



COUNTY COUNCIL OF HARFORD COUNTY, MARYLAND

M E M O R A N D U M

Date: May 19, 2021

To: Redistricting Commission
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From: Charles E. Kearney, Jr.
County Council Attorney

Re: Redistricting Considerations

The Harford County Charter in Section 205 provides the mechanical framework to establish the Redistricting Commission and the timetable for the redistricting process.

Charter Section 205 Redistricting procedure.

(a) The boundaries of Council districts shall be established in 1974 and re-established in 1982 and every 10th year thereafter. Whenever district boundaries are to be established or reestablished, the Council shall appoint, not later than February 15 of the year prior to the year in which redistricting is to be effective, a commission on redistricting, composed of two members from each political party chosen from a list of five names submitted by the governing body of each political party which polled at least fifteen percent of the total vote cast for all candidates for the Council in the immediately preceding regular election or which had at least fifteen percent of the registered voters in the County on the date of that election. The Council shall appoint one additional member of the Commission, who shall not be a member of any of the political parties entitled to two members of the Commission and shall be a registered voter in Harford County. The Commission shall, at its first meeting, select

one of its members to serve as chair. No person shall be eligible for appointment to the Commission if that person holds any elected office.

(b) By October 1 of the year prior to the year in which redistricting is to be effective, the Commission shall prepare, publish, and make available a plan of Council districts and shall present that plan, together with a report explaining it, to the Council. The plan shall provide for Council districts that are compact, contiguous, and substantially equal in population. No less than fifteen calendar days and no more than thirty calendar days after receiving the plan of the Commission, the Council shall hold a public hearing on the plan. If within seventy calendar days following presentation of the Commission's plan no other law establishing or re-establishing the boundaries of the Council districts has been enacted, then the plan, as submitted, shall become law.

The Harford County Code contains the composition of each current council district.

§ 4-5 Council districts.

A. Harford County is hereby divided into 6 Council districts for the purposes of Article II of the Charter.

B. The Council districts are composed of the election precincts established by the Board of Supervisors of Elections, as the precincts exist on October 18, 2011, as follows:

District A

1-01	Edgewood	1-10	Abingdon
1-03	Edgewood	1-15	Constant friendship
1-04	Joppatowne	1-19	Willoughby
1-05	Edgewood	1-41	Magnolia
1-06	Edgewood	1-45	Joppatowne

District B

1-02	Joppa-Magnolia	3-03	Fallston
1-07	Winters Run	3-06	Fallston/ Gunpowder
1-08	Emmorton	3-07	Wilna
1-09	Singer	3-13	Bel Air
1-11	Box Hill	4-02	Upper Crossroads
1-21	Magness	4-05	Upper Crossroads

District C

1-14	Bel Air South	3-14	Bel Air
3-08	Rock Spring	3-15	Bel Air
3-09	Forest Lake	3-16	Bel Air
3-10	Town of Bel Air	3-17	Bel Air

3-11	Town of Bel Air	3-19	Bel Air
3-12	Town of Bel Air		

District D

2-02	Hopewell	4-04	Jarrettsville
3-04	Harkins	4-06	Jarrettsville
3-05	Forest Hill	5-01	Dublin
3-24	Frogtown	5-02	Stearns
4-01	Jarrettsville	5-03	Whiteford
4-03	Norrisville	5-04	Darlington

District E

2-01	Aberdeen	3-02	Churchville
2-04	Aberdeen	3-18	Bel Air
2-10	City of Aberdeen	3-21	Fountain Green
2-11	City of Aberdeen	3-22	Thomas Run
2-14	City of Aberdeen	3-23	Greenbrier
2-15	City of Aberdeen	6-05	City of Aberdeen

District F

1-12	Abingdon	2-19	Aberdeen Proving Grounds
1-13	Abingdon	6-01	Havre de Grace
1-16	Riverside	6-02	Meadowvale
1-17	Creswell	6-03	Havre de Grace
1-18	Bush	6-04	Havre de Grace
1-20	Belcamp	6-06	City of Havre de Grace
2-03	Perryman	6-07	Oakington

The map of the current council districts is attached.

The Charter does not provide any guidance regarding how the task of redistricting is to be accomplished. One appellate court has opined that redistricting is perhaps “the most difficult task a legislative body ever undertakes.” *Smith v. Beasley*, 946 F. Supp. 1174, 1207 (D.S.C. 1996). This is primarily due to the complex array of federal and state legal requirements which must be satisfied. This memo will briefly synthesize the legal considerations which will be your guidepost for the redistricting of Harford County’s council districts.

The legal criteria which govern redistricting are primarily founded in the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, the Federal Voter Rights Act, 42 U.S.C. 1971, et seq. and Article III of the Maryland Constitution.

SUBSTANTIALLY EQUAL POPULATION

The United States Supreme Court in *Baker v. Carr*, 396 U.S. 186, (1962), and subsequent cases determined that the Fourteenth Amendment's Equal Protection Clause provides the legal underpinning for the "*one person, one vote*" principal which lies at the heart of the districting process. In essence, this principle prevents the States and their local jurisdictions from diluting any citizen's political power. This is accomplished by assuring that the vote of any citizen is approximately equal to the weight of that cast by any other citizen. See e.g., *In Re Legislative Districting*, 299 Md. 658 (1982).

The method used to accomplish this guarantee requires that representatives to an elected body are elected from voting districts of substantially equal population. Accordingly, a legislature shall make an honest and good faith effort to construct districts as nearly of equal population as is practicable, *Voinovich v. Quilter*, 507 U.S. 146 (1993); *Reynolds v. Sims*, 377 U.S. 533 (1964). The Equal Protection Clause requires that the seats in both houses of a bicameral State Legislature must be apportioned on a population basis. The *one person, one vote* principal has been extended to the election of county municipal officers and local governmental representatives when these governments exercise substantial governmental powers. *Avery v. Midland County*, 390 U.S. 474 (1968); *Dubois v. City of College Park*, 286 Md. 677 (1980); *Montgomery County v. Garrott*, 243 Md. 634 (1966). This directive includes the council districts of the Harford County Council.

In *Brown v. Thomson*, 462 U.S. 835 (1983), the Supreme Court stated that some deviation from population equality maybe necessary to permit the pursuit of other legitimate objectives such as maintaining the integrity of various political subdivisions and providing for compact districts of

contiguous territory. Therefore, a *minor* deviation from mathematical equality among the districts is insufficient to make a *prima facie* case of invidious discrimination under the Fourteenth Amendment so as to require justification by the jurisdiction for its proposed plan. Courts have generally recognized as a benchmark for determining whether a particular apportionment plan violates the *one person, one vote* principle, the 10% standard. As noted in *Brown v. Thomson*, *supra*, an apportionment plan with a maximum population deviation under 10% falls within a category termed "minor deviation". Any plan with larger disparities in population will, however, create a *prima facie* case of discrimination and therefore must be justified by the jurisdiction. The County, in this instance, would be required to justify the population disparity by showing a rational legitimate state/governmental policy for the redistricting plan. Moreover, it is likely that any defense of a plan with more than 10% overall deviation would be unsuccessful.

Maryland's Constitution also contains criteria for the drawing of a legislative district. In Article III, § 4 it is provided that:

Each legislative district shall consist of adjoining territory, be compact in form, and of substantially equal population. Due regard shall be given to natural boundaries and the boundaries of political subdivisions.

CONTIGUITY REQUIREMENT

The requirement that the districts shall consist of adjoining territory is frequently referred to as the contiguity requirement. This requirement "mandates that there be no division between one part of a district's territory and the rest of the district; in other words, contiguous territory is territory touching, adjoining and connected, as distinguished from territories separated by other territories". *In Re Legislative Districting*, 299 Md. 658, 675-76 (1982). More simply stated, a contiguous district has been defined as one in which a person can go from any point within the district to any other point without

leaving the district.

COMPACTNESS

The legislative district must also be compact in form. Black's Law Dictionary defines compact as being closely or firmly united or packaged or arranged so as to economize space. Compactness, however cannot be truly considered in geometric terms such as being circular or square shaped. It generally means closely united territorially in order to be conducive to constituent-representative communication. Moreover, as noted in *In Re Legislative Districting*, *supra*, the compactness requirement is subservient to the Federal Constitutional requirement of substantial equality of population among the districts. The requirement of population equality is the main constraint on the compactness provision of Section 4 of Article 3 of the Maryland Constitution. The Court cases recognize that, due to the combination of constitutional and other factors, some degree of noncompactness is unavoidable. These factors include concentration of population, convenience of access, geographic features, means of communication, contiguity requirements and due regard for natural and political boundaries. The requirements of contiguity and compactness are generally not a problem for council districts. Rather, these concepts are often at issue in Court challenges to congressional redistricting such as found in the partisan gerrymandering case of *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019).

DUE REGARD

The focus of the State Constitution's "due regard" requirement is the preservation of features "which enable voters to maintain an orientation to their own territorial areas." *In Re Legislative Districting*, 299 Md. at 681. The consideration of natural boundaries is self-evident and where applicable would include rivers and mountains. Any significant natural boundaries are basically non-existent in Harford County and therefore are not a concern in the redistricting of the County Council districts.

The requirement that due regard shall be given for the boundaries of political subdivisions is also

a consideration in the establishment of the councilmanic districts. Harford County contains three incorporated municipalities; i.e. Aberdeen, Bel Air, and Havre de Grace. Any redistricting plan must give consideration to these separate political subdivisions. The Court of Appeals in *Legislative Redistricting Cases*, 331 Md. 574 (1993), cautioned that . . . "the danger lurking in legislative districts which cross jurisdictional boundaries . . . is that representatives from those districts may face conflicting allegiances as to legislative initiatives which benefit one of their constituencies at the expense of the other". Id. at 615.

VOTING RIGHTS ACT OF 1965, AS AMENDED IN 1982

Subsection 2(a) of the Voting Rights Act of 1965 (42 U.S.C.S. § 1973(a)), prohibits all states and political subdivisions from imposing any voting qualifications or prerequisites to voting, or any standards, practices, or procedures which result in the denial or abridgment of the right to vote of any citizen who is a member of a protected class of racial and language minorities. Subsection 2(b) establishes a violation when the "totality of circumstances" shows that the political processes leading to either a nomination or an election are not equally open to participation by members of a protected class.

To make out a §2 "effects" claim, a plaintiff must establish the three "Gingles factors." These are (1) a geographically compact minority population sufficient to constitute a majority in a single-member district, (2) political cohesion among the members of the minority group, and (3) bloc voting by the majority to defeat the minority's preferred candidate. *Thornburg v. Gingles*, 478 U. S. 30, 48-51, (1986). If a plaintiff makes that showing, it must then go on to prove that, under the totality of the circumstances, the district lines dilute the votes of the members of the minority group. The Equal Protection Clause prohibits the unjustified drawing of district lines based on race. *Cooper v. Harris*, 137 S. Ct. 1455, 1480, (2017).

POLITICAL GERRYMANDERING

The Supreme Court, in *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019), stated that ““vote dilution” in the one-person, one-vote cases refers to the idea that each vote must carry equal weight. In other words, each representative must be accountable to (approximately) the same number of constituents. That requirement does not extend to political parties. It does not mean that each party must be influential in proportion to its number of supporters.” at p. 2501. The Supreme Court then went on to hold that partisan gerrymandering claims present political questions beyond the reach of the federal courts. It is, however, a question which Congress and the various state legislatures can address should they find it appropriate. Also, although a claim can still likely be brought under state law, no such case has currently been filed. Accordingly, at this time, the holding in *Rucho* is the last word.

CONCLUSION

The concepts identified above are the primary considerations when any districting plan is created. Nevertheless, both Federal and State Courts throughout the United States recognize that other considerations may, and sometimes do, enter into the creation of a legislative district plan. The Courts have approved, where appropriate, considerations of the maintenance of existing district and precinct lines, and the protection of incumbents. Where these concepts have not interfered with the "*one person, one vote*" principle then these considerations have been appropriate. Notwithstanding, these considerations are subservient to the U.S. Constitutional and Maryland Constitutional requirements identified above.

Should the Redistricting Commission have any additional questions regarding the law related to their task, please feel free to call upon me at your convenience.

