Introduction

The third meeting of the Legislative Commission’s Committee on Reapportionment and Redistricting was held on May 3, 2000, in Las Vegas, Nevada, and was video-conferenced to Carson City, Nevada. This third issue of the Redistricting News highlights some of the material presented to the Committee at the meeting. More detailed information concerning any topics discussed at the meeting may be obtained by contacting the Research Library of the Legislative Counsel Bureau (LCB) at 775-684-6827.

Nevadans Respond Well to the 2000 Census...

Nevada’s Secretary of State, Dean Heller, provided the Committee on Reapportionment and Redistricting with a report on the initial response rates to the 2000 Census. He noted that, of the 50 states, Nevada had the second best improvement in the rate of response to the initial Census forms. In 1990, Nevada’s initial response rate was 61 percent. This year, the rate improved by 3 percentage points to 64 percent.

Mr. Heller also noted that many of the State’s communities improved their response rates by 3 percentage points or more. For example, Mesquite improved by 14 percentage points to 59 percent, Sparks improved by 9 percentage points to 71 percent, and the City of Elko improved by 9 percentage points to 64 percent. The cities of Henderson, North Las Vegas, and Reno each recorded improvements of 6 percentage points or more. Among the counties, improvements in initial response rates were highest in Elko County (12 percent), Washoe County (6 percent), and Clark County (3 percent).

...But Nonresponse Follow-up Efforts Continue

David A. Byerman, Chief Government Liaison for Nevada, U.S. Bureau of the Census, praised Nevadans for their improved initial response rates to the Census forms. He noted that Nevada was one of only 6 states that improved its response rate by 3 percentage points or more.

He also explained that the Bureau of the Census is continuing its efforts to secure responses from persons who failed to respond to the initial mail-in forms. The Bureau has established a telephone hot-line for people who want to let the Bureau know that they were missed during the initial count. The hot line number is the same number used earlier by the Bureau for recruiting enumerators and other Census workers—888-325-7733.

Redistricting Law 2000

Scott G. Wasserman, Chief Deputy Legislative Counsel, LCB, made a presentation to the Committee on Reapportionment and Redistricting concerning the legal principles of redistricting. He explained that the Nevada Legislature is responsible for redistricting congressional, state legislative, University Board of Regents, and State Board of Education districts.

Mr. Wasserman explained that several provisions of the Nevada Constitution relate directly to the method of reapportionment used in this state:
• Section 13, Article 1 of the Nevada Constitution requires representation to be apportioned according to population. The purpose of this section is to secure to each citizen equal representation in the making of the laws of this state. [State ex rel. Winnie v. Stoddard, 25 Nev. 452, 62 Pac. 237 (1900)]

• Section 5, Article 4 of the Nevada Constitution requires that, after each decennial census of the United States, the Legislature shall fix by law the number of senators and assemblymen and apportion them among legislative districts established by statute, according to the number of inhabitants in them respectively.

• Section 6, Article 15 of the Nevada Constitution provides that the aggregate number of members of both branches of the Legislature must never exceed 75. Section 5, Article 4 requires that the number of Senators shall not be less than one-third nor more than one-half of the number of Assembly members.

• Section 13, Article 15 of the Nevada Constitution provides that the census taken under the direction of Congress every 10 years shall serve as the basis of representation in both houses of the Legislature.

In 1971, Nevada’s attorney general interpreted the provisions of Section 5, Article 4 of the Nevada Constitution and indicated that the Legislature must reapportion at the first regular session following each decennial census, provided it deems that data is then available which is sufficiently definitive to provide the basis for reapportionment in compliance with the “one-person, one-vote” principle. Otherwise, reapportionment must be accomplished at a special session to be called after the necessary data is available. [Attorney General Opinion No. 18 (March 15, 1971)]

Mr. Wasserman also identified several standards for redistricting and reapportionment.

Equal Population

Constitutional Basis—Article 1, Section 2, of the U.S. Constitution provides that congressional representatives shall be apportioned among the several states according to their respective numbers. On the basis of this provision, the U.S. Supreme Court has held that population of congressional districts must be “as nearly equal as practicable.” According to Mr. Wasserman, any population deviation between congressional districts within Nevada, no matter how small, could render a reapportionment plan unconstitutional if an alternative plan with a smaller population deviation could have been adopted.

In addition, the Equal Protection Clause of the 14th Amendment to the U.S. Constitution is the basis for the equal population requirement for state legislative districts. A redistricting plan can withstand a constitutional challenge if it only has minor deviations in population among districts. The U.S. Supreme Court has indicated that a redistricting plan with a maximum deviation of under 10 percent likely would fall within the “minor deviations” category.

However, the Legislature should not assume that any legislative redistricting plan having up to a 10 percent overall deviation is safe from successful challenge. Such a plan could be stricken down if a challenge were to succeed based on some other legal requirement. A redistricting plan with a maximum population deviation greater than 10 percent creates a prima facie case of discrimination and must be justified by the state. A state that adopts a plan with a deviation of more than 10 percent would have the burden of showing that (a) the more than 10 percent range is necessary to implement a “rational state policy,” and (b) it does not dilute or take away the voting strength of any particular group of citizens. Affording representation to political subdivisions is the only “rational state policy” that has expressly been accepted by the Supreme Court as justification for a legislative
districting plan that has an overall deviation of more than 10 percent. Lower courts have accepted a desire to provide for compactness of districts or to protect a particular community of interest as “rational state policies” justifying a deviation of greater than 10 percent. Mr. Wasserman noted that court drawn plans are held to a higher standard; that is, they usually will have a deviation of less than 10 percent.

Robert E. Erickson, LCB’s Research Director, informed the Committee that the deviation between the largest and smallest Nevada Senate districts in 1991 was 2.6 percent, while the maximum deviation in the Nevada Assembly was 4.5 percent.

Racial and Ethnic Discrimination

Constitutional Basis—The 14th Amendment to the U.S. Constitution guarantees to all persons equal protection and due process under law. The 15th Amendment prohibits the abridgment or denial of the right to vote on the basis of race or color. Discriminatory purpose and discriminatory results are necessary elements of a successful challenge under the 14th or 15th Amendments.

Section 2 of the Voting Rights Act of 1965 (42 U.S.C. § 1973) prohibits a state from imposing any voting qualification, standard, practice, or procedure that results in the denial or abridgment of any citizen’s right to vote on account of race, color, or status as a member of a language minority group. Under Section 2 of the Voting Rights Act, a voting practice is unlawful if it results in a denial or abridgement of the right to vote on account of race, color, or membership in a language minority group. It is not necessary to prove a discriminatory intent to establish a violation of Section 2 of the Act.

Multi-member Districts—The issue of racial and ethnic discrimination often arises in connection with the multi-member form of districting. In the case of Thornburg v. Gingles, 478 U.S. 30 (1986), the U.S. Supreme Court held that multi-member districts are not a per se violation of the rights of minority voters. In Thornburg v. Gingles, the Court noted that to successfully challenge a multi-member district a minority group must show that (1) it is sufficiently large and geographically compact to constitute a majority in a single-member district, (2) it is politically cohesive, and (3) the majority of the population of the district votes sufficiently as a bloc so that the majority usually defeats the preferred candidate of the minority. In other cases the Court has invalidated the use of multi-member legislative districts where the use of such districts impedes the ability of minority voters to elect representatives of their choice.

“Packing” and “Fracturing”—To avoid a legal challenge based upon an unlawful discrimination against a minority group, in drawing a minority district, the Legislature must avoid “packing” and “fracturing.” “Packing” is drawing district boundary lines so that the members of a minority group are concentrated, or “packed,” into so few districts that they become a supermajority in the packed districts—constituting perhaps 70, 80, or 90 percent of the district’s population. As members of a “packed” district, they can elect representatives from those districts, but their votes in excess of a simple majority are “wasted” to the extent that they are not available to help elect representatives in other districts.

“Fracturing” is drawing district lines so that the minority population is broken up. Rather than allowing the minority to concentrate voting strength in a few districts, enabling the minority to elect representatives in those districts, the members of the minority are spread among many districts, keeping them a minority of the population in every district.

The Court has upheld the use of a “65 percent rule” in a district to facilitate the election of a representative of the minority group. A minority district with less than 65 percent minority population may indicate fracturing, while minority district with 75 percent or more minority population may indicate packing. This number (65 percent) is considered to be an appropriate percentage to ensure a simple majority (51 percent) of the district’s voting population is made up of minorities and to overcome three typical considerations in a minority neighborhood—less population of voting age, less voter registration, and lower voter turnout.

Racial Gerrymandering—In drawing minority districts in its redistricting plan, the Legislature must be careful not to make race the dominant factor in its redistricting plan. To succeed in a racial gerrymandering case, the plaintiffs must prove both that race is the dominant and controlling rationale in drawing district lines and that the legislature subordinated traditional race-neutral districting principles to racial considerations.

Mr. Wasserman indicated to the Committee that several criteria have been recognized by the courts to constitute traditional districting principles. These criteria include:
1. Compactness;
2. Contiguity;
3. Preservation of counties and political subdivisions;
4. Preservation of communities of interest;
5. Preservation of cores of prior districts;
6. Protection of incumbents; and
7. Compliance with Section 2 of the Voting Rights Act.

Partisan Gerrymandering

Mr. Wasserman explained that partisan gerrymandering cases are justiciable under the Equal Protection Clause of the 14th Amendment. Unconstitutional discrimination occurs only when the electoral system is arranged in a manner that will consistently degrade the influence of a group of voters on the political process as a whole. To successfully challenge a districting plan on this basis, the plaintiff must show intentional discrimination and an actual discriminatory effect.
Census 2000 Data and Geographic Products

Scott G. Wasserman, Chief Deputy Legislative Counsel, LCB, reviewed with the Committee on Reapportionment and Redistricting a letter that he wrote in response to a request from the Bureau of the Census for a list of data and geographic products desired by certain legislative leaders who are involved in the redistricting effort for the State of Nevada. On behalf of these legislators, Mr. Wasserman requested the following products:

1. Census Block Maps—1 copy of the paper maps, 8 copies of the Hewlett-Packard Graphics Language (HPGL) files on digital versatile disc (DVD), and 8 copies of the portable document format (PDF) files on compact disc read-only memory (CD ROM);
2. Census 2000 TIGER/Line file—8 copies on CD ROM;
3. Adjusted and Unadjusted Block Data from Census 2000—8 copies on CD ROM;
4. Voting District Outline Maps—1 copy of the paper maps, 8 copies of the HPGL files on DVD, and 8 copies of the PDF files on CD ROM;
5. Census Tract Outline Maps—1 copy of the paper maps, 8 copies of the HPGL files on DVD, and 8 copies of the PDF files on CD ROM.

In addition, Mr. Wasserman advised the Bureau of the Census of certain State constitutional provisions that apply in Nevada. Under the Nevada Constitution, each legislative session must convene on the first Monday of February of each odd-numbered year and must adjourn sine die not later than midnight Pacific Standard Time 120 calendar days following its commencement. Thus, under this provision, the 2001 Legislative Session will begin on February 5, 2001, and must end on or before June 4, 2001. Section 5 of Article 4 of the Nevada Constitution provides that it is the mandatory duty of the Legislature to apportion itself at its first session after the taking of each decennial census. These provisions were highlighted to the Bureau of the Census to emphasize the need for earliest possible delivery of redistricting data to the State of Nevada.

Update on Phase 2 (Voting District Project)

The purpose of this phase of the program, which began in December 1998, is to allow states to outline their legislative districts and existing election precincts on census maps or electronic files using visible features so they will be incorporated into the geographic data base that is used to report the Census results.

Brian L. Davie, Legislative Services Officer, LCB, and Kathy L. Steinle, GIS Specialist, LCB, reported to the Committee on Reapportionment and Redistricting the status of Nevada’s Phase 2 efforts. They explained that the State was given one month to verify the boundaries that were shown on the verification maps sent to Nevada by the Bureau of the Census. Ms. Steinle stated that of Nevada’s 17 counties, 9 had no changes, 3 had changes to precinct names, and 2 had boundary changes. Maps of two counties were still being reviewed as of the May 3, 2000, meeting of the Committee. Since the meeting, all maps have been verified and appropriate changes have been made.