



LRO SNAPSHOT

A policy brief from the Legislative Research Office

Traditional Districting Principles — A Review

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With the 2020 federal decennial census just around the corner, politicians, political parties, and interested citizens turn their attention to redistricting.

As its name suggests, redistricting is the process of redrawing election boundary lines for political, governmental, and other public bodies that elect their memberships by district. Though related, redistricting should not be confused with reapportionment. Redistricting concerns redrawing boundaries of election districts, while reapportionment refers to the allocation of seats among units, such as the allocation of congressional seats among the states.

After the federal decennial census, all 50 states will create new district boundaries for seats in the U.S. House of Representatives and state legislatures. In Nebraska, new district boundaries also will be established for the Public Service Commission, the State Board of Education, the Board of Regents of the University of Nebraska, and the Nebraska Supreme Court.

All states must comply with federal and state constitutional and statutory requirements relating to population equality and discrimination.¹ In addition to those requirements, states adopt their own principles for drawing plans. These principles are intended to guide map drawers and policymakers as they craft election district maps and to ensure that those newly drawn maps will hold up in court.

When redistricting plans are challenged, courts often look for evidence of consideration of traditional districting principles when deciding whether to uphold or reject the challenged plans.

The phrase “traditional districting principles” was first coined in the 1993 case *Shaw v. Reno*.² While the principles have been further articulated and discussed in many of the cases

Traditional districting principles

- Compactness and contiguity
- Preservation of political subdivisions
- Preservation of communities of interest
- Preservation of cores of prior districts
- Protection of incumbents

that arose after the 1991 redistricting process, it is important to realize that the principles have been in existence and recognized prior to the 1990s.

These principles are generally grouped into two broad categories: (1) geographical and natural; and (2) political and legal.

Compactness, contiguity, and preservation of counties and other political subdivisions are considered to be geographical and natural objective principles.

Preservation of communities of interest, preservation of cores of prior districts, and protection of incumbents are deemed to be political and legal and more subjective.

Courts have been slower to recognize these more subjective principles and generally require the presence of compactness, contiguity, and respect for political subdivisions before even reaching these principles. Additionally, courts are wary of arguments that appear to have been created after the fact to justify a district’s irregular shape. However, when supported by evidence, preservation of communities of interest, preservation of cores of prior districts, and protection of incumbents have been cited as traditional districting principles.

Following is a brief explanation of each traditional redistricting principle.

1. For congressional redistricting, the Apportionment Clause of Article I, section 2, of the U.S. Constitution requires all congressional districts be as nearly equal as practicable. For state legislative districts, the Equal Protection Clause of the 14th Amendment requires that legislative districts be substantially equal. Section 2 of the Voting Rights Act of 1965 prohibits redistricting plans that intentionally or inadvertently discriminate on the basis of race.

2. 509 U.S. 630 (1993).



Compactness

Compactness is by far the oldest and most important traditional districting principle. But there is no single measure of compactness that is generally accepted by social scientists as definitive, and the Supreme Court has not given a precise definition of the term. It is a principle where “appearances do matter.” Plan drawers should refrain from drawing districts with many tentacles, districts that snake along a river or highway, or districts that have jagged edges. Courts are suspicious of odd, irregular-shaped districts.

Contiguity

A district is defined as contiguous if one can reach any part of the district from any other part without crossing the district boundary. A district cannot be divided into two or more pieces. It is usually a fairly noncontroversial requirement.

Preservation of Counties or other Political Subdivisions

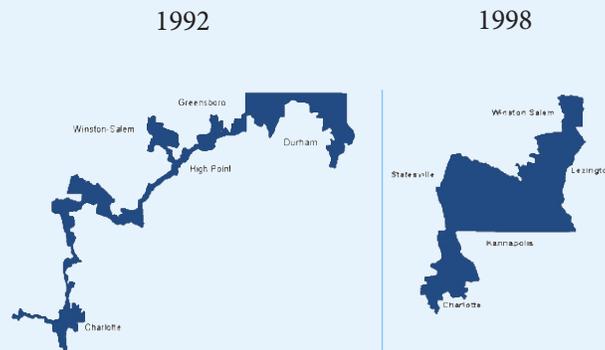
Redistricting plans must exhibit respect for political subdivisions by creating districts that do not needlessly cross county or municipal boundaries—by keeping counties, cities, and towns intact where possible.

Article III, sec. 5, of the Nebraska Constitution directs the Legislature to follow county lines whenever practicable. The Nebraska Supreme Court weighed in on this principle in *Day v. Nelson*.³ The Court said “when the population of a county is such that it can legally constitute a legislative district and it is practicable to do so, the Legislature must establish a district that follows the county’s boundaries.”

Preservation of communities of interest

What is an actual “community of interest” varies from state

North Carolina District 12



To give you some idea of what the lower federal courts have considered to be “reasonably compact,” here is a “before and after” map of North Carolina District 12. The map on the left was used in the 1992 election and subsequently struck down in court, replaced with the map on the right for the 1998 election.

to state as well as district to district within a state.

The Supreme Court has said that a community of interest must show a common thread of relevant interest other than race, and the relevant interest must be tangible. One cannot simply state that there is a community of interest. Additionally, a state must show that it was aware of the community of interest at the time the plan was drawn.

Preservation of cores of prior districts

In 1978, the Supreme Court said that preserving the cores of prior districts was a legitimate goal that might justify population variances. A review of a state’s redistricting history is often necessary to determine a “core of a prior district.”

Protection of incumbents

While the Supreme Court has recognized that protecting incumbents can be a districting principle, the Court has also said that protecting incumbents should be subordinated to the other principles because it is inherently more political and therefore suspect, as well as more difficult to measure.

Nebraska’s Districting Principles

The districting principles guiding the Legislature’s 2011 redistricting process were articulated in LR 102, which passed unanimously. The resolution prescribed nine criteria which, according to the resolution, were designed to help ensure that the redistricting plans passed by the Legislature were constitutionally acceptable. In addition to the requisite population and anti-discrimination criteria, the resolution stated that districts should be compact, be contiguous, follow county lines whenever practicable, be easily identifiable and understandable to voters, preserve cores of prior districts, and not be drawn with the intention of favoring a political party or other group or person.

3. 240 Neb. 997 (1992).