

Legal Considerations for Subdistricting

Redistricting Committee
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Exhibit 22

Subdistricting Multi-Member Districts into Subdistricts

- Multi-member districts are not inherently unlawful but may raise issues under federal law.
- Redistricting bodies may use multi-member or single-member districts for several reasons.
- Federal law provides additional considerations for districting decisions involving race as a factor.
- Subdistricts must comply with the one-person, one-vote principle so the populations in subdistricts must be approximately equal.

Fourteenth Amendment

- Generally, race may not be the "predominant factor" in the creation of a particular district.
- However:
 - Race may be the predominant factor if the district is "narrowly tailored" to achieve a "compelling state interest;" and
 - Race may be one factor out of multiple factors considered in the creation of a particular district.

Compelling State Interest

- Courts have said compelling state interests include:
 - Complying with Section 2 of the federal Voting Rights Act; and
 - Remedying past discrimination.

Compelling State Interest: Complying with the Voting Rights Act

- Complying with the Voting Rights Act can be a compelling state interest if there is direct evidence the votes of members of a racial minority would be diluted without a majority-minority district.
- Look to the Gingles Preconditions, which are covered in an upcoming slide, to help with this analysis.

Compelling State Interest: Remedying Past Discrimination

To show a compelling state interest in remedying past discrimination:

- The state must identify the past discrimination, which may have been public or private, with some specificity, and
- The redistricting body must have had a "strong basis in evidence" to conclude remedial action was necessary before engaging in the remedy.

Narrowly Tailored

- The remedy needs to correct the identified problem without going too far.
- To show a plan is narrowly tailored to complying with the Voting Rights Act, the state needs to show it "has good reason to think that all the Gingles preconditions were met..."
 - If the Gingles preconditions were met, courts then may consider the Senate Factors.

Gingles Preconditions

- The minority group is sufficiently numerous and compact to form a majority in a single-member district.
- The minority group is "politically cohesive" (i.e., tends to vote similarly).
- The majority group votes as a block (i.e., tends to vote similarly) so the minority group's candidate of choice usually is defeated.

Senate Factors

- History of official discrimination
- Racially polarized voting in the state
- Election procedures that diluted the minority vote
- Minority exclusion from the candidate slating process
- Effects of discrimination in health, education, and employment
- Subtle or overt racial appeals in campaigns
- Lack of elected officials' responsiveness to needs of minority
- Extent of minority success being elected to public office

Questions?



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