

PRIMARY CONSTITUTIONAL AND STATUTORY REQUIREMENTS FOR REDISTRICTING IN OREGON

House Special Committee on
Redistricting
January 26, 2021





PRIMARY SOURCES OF LAW



➤ FEDERAL REQUIREMENTS

- United States Constitution (Article I, Section 2 and Equal Protection Clause of the 14th Amendment)
- Federal statutes (Voting Rights Act)
- Federal case law

➤ OREGON REQUIREMENTS

- Oregon Constitution (Article IV, sections 6 and 7)
- Oregon statutes (ORS 188.010, 188.016, 188.125)
- Oregon case law

➤ TRADITIONAL REDISTRICTING PRINCIPLES



REDISTRICTING TIMELINES



- STATE LEGISLATIVE PLAN (Art. IV, section 6, Oregon Constitution)
 - Legislative Assembly must enact by July 1
 - If no plan enacted by Legislative Assembly by July 1, Secretary of State must enact by August 15
 - Direct Oregon Supreme Court review of plan enacted by Legislative Assembly or Secretary of State
- CONGRESSIONAL PLAN (ORS 188.125)
 - Legislative Assembly must enact by July 1
 - By August 1, elector may petition Marion County Circuit Court to:
 - Challenge plan, if Legislative Assembly enacted plan by July 1; or
 - Propose own plan, if Legislative Assembly failed to enact plan by July 1

BIG LEGAL ISSUES WHEN REDISTRICTING



- EQUAL POPULATION
- RACIAL, ETHNIC AND MINORITY GROUP CONSIDERATIONS
- PARTISAN GERRYMANDERING
- MISCELLANEOUS REQUIREMENTS/TRADITIONAL REDISTRICTING PRINCIPLES



EQUAL POPULATION



➤ **“OVERALL RANGE”**

- Sum of deviations of least and most populous districts from ideal district

➤ **CONGRESSIONAL**

- “Representatives . . . shall be apportioned among the several States . . . according to their respective Numbers[.]” Art. I, section 2, U.S. Constitution
- Strict, mathematical equality – as close to equal as practicable

➤ **STATE LEGISLATIVE**

- “No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.” Equal Protection Clause, 14th Amendment, United States Constitution
- Overall range may be greater than for congressional districts
 - Presumptively valid if under 10%
- Oregon Constitution/ORS 188.010 (1)(b) could possibly require more precise population equality than Equal Protection Clause



RACIAL, ETHNIC AND MINORITY CONSIDERATIONS



➤ **BASIC RULE**

- Redistricting plan may not discriminate against any individual on basis of race, color or membership in language minority group

➤ **EQUAL PROTECTION CLAUSE**

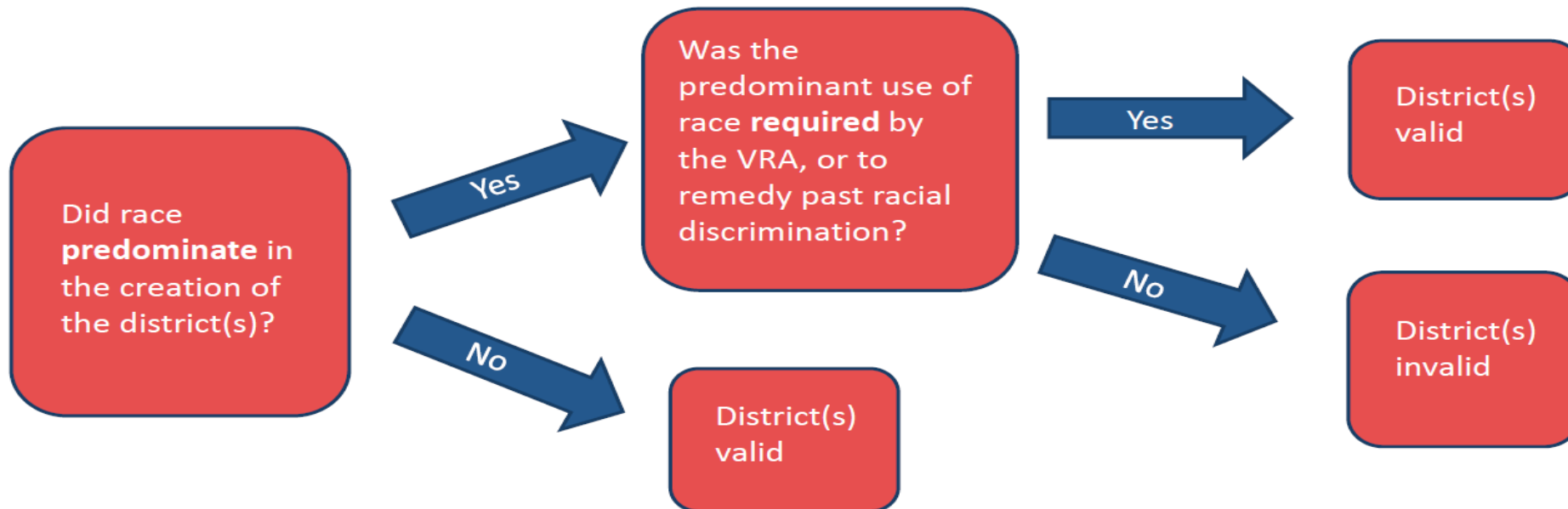
- Prohibits racial gerrymandering by preventing a state, without sufficient justification, from separating citizens into different voting districts on basis of race.
- Any redistricting plan that distinguishes among citizens on basis of race must be narrowly tailored to further compelling government interest

➤ **Voting Rights Act**

- Prohibits redistricting plan that impairs ability of minority group to elect candidates of choice on equal basis with other voters
- *Gingles* test & Senate factors

WHEN CAN RACE BE PREDOMINANT FACTOR IN CREATING A DISTRICT?

RACIAL GERRYMANDERING: ANALYSIS



WHEN DOES VRA REQUIRE RACE TO BE A PREDOMINANT FACTOR IN CREATING A DISTRICT?



VOTING RIGHTS ACT: SECTION 2

Gingles Preconditions

Sufficiently large and geographically compact to constitute majority

Minority group is **politically cohesive**

White voters act as a bloc to defeat minority group's candidate of choice

Senate Factors

- History of official discrimination
- Racially polarized voting in the state
- Minority vote diluting election procedures
- Minority exclusion from the candidate slating process
- Discrimination in health education and employment
- Subtle or overt racial appeals in campaigns
- Extent of minority success being elected to public office



PARTISAN GERRYMANDERING



- **CLAIM CAN NO LONGER BE BROUGHT IN FEDERAL COURT**
 - “[P]artisan gerrymandering claims present political questions beyond the reach of the federal court.” *Rucho v. Common Cause*, 139 S. Ct. 2484, 2506-2507 (2019)
- **ARTICLE 1, SECTION 2, OREGON CONSTITUTION**
 - “All elections shall be free and equal.”
 - Similar to language in PA and NC constitutions used to strike down maps on basis of partisan gerrymandering
- **ORS 188.010 (2)**
 - “No district shall be drawn for the purpose of favoring any political party, incumbent legislator or other person.”



ADDITIONAL OREGON CONSTITUTIONAL AND STATUTORY ISSUES



- **CONSIDER ALL CRITERIA IN ORS 188.010**
 - Contiguous
 - Equal population
 - Utilize existing geographic or political boundaries
 - Do not unnecessarily divide communities of interest
 - Ensure districts are connected by transportation links



ADDITIONAL OREGON CONSTITUTIONAL AND STATUTORY ISSUES



- **NEST TWO HOUSE DISTRICTS IN EACH SENATE DISTRICT**
- **ASSIGN HOLDOVER SENATORS TO SPECIFIC DISTRICTS**
- **USE OF DATA KNOWN TO BE INCORRECT**
- **HOLD PUBLIC HEARINGS REQUIRED UNDER ORS 188.016**
 - 10 hearings before redistricting plan is proposed
 - Five hearings after redistricting plan is proposed, but before it is adopted