PRIMARY CONSTITUTIONAL AND STATUTORY REQUIREMENTS FOR REDISTRICTING IN OREGON
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

Did race **predominate** in the creation of the district(s)?

- Yes
  - Was the predominant use of race **required** by the VRA, or to remedy past racial discrimination?
    - Yes
      - District(s) valid
    - No
      - District(s) invalid
- No
  - District(s) valid
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

NATIONAL CONFERENCE OF STATE LEGISLATURES
PARTISAN GERRYMANDERING

- **CLAIM CAN NO LONGER BE BROUGHT IN FEDERAL COURT**
  

- **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