

## What is Redistricting?

Redistricting is the process of redrawing electoral boundaries within a state. Most elected political offices in Maryland represent distinct geographical areas. These areas are called electoral districts. The United States Congress, The Maryland General Assembly, County Councils, and many county commissions or councils and local school boards represent voters within specified electoral districts.

Redistricting is different from reapportionment, which is the assignment of seats in the U.S. House of Representatives to states based on their population. This is a requirement of Article 1 of the U.S. Constitution. Once the number of representatives each State receives is determined, each State has the responsibility of creating specific electoral districts from which representatives are to be elected. This is the process of redistricting.

## Why Redistrict?

In 1962, the Supreme Court in *Baker v. Carr* interpreted the Equal Protection Clause of the 14<sup>th</sup> Amendment to the U.S. Constitution to require that electoral districts be periodically adjusted or redrawn to account for population shifts among them. According to the court's "one person, one vote" doctrine, malapportioned districts result in the votes of those voters in highly populated districts to count less than voters in less populated ones. It is said that those residing in districts of lesser population are "over-represented." While those citizens residing in larger districts are "under-represented."

In Maryland, the General Assembly is responsible for redrawing congressional boundaries. The Governor of Maryland is initially responsible for the state legislative district plan. As with all states, Maryland redistricts after the decennial census is completed and new population data is available to accurately distribute the population among districts.

## The Redistricting Process in Maryland

### Congressional

The Maryland Constitution is silent on the matter of congressional redistricting. Congress has given the state legislatures authority to redistrict congressional seats. The only federal statutory requirement is that congressional districts be single-member districts. The Maryland congressional plan is introduced as a regular bill in the General Assembly and must be passed by both houses and signed by the Governor who has veto power over the plan. Traditionally, the Governor introduces a congressional district map along with the constitutionally required legislative district map, however the General Assembly may vote on and approve a congressional or legislative district map introduced by any member(s).

### Legislative

Article III, Section 5 of the Maryland Constitution requires the Governor to prepare a legislative districting plan following the decennial census. The Governor must present the plan to the President of the Senate and the Speaker of the House of Delegates. The presiding officers must have the plan introduced as a joint resolution on the first day of the regular session in the second year following the decennial census (January 11 2012). If the General Assembly has not adopted another redistricting plan by the end of the 45<sup>th</sup> day of the session, the Governor's plan as presented becomes law.

## Federal Legal Requirements

### I. Equal Population

Equal and fair representation is one of the cornerstones of our representative democracy. Starting with *Baker v. Carr* in 1962, the courts have established a considerable set of case law requiring the periodic redrawing of district lines and

governing the standards that must be followed to preserve the “one person, one vote” doctrine, as well as to protect the voting rights of minority groups.

### **Congressional Plans**

Perhaps the most steadfast rule handed down by the Supreme Court is that a congressional district must be created with as nearly equal population as practicable. Strict population equality is the rule. In the past, the Court has rejected several justifications for deviating from strict population equality, including: a state’s desire to avoid fragmenting political subdivisions or areas with distinct socioeconomic interests; a preference for geographically compact districts; and considerations of practical politics.

### **State Legislative Plans**

The Supreme Court established a less stringent rule for state legislative district plans in *White v. Regester* and *Gaffney v. Cummings*. These cases place the burden of proof on a plaintiff to show that variance of 10% or less is a violation of the one person, one vote principle.

## **II. The Voting Rights Act of 1965**

The Voting Rights of 1965 was originally enacted to prohibit election practices that excluded minorities from exercising their right to vote. During the 1960’s and 70’s, the U.S. Department of Justice used its provisions to enforce prohibitions on election practices such as poll taxes, literacy tests, and other prerequisites to voting that discouraged minorities from voting. Once direct obstructions to voting were more or less eradicated by enforcement of the Act, the focus changed to the effects of gerrymandering on minorities. Many State redistricting plans were held to be in violation of the Act because they included districts that had been drawn in such a way as to dilute a minority population’s voting strength. This is usually accomplished by spreading a compact minority population across several districts or by intentionally drawing districts around minority populations to create a district with an exceedingly high concentration of minorities, thwarting the creation of an additional district with minority voting strength. These cases, which began in 1986 with the U.S. Supreme Court decision in *Thornburg v. Gingles*, 478 U.S. 30, emphasized two provisions of the Act; Section 2 and 5.

### **Section 2**

<Section 2(a) of the Voting Rights Act> read in part as follows:

No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color. . .

This section covers all jurisdictions and is almost exclusively enforced by lawsuits instituted against States or political subdivisions by the U.S. Department of Justice or other private parties.

## **III. 14<sup>th</sup> Amendment, U.S. Constitution**

In addition to the equal population requirement, the Equal Protection Clause of the 14<sup>th</sup> Amendment to the U.S. Constitution also limits racial and political gerrymandering.

## **Racial Gerrymanders**

In 1993, the U.S. Supreme Court ruled that redistricting plans that include some majority minority districts violate the Equal Protection Clause if they are drawn primarily in consideration of race. In *<Shaw v. Reno, 509 U.S. 630>* and subsequent cases, the court has said that a violation occurs when race is the predominant consideration in drawing district lines and when other, traditional districting principles such as compactness and regard for political subdivision boundaries are ignored in favor of race. Generally, such districts are extremely irregular and cannot be explained as anything other than an attempt to create a district according to race. The court explained that there was an inherent danger in the classifying of citizens on the basis of race. Thus States can only create majority minority districts where they are reasonably compact and take into consideration factors other than race.

## **Partisan Gerrymanders**

In 1986, a divided U.S. Supreme Court recognized the legal claim that a redistricting plan could unconstitutionally discriminate against a minority party. In *<Davis v. Bandemer, 478 U.S. 109>* the court said that if a redistricting plan substantially interfered with a minority party's ability to participate in the electoral process to the point where that party is effectively shut out of the legislative process altogether, a violation of the 14<sup>th</sup> Amendment would occur. Since this decision no challenges have been successful at proving the requisite discriminatory effect needed to prove a case of political gerrymandering.

## **State Legal Requirements**

Article III, sections 2 and 3 of the Maryland Constitution set out the requirements that must be followed in redistricting the General Assembly. Section 2 establishes the size of the General Assembly (47 Senators, 141 Delegates). Section 3 provides that the state is to be divided into legislative districts for the purposes of electing Senators and Delegates. One Senator and 3 Delegates are to be elected from each district. For the purpose of electing Delegates, districts may be subdivided into 3 single-member delegate districts or one single member delegate district and one multi-member delegate district.

Although not in the state constitution, an additional "resident Delegate" requirement has been added to the Assembly's joint resolution since 1970. The rule requires in any legislative district which contains more than 2 counties:

- (1) where Delegates are to be elected at large by the voters of the entire district, a county, or part of a county, may not have more than 1 Delegate residing in that district; and
- (2) where Delegates are to be elected by the voters of a multimember subdistrict which contains more than 2 counties or parts of more than 2 counties, a county or a part of a county may not have more than 1 Delegate residing in that subdistrict

This rule was established to guarantee representation in the General Assembly to small counties that comprise an at-large delegate district.

Article III, section 4 of the Maryland Constitution requires legislative districts to be substantially equal in population, compact in form, and contiguous. It also requires a legislative redistricting plan to give "due regard" to the boundaries of political subdivisions. Generally, this means that county, city, and other municipal boundaries should be left intact whenever possible. Article III also requires public hearings to be held before the State legislative plan is enacted.

## **Allocation of Prisoners**

Chapter 67 of 2010 requires that population counts used to create legislative districts for the U.S. Congress, General Assembly, and county and municipal governing bodies exclude incarcerated individuals who were not State residents prior to their incarceration in either State or federal correctional facilities. It also requires that incarcerated individuals

who were State residents prior to their incarceration be counted as residents of their last known address before their incarceration in a State or federal facility.

## Past Legal Issues

### State Constitutional Issues

#### Jurisdiction

The Maryland Court of Appeals has original jurisdiction to review legislative redistricting and may grant appropriate relief if it finds that the plan is not consistent with the requirements of the Maryland Constitution.

#### Public Hearing Requirement

The 1973 legislative redistricting plan was invalidated by the Maryland Court of Appeals for failure to comply with the State constitutional requirement for public hearings. The Governor had held only one public hearing, which was announced in a single press release two days earlier. A Special Master was designated by the court to hold several adequately publicized hearings around the State. The plan was subsequently adopted by the court in March 1974. (*In The Matter of Legislative Redistricting of the State*, 271 Md. 320, 317 A.2d 477)

#### Compactness Requirement

The State constitutional compactness requirement was considered by the Maryland Court of Appeals in a challenge to the 1982 legislative redistricting plan. Several districts in several counties were challenged, the principle districts being in Montgomery County and Baltimore City. The court upheld each challenged district stating that none of them reached the level of noncompactness contemplated by the State constitution. (*In Re Legislative Redistricting* 299 Md. 658, 475 A.2d 428 (1982))

#### Due Regard Requirement

In 1993 the Maryland Court of Appeals considered a challenge to the Governor's enacted 1992 legislative redistricting plan based on alleged violations of the State constitution's requirement that the State give due regard to natural boundaries and political subdivisions. The focus of attention were five legislative districts in Baltimore City which crossed into Baltimore County. A majority of a fractured court narrowly upheld the plan. The majority stated that the plan came "perilously close" to violating the State constitution when it crossed political subdivision lines in order to group communities that the Governor's redistricting advisory committee felt had shared interests. (*Legislative Redistricting Cases*, 331 Md. 574, 629 A.2d 646).

#### Due Regard for Political Subdivisions

The Governor's 2002 Legislative districting plan was challenged on the basis that it violated the state constitution's requirement that a plan give due regard to the boundaries of political subdivision lines. As in 1992 the focus was on the 9 instances where legislative district lines crossed the Baltimore City and Baltimore County border. The Court of Appeals invalidated the plan because the map impermissibly prioritized other policy goals over and above minimizing the crossing of political subdivision boundaries. (369 Md. 398, 800 A.2d 744 (2002))

#### Equal Population

The Governor's 1992 legislative redistricting plan was also challenged on the basis that its districts did not comply with the "substantially equal" population requirement of the State constitution. The difference between

the least and the most populated senatorial district was 9.84%. Federal case law presumes a state legislative districting plan to be constitutional if its overall deviation is below 10% unless a challenger can show the deviations are the result of an “unconstitutional or irrational” state policy. (*849 F.Supp 1022, 1032 (1994)*)

The Maryland Court of Appeals interpreted the State constitutional provision as being even less strict than the federal 10% rule and cited the legislative history surrounding the enactment of the constitutional provision, which contemplated a maximum allowable deviation of 15%. (*Legislative Redistricting Cases, 331 Md. 574, 629 A.2d 646*).

## **Federal Constitutional Issues**

### **Jurisdiction**

The Maryland Court of Appeals may be bypassed if it is alleged that a violation of the Voting Rights Act of 1965 or any of the relevant U.S. Constitutional provisions. (14<sup>th</sup> Amendment, 15<sup>th</sup> Amendment) has occurred. In that case, the Federal District Court has jurisdiction and may exercise that jurisdiction narrowly or broadly, irrespective of the specifics of the suit.

### **Minority Vote Dilution**

A portion of the Governor’s 1992 legislative redistricting plan for the Maryland House of Delegates was invalidated by a Federal District court in (*Marylanders for Fair Representation v. Schaefer, 849 F.Supp 1022 (D. Md. 1994)*), for violating section 2 of the Voting Rights Act. While the court explained that the State was not obligated under section 2 to create a majority minority district wherever possible in a plan, the creation of these districts are required whenever the conditions set forth under the U.S. Supreme Court decision in (*Thornburg v. Gingles, 478 U.S. 30 (1986)*) are present. The court found that only the district 37 met these conditions, which included racial block voting, geographical compactness and political cohesion of the African-American population, and a history of racial discrimination in the area. The court ordered the State to create district 37A, a new, single-member, majority minority district.

### **Partisan Gerrymandering**

A federal District court dismissed a claim that the Governor’s 1992 legislative plan was an illegal partisan gerrymander in violation of the Equal Protection Clause of the 14<sup>th</sup> Amendment. It found that the plan did not cause the degree of discriminatory effect on the minority party necessary to invalidate the plan. The plan did not take away their political influence in the legislature or among voters as a result of the redistricting plan as the decision in (*Davis v. Bandemer, 478 U.S. 109 (1986)*) required.

## **The Department of Legislative Service’s Role**

The Department of Legislative Services provides staff support necessary for redistricting to the General Assembly. The Department will make available to members customized maps and reports of the data needed to develop redistricting plans.

Assistance will be available through the Department for members seeking help with drafting alternative plans or amendments to the Governor’s legislative districting plan or congressional plans. Maps and statistical reports will be produced for members seeking assistance with districting plans.

The department will also accept plans submitted to the General Assembly by the general public or other interest groups. To facilitate the submission of these plans, formatting standards will be established for electronic submissions in conjunction with the Governor’s Office.

## Basic Redistricting Statistics

The following 2010 population numbers are based on U.S. Census data and have not been adjusted pursuant to Maryland's No Representation Without Population Act (Chapter 67 of 2010).

<b>2010 State Population</b>	5,773,552
Total Legislative Districts	47
Ideal Legislative District Population	122,842
Allowable Variance (+ or - 5%)	116,700 – 128,984
Ideal Single Member Delegate District Population	40,947
Allowable Variance (+ or - 5%)	38,900 – 42,994
Ideal Two Member Delegate District Population	81,895
Allowable Variance (+ or - 5%)	77,800 – 85,990
Number of Congressional Districts	8
Ideal Congressional District Population	721,694
Allowable Variance	Strict Population Equality

## Glossary of Terms

**At-Large Voting:** An election in which a candidate or candidates are elected by voters from an entire political subdivision as opposed to a single election district.

**Compactness:** A traditional districting principle; the ideal being a district with every point along its boundary being of equal distance from its center. A circle is the most compact shape for a district.

**Contiguity:** Traditional redistricting principle referring to whether or not all parts of a district are connected to each other.

**Electoral Districts:** Geographical areas represented by elected political officials.

**Gerrymander:** The intentional drawing of district boundaries to advantage one group over another.

**Majority-Minority Districts:** A legal term of art used to describe districts in which a racial or ethnic minority constitutes a majority of the population.

**Minority Vote Dilution:** A legal term of art specifically referring to a claim under Section 2 of the Voting Rights Act alleging that a newly drawn district has been constructed in a manner which dilutes the voting strength of minorities.

**Multimember District:** A district that elects two or more members of an elected body.

**One Person One Vote:** A constitutional standard for all electoral districts established by the Supreme Court, which requires that districts be equal in population.

**Racial Block Voting:** Evidence used in vote dilution cases which show that voters in a particular district vote for candidates along racial lines.

**Reapportionment:** The allocation of seats in a legislative body among established districts jurisdictions where the district boundaries do not change but the number of members per district does.

**Redistricting:** The drawing of new political district boundaries; usually done following the decennial census.

**The Voting Rights Act of 1965:** A federal statute enacted under authority of the 15th amendment that invalidates State election laws and practices that disenfranchise voters on account race or color.

**Section 2 of the Voting Rights Act:** Generally outlaws any voting qualification or practice that abridges the right of citizens to vote. This section is the basis for minority vote dilution claims against redistricting plans.