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Background Brief on ...

Redistricting

What is Redistricting?

Redistricting is the process of redrawing legislative and congressional district lines following the decennial U.S. Census. The lines are redrawn so that districts are of roughly equal population as required by the Oregon Constitution and the U.S. Constitution.

The population of Oregon based, on the 2010 U.S. Census, was 3,831,074 people. This is a growth in population of 12 percent from 2001. Therefore, the ideal population for:

- Legislative House Districts was 63,851
- Legislative Senate Districts was 127,702
- U.S. Congressional Districts was 766,215

What is Reapportionment?

Reapportionment is the process by which the 435 seats in the United States House of Representatives are redistributed amongst the 50 states following each constitutionally mandated decennial census.

Reapportionment is based on the division of population to calculate the number of congressional seats of each state. Each state is apportioned a number of seats that approximately corresponds to its share of the aggregate population of the 50 states.

Who is Responsible for Redistricting?

The Oregon Legislature is responsible for redistricting the state's 60 House and 30 Senate districts, as well as the five U.S. Congressional districts. Redistricting plans, like other legislation, are passed by the Legislature in bills. As with all legislative enactments, redistricting plans are subject to the veto authority of the Governor.

Article IV, section 6 of the Oregon Constitution and ORS 188.010 contain the criteria, deadlines, and responsibilities for conducting and completing legislative redistricting. If the legislature fails to enact a legislative redistricting plan by July 1, or if its plan or a portion of the plan is successfully challenged in court,

the responsibility for drawing legislative district lines or for correcting a specific problem falls to the Secretary of State.

There are no corresponding timelines for the redistricting of congressional districts because the Oregon Constitution and statutes are silent on the matter of congressional redistricting. The practical deadline is for the congressional plan to be completed in time for candidates to file for the next primary election.

Currently, the federal and state constitutions do not provide for a redistricting mechanism if the Legislative Assembly fails to complete a congressional plan. The only available mechanism for redress is for an affected individual or group of individuals to petition the courts to address the inequality in district populations based on the new census data.

Federal Criteria for Redistricting

In 1962, the Supreme Court established the “one person, one vote” doctrine in *Baker v. Carr*, 1962. In this case, the Supreme Court interpreted the Equal Protection Clause of the 14th Amendment to the U.S. Constitution to require that electoral districts be periodically adjusted or redrawn to account for population shifts. In subsequent years, the Supreme Court has recognized three major constitutional standards governing redistricting plans:

- Districts must be of equal population to ensure that the value of every person’s vote is substantially equal;
- Plans may not intentionally dilute the voting strength of members of a racial or ethnic minority group; and
- Plans that contain districts drawn primarily on the basis of race or ethnicity require a compelling justification.

The Voting Rights Act of 1965 - The federal Voting Rights Act (**Act**) of 1965 introduced a new body of statutory law to help enforce the guarantees of the U.S. Constitution against racial and ethnic discrimination in the electoral process. This Act protects against redistricting techniques that are used to limit minority

communities’ ability to achieve fair representation.

Section 2 of the Act prohibits district lines from being drawn in a way that deny minority voters an equal opportunity “to participate in the political process and to elect representatives of their choice.” Essentially, district lines cannot be drawn to dilute minority voters’ voting power if:

- A minority community can fit reasonably in a **geographically compact** district;
- Voting-age minorities would represent a **majority of the voters** in that district;
- The minority population would usually **vote for the same candidate**;
- The white population would usually **vote for a different candidate**; and
- The minority vote is not otherwise protected given the “**totality of the circumstances**.”

In addition, the Act allows members of a racial or language minority group to challenge a redistricting plan that limits or diminishes their opportunity to participate in the electoral process and to elect representatives of their choice.

14th Amendment, U.S. Constitution - In addition to the equal population requirement, the Equal Protection Clause of the 14th Amendment to the U.S. Constitution also limits racial and political gerrymandering.

Oregon’s Criteria for Redistricting

The criteria that the legislature or the Secretary of State uses for apportioning legislative and congressional districts are listed in ORS 188.010. The criteria to be considered requires that each district, as nearly as practicable, shall:

- Be contiguous;
- Be of equal population;
- Utilize existing geographic or political boundaries;
- Not divide communities of common interest; and
- Be connected by transportation links.

In addition, the law states that no district shall be drawn for the purpose of favoring any political party, incumbent legislator or other person or be

drawn for the purpose of diluting the voting strength of any language or ethnic minority group.

Finally, Article IV, Section 6 of the Oregon Constitution requires that two house districts be “nested” in one senate district.

While all the criteria are significant, equalizing populations in districts is the basic purpose of redistricting. Redistricting is based on total population not just the voting-age population.

ORS 188.010 specifies that each district “as nearly as practicable shall” be of equal population, and court decisions have not specified a maximum deviation. Generally, the smaller the deviation, the less likely the plan will be subject to legal challenge.

In 2013, the Legislature passed House Bill 2887, which prescribed a process for adjudicating redistricting of congressional districts if the Legislature is not able to adopt a plan. If the Legislature fails to enact a congressional redistricting plan by July 1, the Governor vetoes the plan, or if a plan is successfully challenged in court, the responsibility for drawing congressional district lines, or for correcting a specific problem, falls to a special judicial panel appointed by the Chief Justice of the Supreme Court. The panel would consist of one state circuit court judge, senior judge or judge who is serving as a judge pro tempore from each congressional district in this state. The panel will be charged with reviewing a legislatively approved plan that has been challenged; drawing a congressional plan if there is no legislatively approved plan; or reviewing a vetoed plan. A final congressional redistricting plan would become operative on January 1 of the next calendar year.

Oregon Redistricting History

In 1961, the legislature enacted a redistricting plan that was challenged and overturned because of under-representation in Multnomah and Lane counties. The Supreme Court approved adjustments made by the Secretary of State.

In 1971, the legislature did not enact a legislative plan; therefore, responsibility for preparing a plan fell to the Secretary of State.

In 1981, the legislature enacted a legislative redistricting plan that was challenged and overturned because one district was left without a Senator for two years. The Supreme Court approved adjustments made by the Secretary of State.

In 1991, the legislature did not enact a legislative redistricting plan; therefore, responsibility for preparing a plan fell to the Secretary of State. After court challenges and minor modifications, the Secretary of State’s legislative district plan was approved by the Supreme Court.

In 2001, the legislature adopted legislative and congressional redistricting plans. However, both plans were vetoed by the Governor, therefore, responsibility for preparing a plan fell to the Secretary of State. The Supreme Court sustained one court challenge because the prison population in Sheridan was put outside the city by the federal census. Upon correction, the Secretary of State’s plan was approved.

In 2011, the legislature adopted a legislative redistricting plan, Senate Bill 989, and a congressional redistricting plan, Senate Bill 990. Both plans were signed by Governor John Kitzhaber and neither plan was the subject of a court challenge. The average deviation in Oregon legislative districts was less than one percent. For congressional districts, the deviation was zero in 2 districts; plus one person in one district; and minus one person in two districts.

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Additional Resources

State of Oregon Redistricting

<https://www.oregonlegislature.gov/la/Pages/redistricting.aspx>

Secretary of State

<http://bluebook.state.or.us/state/legis/legis15a.htm>

National Conference of State Legislatures

<http://www.ncsl.org>

Census 2010

<http://2010.census.gov/2010census>

The Brennan Center

<Http://www.brennancenter.org>

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