

# **Attachment C**

## **ATTACHMENT C:**

### **Legal Criteria for Redistricting of Supervisorial Boundaries**

The County's redistricting of supervisorial boundaries must comply with the requirements of the state Elections Code. As explained below, the code sets forth two mandatory criteria and several permissive traditional criteria that the Board may consider for the adjustment of district boundaries.

#### **Criteria:**

##### *Elections Code Section 21500*

Following each decennial federal census, and using that census as a basis, the board shall adjust the boundaries of any or all of the supervisorial districts of the county so that the districts shall be as nearly equal in population as may be and shall comply with the applicable provisions of Section 1973 of Title 42 of the United States Code, as amended. In establishing the boundaries of the districts the board may give consideration to the following factors: (a) topography, (b) geography, (c) cohesiveness, contiguity, integrity, and compactness of territory, and (d) community of interests of the districts. (Cal. Elec. Code §21500)

##### *Mandatory Criteria*

Section 21500 sets forth two mandatory criteria. The section directs that the adjustment of supervisorial districts *shall*:

- 1) "be as nearly equal in population as may be"; and
- 2) "shall comply with the applicable provisions of federal Voting Rights Act.

##### *1. Population Equality*

The first mandatory requirement of section 21500 places "equality of population" between districts as paramount in order to equally weight the votes among the districts. The language of the section and case law, however, recognize that strict population equality among the districts (20% in each district) may not be possible when the Board takes into account the other legal criteria for adjustment of district boundaries as set forth in section 21500.

It should be noted that the trend in current case law is to require greater equality than in previous years. Case law has made it clear that there is no "safe harbor" in regard to population deviations, i.e., a percentage deviation that is acceptable without justification. Therefore minor deviations from population equality are permissible if justified by legitimate considerations such as efforts by the Board to adjust boundaries in compliance with the Voting Rights Act or as a result of the application of the other enumerated legal criteria set forth in section 21500.

Justifications for population deviations should be stated by the Board on the record prior to the adoption of new district boundaries.

## 2. Federal Voting Rights Act

The second mandatory requirement is that the Board must comply with the federal Voting Rights Act (VRA). The VRA prohibits any act, including the adjustment of district boundaries, that results in an abridgment of the voting rights of any citizen on account of race or language, even if unintended. (42 U.S.C. §1973)

Under current VRA case law, the most important considerations for the Board are 1) the potential dilution of any minority voting populations and 2) the use of race in adjusting boundaries. In regard to the first consideration, the Board must consider the following:

- a.) Does a geographically compact minority population exist within a relevant geographic area, e.g., an existing or proposed district that constitutes a majority of the voting age population?
- b.) If so, is it possible to draw a district boundary in which the minority population comprises a majority of the voting age population?

If the answers to the above questions are “yes,” absent any compelling public interests to the contrary, the district boundary should be drawn to maintain the majority minority population in order to avoid possible violations of the VRA. (*See, Thornburg v. Gingles* 478 U.S. 30, 50-51 (1986))<sup>1</sup>

In regard to the second consideration, the use of race in drawing boundaries, the U.S. Supreme Court has disapproved elevating race above traditional redistricting factors, such as community of interest, topography, etc. (*Shaw v. Hunt* 517 U.S. 899 (1996))

### Permissive Criteria

Section 21500 also enumerates permissive criteria that the Board may consider when adjusting boundaries. These criteria are subordinate to the two mandatory criteria previously discussed.

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<sup>1</sup> In *Gingles*, the U.S. Supreme Court set forth a three-part threshold test that a minority group must meet to establish a violation of the VRA. This test requires that a minority prove that: 1) it is sufficiently large and geographically compact to constitute a majority in its preferred district; 2) it is politically cohesive; and 3) the majority usually votes as a bloc in the challenged district so as to usually defeat the minority’s preferred candidates if the district were fragmented. If these three conditions are met, the court will consider the “totality of circumstances” to determine whether a violation has occurred. (See also, *Garza v. County of Los Angeles* (1990) 918 F.2d 763, *cert. den.* (1991) 498 U.S. 1028)

The permissive criteria are commonly referred to as “traditional” redistricting criteria and are as follows:

- (a) Topography and (b) geography: These criteria advise the use of obvious natural barriers such as rivers and mountain ranges and prefer that political boundaries, such as city and district boundaries, be respected to the extent possible.
- (c) Cohesiveness, Contiguity, Integrity and Compactness of Territory: Cohesiveness, integrity and compactness of territory and the concept of community of interest (discussed below) are factors intended to protect the voting strength of groups, including minority voters that share similar interests thereby promoting the goal of the creation of districts that are effective for both the represented and their representative. These criteria are described in more detail below.

1. Cohesiveness generally refers to the political and social cohesion of population groups within a geographically compact area.
2. Contiguity refers to the boundaries of a district. A district is contiguous if you can travel from any point in the district to any other point in the district without crossing the district boundary. Another description of a contiguous district is a district where all parts of the district are connected to each other and the district lies within one boundary.
3. Integrity and Compactness of Territory: Although not clearly defined, integrity takes meaning when seen in combination with “contiguity” and “compactness” (below) and refers to the preservation of the integrity of geographic regions defined by district boundaries. It seeks to respect existing political boundaries and avoid odd-shaped districts connected only by corridors and consisting of widely separated areas, rather than compact boundaries drawn with consideration to available modes of transportation and communication within the district.

Compactness also refers to the geometric shape of a district and the extent to which the district’s geographic territory is dispersed from its center. A district is generally considered compact if it has a fairly regular shape, with constituents all living relatively near to each other. It primarily relates, however, to the ability of citizens to relate to each other and their representatives combined with their geographic proximity to each other, taking into account the availability of transportation and communication within the relevant geographic area.

4. Community of Interests refers to a group of people concentrated within an area, such as a city or neighborhood that have social and economic interests in common. This factor should be considered in determining whether an area should be included within or excluded from a proposed district so that all citizens of the district may be

represented reasonably, fairly and effectively. Examples of such shared interests, among others, are those common to an urban area, a rural area, an industrial area or an agricultural area, and those common to areas in which the people share similar living standards, use the same transportation facilities, have similar work opportunities or have access to the same media of communication relevant to the election process. A district may have more than one community of interest within its boundaries.

### **Board Process and Statutory Deadline**

California Elections Code section 21500.1 requires two public hearings in order to adjust district boundaries. The first hearing is to receive initial public comments on proposals to adjust boundaries and the second public hearing occurs when the Board votes on the selected proposal. Because the amendment of the existing ordinance requires two hearings, a second reading of the final ordinance adjusting district boundaries will be required in addition to the hearing at which the Board votes on the selected proposal.

The Elections Code sets November 1, 2011 as the deadline for the adoption by the Board of the final district boundaries. However, because the adjustment of district boundaries is accomplished by enactment of an ordinance that will not legally go into effect until 30 days following adoption, the deadline for the second reading of ordinance is effectively October 1, 2011.

If the Board fails to take the final action prior to the statutory deadline, the Elections Code requires that the boundary adjustments be effected by a "Supervisory Redistricting Commission" composed of the District Attorney, the County Assessor and the County Superintendent of Schools.