census

G.S. 160A-23.1

- If data not available, the legal authority of a municipality to delay the election on their own is questionable.
- If a municipality doesn't have the data, they don't know if they have population imbalances and “substantial inequality”

Municipal Redistricting: **Session Law 2021-56**

- Moves elections for ~ 35 municipalities that elect by district to 2022 – dates depend on election method and whether a federal second primary is needed (March 8, 2022, and either April 26 or May 17)
- Filing period depends on how quickly the municipality can adopt new redistricting plan
 - If districts revised by November 17 (must notify CBE by November 12), filing period is noon on December 6 – noon on December 17
 - If districts revised by December 17, filing period is noon on January 3, 2022 – noon on January 7, 2022



Municipal Redistricting: **Session Law 2021-56**

- Exception for at-large contests in the affected municipalities – had to notify county board of elections by July 19
- Can provide opportunity for public input prior to the release of the census data
- **MUST** provide public comment after the release of the data and conduct at least one public hearing prior to adopting revised districts
- Current terms extended; winner in 2022 has term shortened (back on schedule in 2023 and beyond)

County Redistricting: G.S. 153A-22

- County redistricting statute requires counties to adopt redistricting resolutions at least 150 days before the date of the primary election.
- 2022 Primary is scheduled for March 8, 2022
- 150 days before primary = **October 9, 2021**
- Census data not expected until end of September 2021
- No statutory process for counties with residency districts to redistrict (must be done by local act of GA)
- (No statutory deadline for school board redistricting)



County Redistricting: **Session Law 2021-56**

- Forget the 150-day deadline for 2022!
- If your county has electoral districts (about 1/3 of counties), board of commissioners must adopt the new districts by November 17 (rather than October 9)
- No specific requirement in the law about public hearings or public comments, but still important to provide opportunity for input

Other Provisions: **Session Law 2021-56**

- Voter registration open between 1st and 2nd primaries in 2022
- Charlotte-Mecklenburg Schools: delayed to November 8, 2022*
- Raleigh City Elections: Election method permanently changed to nonpartisan plurality method (was nonpartisan election and runoff) and moved to even-numbered years (election November 8, 2022)
- *City of Lexington Schools: delayed to March 8, 2022 (Session Law 2021-102, ratified yesterday!)



FAQs: Session Law 2021-56

Q: Does this law automatically delay mayoral contests if the municipality elects its town council by district, even though everyone in the town can vote for the office of mayor?

A: Yes, this law automatically delays the at-large contests (including mayor and at-large town council contests) in municipalities that would have elected at least one town office by district in 2021. If a town wishes to hold its at-large contests in 2021, it must adopt a resolution and notify the county board of elections by July 19, 2021.

Q: Does a city have the authority to hold an ABC election in 2021 if the municipal election for that town is delayed to 2022?

A: No, a city may not hold an ABC election in 2021 if its municipal election was delayed to 2022 unless the city has an at-large election that would normally be held in 2021 and it decides by July 19 to hold that election on its regular schedule. Otherwise, G.S. 18B-601(f) provides that the board of elections must conduct and set the date for the alcoholic beverage election in accordance with G.S. 163-287, which provides that the election can only be held on one of the following dates:

- At the same time as any other State or county general election.
- At the same time as the primary election in any even-numbered year.
- At the same time as any other election requiring all the precincts in the county to be open.
- At the same time as a municipal general election, if the special election is within the jurisdiction of the municipality only.



FAQs: Session Law 2021-56

Q: Does this law affect municipal school board, sanitary district, or other local elections, if those entities elect by district?

A: Not necessarily. In general, this law only affects municipal elections, not school boards or other local elections. However, if the language of the charter or session law states that the election for that entity is to be held on the same date as the municipal election, that election may also be delayed to 2022. Please contact legal@ncsbe.gov or your governing body's attorney if you think this may apply to a local election in your county.

Q: A small municipality in my county does not elect by district and is concerned about the cost of having its election in 2021 when a larger municipality's election in the county has been moved to 2022. Can the small municipality postpone its election? What other options does it have?

A: The small municipality may not move its election from 2021 because, absent a local act, there is no statutory authority to do so for municipalities that do not elect by district. The municipality could decide to eliminate absentee voting (this includes absentee by mail and early voting). Pursuant to G.S. 163-302, a municipality may authorize (or deauthorize) absentee voting by resolution. Such resolution must be adopted no later than 60 days prior to an election in order to be effective for that election. Any such resolution shall remain effective for all future elections unless repealed no later than 60 days before an election.



Resources

Legislator's Guide to Redistricting (authored by NC General Assembly staff):
https://www.ncleg.gov/Files/GIS/Maps_Reports/2011RedistrictingGuide.pdf

NCSL Redistricting site: <https://www.ncsl.org/research/redistricting.aspx>

US Census Bureau Redistricting site: <https://www.census.gov/programs-surveys/decennial-census/about/rdo.html>



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