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APPENDIX K

STANDARDS AND CRITERIA GOVERNING THE 2021  
REAPPORTIONMENT AND REDISTRICTING PROCESS

## **VII. DISCUSSION AND ACTION REGARDING THE STANDARDS AND CRITERIA GOVERNING THE REAPPORTIONMENT AND REDISTRICTING PROCESS**

## Proposed - 2021 REAPPORTIONMENT COMMISSION

### STANDARDS AND CRITERIA U.S. CONGRESSIONAL DISTRICTS

#### Standards and criteria that shall be followed:

The population base used shall be the total population of the State of Hawaii as determined by the last U.S. Census - 1,455,271 persons.

The population in the two congressional districts shall be as nearly equal as possible. The difference in the populations in the two districts must be less than 1%.<sup>1</sup> The congressional districts shall not be drawn so as to unduly favor a person or political party.

The congressional districts shall be "contiguous". In other words, all parts of each district should share a common border and you should be able to reach any part of that district without crossing the district's boundary. Put another way, no district should be divided into two or more discrete pieces.

The congressional districts shall not be drawn so as to: (a) deny or abridge a citizen's right to vote based on race, color or membership in a language minority group; or (b) unlawfully discriminate against voters on the basis of race, color or membership in a language minority group.

#### Standards and criteria that are to be followed if practicable:

The congressional districts should be geographically "compact".

The congressional district boundaries should follow permanent and easily recognized features such as streets, streams, and clear geographic features.

The congressional district boundaries should coincide with census tract boundaries.

The state legislative districts should be wholly included within the congressional districts. In other words, all proposed state senate and representative districts should wholly fit within one of the two proposed congressional districts. They should not cross the

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<sup>1</sup> Congressional redistricting plans with maximum deviations in population of up to 1% have been approved by federal courts, "provided the state policies underlying each individual deviation are both legitimate and sufficiently related to the deviation." See Hebert, et al., *The Realists' Guide to Redistricting*, Second Edition, ABA Section of Administrative Law and Administrative Practice, at page 7 (2010), citing *Vera v. Bush*, 933 F. Supp. 1341, 1348 & n. 9 (S.D. Tex., 1996) (three-judge court) and *Vera v. Bush*, 980 F. Supp. 251, 253 (S.D. Tex., 1997) (three-judge court).

congressional district borders and sit partly within both congressional districts.

Submergence of an area in a larger district wherein substantially different socio-economic interests predominate should be avoided. For example, if there are two groups of people with differing socio-economic interests residing in areas close to each other, if practicable, the congressional districts should not be drawn so that the voting power of one of the groups is submerged or outweighed by the voting power of the other group.

All proposed plans submitted to the Commission must contain the following technical information in the following format in order to be considered:

- Plans shall be submitted as a table of census block IDs, block population, and assigned district number.
- Permissible district numbers for Federal Congressional plans are 1 and 2.
- The Commission will also accept general comments and recommendations for redistricting and requests to consolidate, split or maintain specific communities of interest. Comments and recommendations should be submitted in writing.

Other standards and criteria:

- Neighborhoods will generally be determined based on existing elementary school district boundaries and/or neighborhood board district boundaries.
- While not mandatory, it is beneficial in the development of plans if the existing boundaries can be used as a starting which can be adjusted to reflect current data. This will facilitate tracking where changes have been made.

**Proposed - STATE LEGISLATIVE DISTRICTS**

Standards and criteria that shall be followed:

The population base used shall be the "permanent resident" population of the State of Hawaii. We plan to calculate the permanent resident population by taking the total population of the State of Hawaii as shown in the last U.S. census and subtracting the following : non-resident students and non-resident military sponsors and their dependents, as provided to us by local universities (i.e. University of Hawaii System, Hawaii Pacific University, Chaminade University, and Brigham Young University – Hawaii) and the military (i.e. Defense Manpower Data Center – Department of Defense). This is consistent with Article IV, Section 6, HRS § 25-2, the prior conduct of Reapportionment Commissions, and the Hawaii State Supreme Court's decision in *Solomon v. Abercrombie*, 126 Hawaii 283, 270 P.3d 1013 (2012) that discuss the

determination of the "permanent resident" population base.

The permanent resident population in each of the 25 state senate districts shall be as nearly equal as possible. Likewise, the permanent resident population in each of the 51 house of representative districts shall be as nearly equal as possible. The population difference between the largest and smallest of the districts of each house (the "maximum deviation") may be impacted by whether the integrity of the basic island units called for in Article IV, Section 4 concerning apportionment among the four basic island units is maintained or if the Commission decides to use canoe-districts that involve more than one basic island unit.<sup>2</sup>

Article IV, Section 4 is to be complied with, as opposed to the use of canoe-districts to lower the deviation between districts, the allocation of members to each house of the state legislature among the four basic island units is to occur through "the method of equal proportions; except that no basic island unit shall receive less than one member in each house." The method of equal proportions, is the same method of equal proportions, sometimes referred to as the Huntington-Hill method, that was used to apportion the U.S. House of Representatives. 2 USC § 2a. The application of the method of equal proportions to determine how many seats are allocated to a jurisdiction is reflected on the U.S. Census Bureau's website and will likewise be applied to allocate seats among the basic island units. <https://www.census.gov/topics/public-sector/congressional-apportionment/about/computing.html>.

As part of the documentation of the plans, it is advisable to prepare tables that reflect not only deviations between all districts but also deviations between districts within a basic

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<sup>2</sup> A thorough discussion of the impact of maintaining basic island units on the deviation between the largest and smallest district in the state can be found in *Kostick v. Nago*, 960 F.Supp.2d 1074 (2013), *aff'd*, *Kostick v. Nago*, 134 S.Ct. 1001, 187 L.Ed.2d 849 (2014). Suffice it to say the maintaining of basic island units will result in significant deviations in excess of 10%. In 2011, the deviations between the largest and smallest districts were 44.22% in the Senate and 21.57% in the House. As noted in *Kostick*, "[b]ecause the total deviations exceed 10 percent, the 'entire plan is thus suspect and deviations substantially adding to the maximum deviation must be justified with expressed reasons.'" *Id.* at 109 (internal citations omitted). The District Court as affirmed by the U.S. Supreme Court concluded, in part, as follows:

We conclude that, given Hawaii's unique history, culture, and geography, the deviations of 44.22 percent in the Senate and 21.57 percent in the House do not exceed constitutional limits. We emphasize that our holding is specific to the facts before us. We do not hold that Hawaii's documented rationales—strong as they are—could justify any deviation, no matter how large. Nor do we suggest that Hawaii's state constitutional mandate trumps the Equal Protection Clause. This court has intervened before in Hawaii's legislative reapportionment, to little benefit and much dissatisfaction. Perhaps such intervention was warranted in 1982 on the record before the court in *Travis*. But on the extensive record before us, which evidences Hawaii's thoughtful and deliberative attempt to adequately represent its citizens in the face of unique challenges, we come to a different conclusion. Crediting the strength of the Commission's rationales and the uncontradicted evidentiary support in the record, the 2012 Reapportionment Plan's deviations pass constitutional scrutiny. The Commission created a reapportionment plan that was implemented in a manner consistent with principles of equal representation. The 2012 Reapportionment Plan complies with *Reynolds's* ultimate aim—to achieve and assure "fair and effective representation for all citizens." 377 U.S. at 565–66, 84 S.Ct. 1362.

*Id.* at 111.

island unit. The Commission can balance representation in both houses as occurred in *Kostick*, a table reflecting the "disparities among *all* legislators (the 76 House and Senate seats combined) by basic island unit" may facilitate a discussion of such a position. *Id.* at 1102.

No state legislative district shall be drawn so as to unduly favor a person or political party.

Except in the case of districts encompassing more than one island, each state legislative district shall be "contiguous". In other words, all parts of each proposed district should share a common border and you should be able to reach any part of that district without crossing the district's boundary. Put another way, no district should be divided into two or more discrete pieces.

All state legislative districts should be single-member districts. Alternatively, not more than four members shall be elected from any state legislative district.

In drawing the state legislative districts, no census blocks shall be split. In other words, district lines shall not be drawn so that a census block lies partly in one district and partly in another district.

The state legislative districts shall not be drawn so as to: (a) deny or abridge a citizen's right to vote based on race, color or membership in a language minority group; or (b) unlawfully discriminate against voters on the basis of race, color or membership in a language minority group.

Standards and criteria that are to be followed if practicable:

No district shall extend beyond the boundaries of any basic island unit.\*

The state legislative districts should be geographically "compact".

The state legislative district boundaries should follow permanent and easily recognized features such as streets, streams, and clear geographic features.

The state legislative district boundaries should coincide with census tract boundaries.

The state legislative districts should be wholly included within the congressional districts. In other words, all proposed state senate and representative districts should wholly fit within one of the two proposed congressional districts. They should not cross the congressional district borders and lie partly within both congressional districts.

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The state house of representative districts should be wholly included within the state senate districts. In other words, a representative district should not lie partly in one senate district and partly within another senate district.

Submergence of an area in a larger district wherein substantially different socio-economic interests predominate should be avoided. For example, if there are two groups of people with differing socio-economic interests residing in areas close to each other, if practicable, the state legislative districts should not be drawn so that the voting power of one of the groups is submerged or outweighed by the voting power of the other group.

All proposed plans submitted to the Commission must contain the following technical information in the following format in order to be considered:

- Plans shall be submitted as a table of census block IDs, block population, and assigned district number.
- Permissible district numbers for State Senate plans are 1 thru 25. Permissible district numbers for State House plans are 1 thru 51.
- The Commission will also accept general comments and recommendations for redistricting and requests to consolidate, split or maintain specific communities of interest. Comments and recommendations should be submitted in writing.

Other standards and criteria:

- Neighborhoods shall be determined based on existing elementary school district boundaries and/or neighborhood board district boundaries.
- While not mandatory, it is beneficial in the development of plans if the existing boundaries can be used as a starting which can be adjusted to reflect current data. This will facilitate tracking where changes have been made.