A GUIDE
TO
STATE AND CONGRESSIONAL REDISTRICTING
IN
NEW MEXICO

2011

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INTRODUCTION

No other single issue ignites the interests of legislators, sparks such a variety of alternatives or creates such an intense atmosphere of maneuver and compromise as does redistricting. Redistricting can be an agonizing experience. Shifts in population leave some legislators in the unhappy position of having to vote on a redistricting bill that may cost them their legislative seats. Some residents will find themselves in new districts. Some areas of the state lose power in the lawmaking process to other areas. Political control of the legislature may move from one party to another or from one political philosophy to another.

On March 15, 2011, the United States Census Bureau released the decennial count of the population of New Mexico — 2,059,179 — as assigned to its 1,448 precincts. The New Mexico Legislature is now faced with the task of redistricting its house and senate seats, the Public Regulation Commission districts and the state's three congressional districts.

In view of this impending drama and the importance of redistricting to basic citizenship, it is appropriate for the Legislative Council Service to summarize the basic process of redistricting and provide an overview of that process in New Mexico. We hope the following will provide all New Mexicans with a nontechnical and informative introduction to the subject.

WHAT DOES IT MEAN TO REAPPORTION OR REDISTRICT?

Reapportionment

"Reapportionment" is the process of dividing or redividing a given number of seats in a legislative body among established governmental units, usually according to a plan or formula. We generally use the term reapportionment when referring to the process by which the 435 seats of the United States House of Representatives are apportioned among the 50 states. This is accomplished through the use of a mathematical formula, which is recalculated every 10 years following the federal census. At that time, the 435 congressional seats are reapportioned among the 50 states. The fastest growing states are apportioned more representatives, and states that are not growing as fast lose representatives.

Redistricting

"Redistricting" is often used synonymously with reapportionment but the terms do not mean the same thing. Redistricting means redrawing the boundaries of existing voting districts. In this process, the number of representatives per district does not change but the district's boundaries do. For example, New Mexico has 70 house districts and 42 senate districts. Redistricting will not change the number of districts but it will change the boundaries of those districts.

Unlike reapportionment, which is a mathematical process, redistricting is a political process. In redistricting, there is discretion in where new boundaries are placed.

WHY REAPPORTION AND REDISTRICT?

Constitutional and Statutory Authority

The history of redistricting begins with the United States Constitution and its requirement that members of the United States House of Representatives be apportioned among the states according to the number of persons in each state as determined by an actual enumeration every 10 years. Section 2 of the Fourteenth Amendment and Article 1, Section 2 of the United States Constitution, in pertinent part, state:

> Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State[1] . . . The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct[2] . . .

Beginning with the first census in 1790, there has been a census every 10 years, for an unbroken series of 23 nationwide population counts. The census provides the statistical basis for state-drawn congressional district lines, almost all state legislative redistricting plans, most local redistricting measures and many distribution formulas for allocating revenues and government funds.

Congress has delegated the responsibility for taking the census to the United States Department of Commerce and its Census Bureau. The law directs the secretary of commerce to take a decennial census of the population as of the first day of April of the first year in each decade. The census must be completed within nine months and the state population totals reported to the president by December 31 of the census year.[3]

Following the census, the president transmits to Congress the apportionment of the 435 representatives among the states. Each state is guaranteed at least one representative. The remaining 385 seats are apportioned among the states based on census results and a mathematical formula known as the "method of equal proportions".

New Mexico's population did not grow enough between 2000 and 2010 to warrant the addition of a fourth congressional district.

Statutory law further requires that the secretary of commerce, no later than April 1, 2011, provide more detailed reports by state sub-units to the governors and bodies or officials charged with state legislative redistricting. This population data is commonly referred to as PL 94-171 data, after the federal law requiring the data reports.[4] It is this data that is used to redraw congressional and legislative districts in New Mexico.

The Drawing of Boundaries

While redistricting has been a fundamental issue in American representative democracy since the 1787 constitutional convention, the Founding Fathers did not design a set of blueprints for achieving fair and equal representation for all people. It was not until 1911 that Congress established redistricting criteria for use by the states in the drawing of congressional districts. However, Congress dropped those criteria in 1921, allowing states to once again redistrict on any basis, which in practice was rarely on the basis of population figures.

By 1946, the failure of the legislative branch to remedy the inequities of the redistricting process led to the question being put to the United States Supreme Court in *Colegrove v. Green.* The Court determined the issue was nonjusticiable. Justice Felix Frankfurter, in the majority opinion, concluded:

> Courts ought not to enter this political thicket. The remedy for unfairness in districting is to secure state legislators that will apportion properly, or to invoke the ample powers of Congress.[5]

Judicial nonintervention continued to be the Court's policy for the next 16 years. Then, in 1962, in *Baker v. Carr*, the Court changed direction, holding that state legislative districting cases are subject to judicial review.[6] Since *Baker*, the Court has consistently held that legislative and congressional redistricting cases are subject to review by the courts. Over time, this review has focused on two major areas — the population of districts and the dilution of voter strength in minority districts.

The Population of Districts

In the year following *Baker*, the Supreme Court issued its now famous opinion in *Gray v. Sanders*. In *Gray*, the Court was asked to consider the constitutionality of districts that varied significantly in population. Writing for the majority, Justice William O. Douglas wrote the historic words:

> . . . the conception of political equality from the Declaration of Independence, to Lincoln's Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments can mean only one thing — one person, one vote.[7]

Once the Supreme Court opted for judicial review of districting cases, it stayed in the fray, handing down 17 redistricting rulings the next year. In 1964, in *Wesberry v. Sanders*, the Court held that congressional districts must be redrawn so that "as nearly as is practicable one man's vote in a congressional election is . . . worth as much as another's".[8] By 1983, the Court developed a standard of equality for congressional districts that required them to be mathematically equal unless justified by some "legitimate objective".[9] Since 1983, mathematical equality for congressional districts has remained the standard.

While the population of congressional districts must be as nearly equal as practicable, the Court has allowed a more lenient standard for state legislative districts. The Court has held that legislative districts need not be mathematically equal; nonetheless, absent some rational state policy, they should not differ by more than plus or minus five percent from the ideal and, even then, may be subject to an equal protection challenge if traditional redistricting principles are ignored.[10]

Reporting Population Data

In 1975, in order to facilitate the drawing of districts with equal populations, Congress enacted PL 94-171. The law requires the secretary of commerce to report census results no later than April 1 of the year following the census to governors and officials charged with state legislative redistricting.[11] It also requires the secretary to cooperate with state redistricting officials in developing a nonpartisan plan for reporting census tabulations.

While such a requirement may appear relatively noncontroversial, the reporting of census data has in fact generated significant controversy. Questions about how census numbers were obtained and what numbers were reported brought the Census Bureau under significant scrutiny in the 1990s. The bureau has long acknowledged that its federal decennial census misses some people, and post-enumeration surveys show that some populations are more likely to be undercounted than others. This situation set the stage for significant undercount litigation in the 1990s.

After the release of the 1990 census figures, New York City and other jurisdictions challenged the release of census figures that undercounted minority populations, alleging a violation of minority voting rights.[12] Although acknowledging an undercount, the secretary of commerce declined to allow the bureau to adjust the count to make it more accurate. Subsequently, Wisconsin and Oklahoma joined the suit on the side of the Department of Commerce in order to preserve their federal funding under the 1990 census. Without dissent, the Supreme Court held that in light of the United States Constitution's broad grant of authority to Congress, which delegated its authority to the secretary of commerce through the Census Act, "the Secretary's decision not to adjust need only bear a reasonable relationship to the accomplishment of an actual enumeration of the population, keeping in mind the constitutional purposes of the census".[13] Thus, the federal government did not have to adjust census figures that undercounted minority populations if the secretary had a reasonable explanation for not doing so. The Court found that the secretary's emphasis on distributional accuracy over numerical accuracy of the census was within the secretary's discretion.[14]

As the country prepared for the 2000 census, undercount and statistical sampling issues once again occupied the spotlight. When the Department of Commerce announced its intention to use statistical sampling techniques to adjust the 2000 census, several sets of plaintiffs filed suit. Among the plaintiffs was the United States House of Representatives, which sought to enjoin the Department of Commerce from using statistical sampling. Ruling in January 1999, the Supreme Court held that the Census Act prohibits the use of statistical sampling for purposes of apportioning representatives among the states.[15] However, the Court did not rule on whether adjusted figures could be used for redrawing congressional district lines within each state. In March 2001, the Department of Commerce announced that it would not statistically adjust the 2001 census numbers and would only release data based on the actual count.

Racial and Ethnic Discrimination

In the 1960s, as the courts forced states to seek population equality in voting districts to ensure that one person's vote was equal to any other person's vote, the issue of ethnic and racial discrimination in state and congressional redistricting also loomed large. The passage and ratification in 1870 of the Fifteenth Amendment to the United States Constitution guaranteed citizens that their right to vote shall not be abridged by the United States or any state on account of race, color or previous condition of servitude. However, in practice, states often circumvented the spirit and intent of this guarantee. Nearly a century after the passage of the Fifteenth Amendment, Congress passed the Voting Rights Act of 1965.[16] The Voting Rights Act was

primarily intended to enforce the Fifteenth Amendment but also to enforce the equal protection clause of the Fourteenth Amendment and Article 1, Section 4 of the United States Constitution. Additionally, the act was later amended to provide for protection of language minorities as well as racial minorities.

Over the years, many cases have been brought before the courts alleging discrimination in the districting process. Most of the cases alleged violations of the equal protection clause of the Constitution and Section 2 of the Voting Rights Act of 1965. Section 2 prohibits a state or political subdivision from imposing any voting qualification, standard, practice or procedure that results in denial or abridgment of a United States citizen's right to vote on account of race, color or status as a member of a language minority group.[17] It creates a legal cause of action against a jurisdiction violating this mandate. The legal test by which such cases are adjudicated is the "results" test.[18] This means that a plaintiff may prove a Section 2 violation if, as a result of the challenged practice or structure, the plaintiff did not have equal opportunity to participate in the political process and to elect candidates of the plaintiff's choice.

Section 5 of the Voting Rights Act has also been used to battle discriminatory practices in redistricting. Section 5 does not apply to all jurisdictions but only to "covered" jurisdictions, which originally included only those state and local jurisdictions that, as of November 1, 1964, maintained literacy or educational prerequisites, evidence of good moral character or other similar qualifying prerequisites for voting and that had less than 50 percent of the voting-age population either registered on November 1, 1964 or voting in the presidential election of 1964.[19] Under Section 5, a covered jurisdiction must preclear changes in its electoral laws, practices or procedures with either the United States Department of Justice or the United States district court for the District of Columbia. The same preclearance requirement is imposed on those jurisdictions where discriminatory voting practices have been found.[20]

In the years following the passage of the Voting Rights Act of 1965, Congress continued to broaden the scope of the law. Subsequent amendments to that act created additional categories of "covered jurisdictions" subject to preclearance. For New Mexico, the most significant were the amendments passed in 1975, which expanded the scope of Section 5 beyond race and color to include members of language minority groups.[21] The law requires the use of preclearance procedures in jurisdictions in which more than five percent of the voting-age citizens are members of a single language minority and in which printed election materials are available only in the English language. American Indians, Asian Americans, Alaska Natives and persons of Spanish heritage are members of language minority groups.[22] These amendments brought New Mexico under Section 5 of the Voting Rights Act of 1965 for a short time in the 1970s, but New Mexico was released from preclearance requirements in 1976.

Applying the Voting Rights Act

During the 1990s redistricting process, Sections 2 and 5 of the Voting Rights Act and the equal protection clause of the United States Constitution provided the basis for significant voting rights litigation across the country. Much of that litigation came about when states created

additional majority-minority voting districts — districts configured so that a racial or language minority population constituted a majority — often in an effort to forestall Section 2 challenges. This was a particularly common occurrence in jurisdictions subject to Section 5 preclearance. In those jurisdictions, Department of Justice officials frequently pushed to maximize the number of majority-minority districts without regard for the traditional districting principles of compactness, contiguity and the preservation of communities of interest.

Eventually, many jurisdictions found themselves in court, forced to justify the creation of bizarrely shaped districts created for the purpose of increasing minority voting strength. In *Shaw v. Reno* and subsequent cases, the Supreme Court rejected the creation of bizarrely shaped districts created for the purpose of maximizing minority voting strength, holding that the use of race as the predominant factor in making districting decisions violated the equal protection clause.[23] In subsequent cases, however, the Court stated that race may still be a factor appropriately considered in the districting process. Nonetheless, when legislative bodies set aside traditional districting principles (such as compactness, contiguity, the preservation of communities of interest and political subdivisions) in favor of race-based districting, the districting process may violate the equal protection clause.[24] Writing for the Court in *Bush v. Vera*, Justice Sandra Day O'Connor stated that when traditional districting principles are subordinated to race-based decisions, the Court would apply a standard of strict scrutiny.[25] And though the court, in *Hunt v. Cromartie*, stressed that the plaintiff has a high burden of proof in challenging a plan on these grounds,[26] once a strict scrutiny standard applies, the Court will allow race-based districts only if the state can demonstrate that the district is narrowly tailored to further a compelling state interest.

A BRIEF HISTORY OF REDISTRICTING IN NEW MEXICO

While neither the Constitution of New Mexico nor state law mandates redistricting after every decennial census, Article 4 of the Constitution of New Mexico authorizes it,[27] and the process has become necessary as the population of each district changes dramatically each decade. Redistricting is necessary to ensure population equality and to prevent dilution of minority voting strength, as required under federal law.

Legislative redistricting in New Mexico has a turbulent history. A study of that history, *Legislative Apportionment in New Mexico: 1844-1966*,[28] shows that the job of allocating representation among the counties of the territory, and of the state prior to the 1960s, was at some times neglected and at other times circuitous. Until 1949, population was the major basis of representation in both houses, although equal representation, as the courts use the term today, was seldom achieved.

In 1949, a constitutional amendment provided for the apportionment of the New Mexico Senate in a fashion similar to that of the United States Senate. One senator was allotted to each county, except counties of the sixth class. The districts of the New Mexico House of Representatives were changed little from the original 1910 constitutional apportionment. The

size of the house increased from 49 to 55, with the additional six representatives going to fast-growing Bernalillo County.

1960s

Then came the 1960s and the impact of the federal reapportionment cases. In 1962, a suit was filed in state district court challenging the 1949 constitutional apportionment of the house. Two years later, a suit was filed in the United States district court for the district of New Mexico challenging the 1949 apportionment of the senate. The result of those two suits was that the courts declared the 1949 apportionment provisions of the Constitution of New Mexico unconstitutional and in violation of the equal protection clause of the Fourteenth Amendment of the United States Constitution.

The state was then without an apportionment law, and, with the exception of 1964, the legislature spent every year from 1963 to 1966 trying to find a workable solution. This apportionment marathon resulted in the legislature adopting, in 1965, a house plan based on 70 members, with five multicounty districts and, in 1966, a 42-member senate plan.

The 42-member plan for the senate was subsequently modified twice by a three-judge federal district court. Those modifications included two at-large positions in counties that were already districted and three at-large positions in multicounty districts. Voters in at-large districts were allowed to vote for two senators instead of one. This decision was not appealed.

1970s

Faced with redistricting in the 1970s, the 1971 legislature passed a 71-member reapportionment house plan and a 45-member senate plan. Both plans were based on estimated population derived from the vote for governor at the previous general election, using the so-called "votes cast formula". Actual census figures were not used because New Mexico's precinct boundary lines in most cases did not coincide with census enumeration district lines.

Two suits challenging the 1971 acts were filed, one in state district court and the other in United States district court. The state court directed that because redistricting is primarily a legislative function, the issue should be submitted to the 1972 legislature.

The 1972 acts passed by the legislature retained 70 representatives and 42 senators. In both houses, two plans were enacted, one for the 1972 elections and one for the 1974 and 1976 elections for the house and senate. The provisional districts drawn for the 1972 plans were based on census-enumeration districts, and precincts were to be redrawn so their boundaries would correspond to census-enumeration district lines. The provisional 1972 house apportionment plan included one floterial district in which six representatives were to run from districts and one was to run at large. The provisional senate plan provided for staggered terms, subject to court determination.

In 1972, the state district court in Santa Fe ruled the house provisional plan constitutional except for the sections relating to the floterial district, accepting instead the alternate provisions for seven single-member districts. The provisional senate plan was also ruled constitutional except for the sections relating to the terms of office of the eight senators elected in 1970 whose new districts were either coterminous or wholly composed of the area within their old districts. Under the plan, they were not required to run for re-election until 1974. The remaining senators had to run for re-election in 1972, and the court ruled that staggered terms, where one-half of the senate ran every two years, were no longer acceptable.

The federal district court dismissed its case in 1972, finding that the state court had adequately handled the situation. For a variety of reasons, in 1973 the legislature repealed both the house and senate census-enumeration district plans. The 1972 provisional plans, as modified by the state court, remained in effect until the 1980s.

Federal congressional action provided the next reapportionment hurdle for New Mexico. With the passage of the 1975 amendments to the Voting Rights Act of 1965, New Mexico, because of the minority language extension, joined a number of other, mostly southern, states as a jurisdiction covered under Section 5 of the act. However, under Section 4 of the act, a covered jurisdiction could "bail out" if it could prove to the satisfaction of the federal court that it had not used a discriminatory test or device for a specified period of time.

In 1975 and 1976, New Mexico petitioned the United States district court for the District of Columbia for permission to be exempt from preclearance. The state successfully showed that for the prior 10 years, New Mexico did not have any discriminatory election laws on its books. In 1976, by order of the United States district court for the District of Columbia, the state was released from preclearance procedures.

1980s

Following the tradition of the 1960s and 1970s, the 1980s redistricting task in New Mexico was difficult. First, in 1981, the Census Bureau provided states detailed breakdowns of population data in enumerator districts in rural areas and in blocks in urban areas. This posed a huge problem for New Mexico because the bureau's enumerator district and block boundaries still did not coincide with New Mexico's voting precinct lines. Many, if not most, of New Mexico's precinct boundaries were not along visible boundaries acceptable to the bureau. Therefore, New Mexico continued to use the votes cast formula, which had been used in the 1960s and 1970s and defended successfully in court in 1972, to determine precinct population. Using the population so derived, the legislature, in a special session in early January 1982, redistricted both houses and the congressional districts. However, a number of New Mexico's residents and some of its legislators challenged the constitutionality of these districts. The various cases were consolidated and cited as *Sanchez v. King*.[29]

On April 8, 1982, the United States district court for the district of New Mexico found that using the votes cast formula to ascertain precinct population "causes substantial variations

between the numbers thereby derived and United States census figures".[30] Consequently, the 1982 Reapportionment Acts were declared unconstitutional due to the deviations in population between districts that resulted from using the votes cast formula, which violated the one-person, one-vote principle established in *Reynolds v. Sims*. The court noted "that the census figures, with adjustments for obvious errors which can always occur, are the only reliable and official figures available" and required that "the Legislature employ a good-faith effort to construct legislative districts on the basis of actual population" rather than population figures derived using its votes cast formula.[31]

The result was that, with the help of the Census Bureau and contract demographers, the legislature was able to obtain estimated populations for each of the precincts in the state and make a good-faith effort to construct districts on the basis of actual population. In a third special session in June 1982, the legislature repealed its unconstitutional redistricting efforts and enacted a new 1982 Senate Reapportionment Act and 1982 House Reapportionment Act.

This was not the end of the road. The plaintiffs, in the second phase of *Sanchez v. King*, challenged 19 of the 70 districts adopted by the legislature, claiming that the legislature's second redistricting effort constituted an intentional, racially motivated gerrymander and that it also resulted in an impermissible dilution of minority voting strength.[32]

The federal three-judge court stated that although it was apparent that racially motivated gerrymandering existed in the state redistricting plan, because the Voting Rights Act no longer required a finding of intentional discrimination, the court would not rule on the issue of intent with respect to any particular district.[33] However, on August 8, 1984, the court did find that the redistricting plans for 16 house districts in six counties — Sandoval, Cibola, McKinley, Curry, Otero and Chaves — were illegal under Section 2 of the Voting Rights Act. In December 1984, in its final judgment, the court:

— declared house districts 5, 6, 7, 44, 51, 52, 53, 57, 58, 59, 63, 64, 65, 66, 67 and 69 invalid and implemented a remedial redistricting plan for those districts contained in the August decision;

— declared the results of the June 5, 1984 primary contests for house seats in those districts void;

— appointed federal examiners for a period of 10 years in McKinley, Cibola, Sandoval, Curry, Chaves and Otero counties;

— ordered that all future legislative redistricting be based on actual population and race data by precinct provided by the Census Bureau rather than on population figures derived from the state's votes cast formula; and

— ordered state legislative redistricting plans adopted prior to 1994 to be precleared pursuant to the Voting Rights Act by court determination or submission to the United States attorney general before the plans could be enforced.[34]

A special primary was held on September 18, 1984 for contested legislative races in those districts redrawn by the court. This brought the 1980s round of redistricting to an end and set the stage for the 1990s.

1990s

The 1990s decennial redistricting of New Mexico's congressional and legislative districts was really a decade-long process. Though the 1980s decennial redistricting was not finished until 1984, preparation had already begun in 1983 for the 1990s decennial redistricting.

This preparation began when the legislature enacted the Precinct Boundary Adjustment Act and appropriated funds to provide for readjustment and mapping of all precincts in the state to conform with visible boundaries acceptable to the Census Bureau.[35] Participating in the "1990 Census Redistricting Data Program" administered by the bureau, New Mexico joined the majority of the states in working with the bureau to prepare maps that would for the first time show precinct lines and provide for reporting 1990 census data by precinct.

In Phase I of that program, called the "Block Boundary Suggestion Project", New Mexico began the task of collecting election precinct information from counties and redrawing those boundary lines that did not coincide with visible features on the ground. Phase II of the program involved making sure all precinct boundary lines and existing boundary lines on the census maps were correct, thus allowing the Census Bureau to report census data to the state precinct by precinct. New Mexico received population data by precinct for the first time in 1991.

In September 1991, the governor called the Fortieth Legislature into its first special session. The legislature convened on September 10 and adjourned on September 19. During that time, the legislature considered 30 house bills and 25 senate bills and passed legislation to provide for the redistricting of the State Board of Education, the New Mexico House of Representatives, the New Mexico Senate and the New Mexico seats in the United States House of Representatives.

Pursuant to the court order stemming from the litigation following redistricting in the 1980s, the legislature submitted for review its completed legislative redistricting plans to the United States Department of Justice on October 9, 1991. On December 10, 1991, the department precleared the redistricting plan for the state house but objected to the state senate redistricting plan, citing the state's failure to sufficiently explain creation of districts in southeastern New Mexico that potentially fragmented minority voting strength in that area.

In response to the Department of Justice decision, the governor called the legislature into a second special session beginning on January 3, 1992. At that time, the legislature passed an amended senate redistricting act that changed the boundaries of state senate districts 27, 32, 33, 34, 41 and 42, resulting in the creation of two additional majority-minority districts in southeastern New Mexico. The newly amended act was resubmitted to the Department of Justice and, on January 17, 1992, the department precleared the amended plan.

In August 1995, the United States and the remaining *Sanchez* plaintiffs agreed not to pursue a motion extending the Section 3 preclearance requirements that the court had imposed in December 1984.

The 1990s marked the first time in more than 30 years that New Mexico conducted its decennial redistricting without any involvement in litigation. In large part, this was due to extensive preparation — extensive public hearings and public input, participation in the Census Bureau's census redistricting data program and setting and carefully following redistricting guidelines. Much of the attention to detail was probably due to the fact that New Mexico was required to preclear its redistricting plans prior to implementation. As noted above, though the first senate plan was rejected by the Department of Justice, the five districts in question, along with an adjacent sixth district, were redrawn and approved before the regular legislative session, and no judicial challenges ensued.

2000s

New Mexico began preparing for the 2001 redistricting in 1995 by participating in the "Census 2000 Redistricting Data Program". This program once again enabled the Census Bureau to report precinct level census data to the state. Phase II of the program, which entailed matching precinct lines with Census Bureau block boundaries and redrawing precinct lines as necessary to account for estimated changes in population, was completed in the spring of 2000, though some minor adjustments had to be made following the 2000 election to comply with the Precinct Boundary Adjustment Act.

During the 2000 legislative session, all precinct boundaries were frozen until February 2002 so that the precinct level census data supplied to the state under Phase III of the program would match the actual precincts used for redistricting.

During the 2001 session, the New Mexico Legislature created a redistricting committee (Laws 2001, Chapter 220) to review the requirements of redistricting law, conduct public hearings and recommend legislation in line with guidelines for redistricting that were approved by the New Mexico Legislative Council. The committee held 14 public meetings in 12 communities, beginning May 14, 2001 and ending August 30, 2001, during which time it heard from more than 100 New Mexicans and developed numerous redistricting concepts.

The New Mexico Legislature met in special session from September 4, 2001 to September 20, 2001, but only a plan to redistrict the Public Regulation Commission was signed into law; the governor vetoed two senate plans, two house of representatives plans, a congressional plan and a State Board of Education plan. Litigation followed, with the first lawsuit being filed while the legislature was still in special session. Suits were filed challenging the state's legislative, congressional, State Board of Education and Public Regulation Commission districts.

The challenge to the Public Regulation Commission districts was eventually dropped, and the lawsuit over the State Board of Education was resolved relatively easily. Upon agreement of the parties, the state district court ordered the adoption of the legislatively approved State Board of Education plan.[36] Trial on the senate districts was averted when, during

the 2002 regular session, the legislature approved and the governor signed a senate plan[37] (Laws 2002, Chapter 98), effectively ending that litigation before the trial started.

The suits over the congressional and house of representatives plans[38] were not as easily resolved. After an extensive round of jockeying among various plaintiffs and defendants over whether the cases should be heard in federal or state court and, once that issue was decided in favor of state court, the disqualification by the governor of the state judge assigned to the matter, the New Mexico Supreme Court appointed State District Court Judge Frank H. Allen, Jr., to hear the congressional, house of representatives and senate cases.

The congressional case was tried in mid-December 2001. On January 2, 2002, Judge Allen adopted a plan submitted by the *Vigil* plaintiffs that shifted just eight precincts to equalize the populations among the three congressional districts.[39] The decision was not appealed.

The house of representatives case was heard immediately after Judge Allen issued his decision in the congressional case. On January 24, 2002, Judge Allen adopted a house of representatives plan that had been approved by the legislature but altered eight districts to accommodate plans submitted at trial by the Navajo Nation and the Jicarilla Apache Nation.[40] The decision was appealed by the governor, and the *Vigil*, *Padilla* and *Gutierrez* plaintiffs-in-intervention moved unsuccessfully to have the federal court declare the plan unconstitutional. The governor and lieutenant governor then appealed to state court and the appeal eventually was dismissed with prejudice by the New Mexico Supreme Court on September 6, 2002.[41]

All told, the litigation surrounding the 2001 redistricting efforts cost the state more than $3.5 million.

REDISTRICTING IN NEW MEXICO IN 2011

As in previous decades, the 2011 redistricting process began years earlier as the state and the Census Bureau worked to update geographic information and political boundaries to ensure that census population counts would be correctly assigned to the correct precincts. Precinct boundaries were frozen from July 1, 2009 until January 31, 2012, except for those boundaries that need adjustment as approved by the secretary of state to meet the legal requirements of the redistricting process. A redistricting committee was created by Senate Bill 408 (2011) to hold public hearings around the state during the summer of 2011.

The legislature expects to meet in special session in September 2011 to consider legislative, congressional, Public Education Commission and Public Regulation Commission redistricting plans.

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1. U.S. CONST., amend. XIV, §2.
2. U.S. CONST., art. I, §2.

3. 13 U.S.C. § 141.
4. *Id.*
5. 328 U.S. 549, 556 (1946).
6. 369 U.S. 186 (1962).
7. 372 U.S. 368, 381 (1963).
8. 376 U.S. 1, 8 (1964).
9. *Karcher v. Daggett*, 462 U.S. 725 (1983).
10. *White v. Regester*, 412 U.S. 755 (1973), *Brown v. Thomson*, 462 U.S. 835 (1983).
11. 13 U.S.C. § 141.
12. *Wisconsin v. City of New York*, 517 U.S. 1, 19 (1996).
13. *Id.* at 20.
14. *Id.*
15. *Department of Commerce v. House of Representatives*, 525 U.S. 316 (1999).
16. 42 U.S.C. § § 1971, 1973 to 1973bb-1 (1996).
17. 42 U.S.C. § 1973 (a) (1982).
18. *Thornburg v. Gingles*, 478 U.S. 30, 35, 43-44 (1986).
19. 42 U.S.C. § 1973c (1996).
20. *Id.*
21. Act of June 29, 1982, Pub. L. 94-73. Title II, §§ 203, 206, 207, 89 Stat. 400, 401-02 (codified as amended at 42 U.S.C. §§ 1973 (a), 1973b(f), 1973d, 1973k, 1973l(c)(3)).
22. *Id.*
23. *Shaw v. Reno*, 509 U.S. 630 (1993).
24. *Bush v. Vera*, 517 U.S. 952 (1996).
25. *Id.* at 971.
26. *Hunt v. Cromartie*, 532 U.S. 234 (2001).
27. N.M. CONST. art. IV, § 3.
28. RICHARD FOLMAR, LEGISLATIVE APPORTIONMENT IN NEW MEXICO, 1844-1966 (New Mexico Legislative Council Service, 1966).
29. 550 F. Supp. 13 (N.M. 1982), *aff'd*, 459 U.S. 801 (1982).
30. *Id.* at 14.
31. *Id.* at 15.
32. *Sanchez v. King*, No. Civ. 82-0067-M Consolidated New Mexico Redistricting Litigation, at 2 (D.N.M. filed Aug. 8, 1984).
33. *Id.* at 9.
34. *Sanchez v. Anaya*, No. Civ. 82-0067-M Consolidated New Mexico Redistricting Litigation, (D.N.M. filed Dec. 17, 1984).
35. Precinct Boundary Adjustment Act, N.M. Laws 1983, Chap. 223, §§1-5, as amended.
36. *Sanchez v. Vigil-Giron*, No. D-101-CV-2001-02250 (N.M. 1st Jud. Dist. Feb. 6, 2002) (order adopting redistricting plan for state board of education).
37. 2002 Senate Redistricting Act, N.M. Laws 2002, Chap. 98.
38. *Vigil v. Lujan*, No. CIV 01-1077 (consolidated with *Padilla v. Johnson*, No. CIV 01-1081) (D.N.M. March 15, 2001) (order dismissing case); *Jepsen v. Vigil-Giron*, No. D-0101-CV-2001-02177 (consolidated) (N.M. 1st Jud. Dist. filed Sept. 13, 2001).
39. *Jepsen v. Vigil-Giron*, No. D-0101-CV-2001-02177 (consolidated) (N.M. 1st Jud. Dist. Jan. 8, 2002) (order adopting congressional redistricting plan).
40. *Jepsen v. Vigil-Giron*, No. D-0101-CV-2001-02177 (consolidated) (N.M. 1st Jud. Dist. Jan. 28, 2002) (order adopting house of representatives redistricting plan).
41. *Jepsen v. Vigil-Giron*, No. 27,540 (N.M. Sup. Ct. Sept. 6, 2002) (order dismissing appeal).

GUIDELINES FOR THE DEVELOPMENT OF STATE AND CONGRESSIONAL REDISTRICTING PLANS

WHEREAS, it is incumbent on the New Mexico legislative council to issue redistricting guidelines that articulate principles based on federal and state law and the prior experience of this legislature; and

WHEREAS, such guidelines are necessary to assist the appropriate legislative committees involved in redistricting in the development and evaluation of redistricting plans following the 2010 decennial census; and

WHEREAS, such guidelines are also intended to help facilitate the completion of the redistricting process before the nominating petitions are first made available in October 2011 for the 2012 primary election;

NOW, THEREFORE, IT IS HEREBY RESOLVED that the New Mexico legislative council adopt the following redistricting guidelines with the intent that the appropriate legislative committees involved in redistricting use them to develop and evaluate redistricting plans.

1. Congressional districts shall be as equal in population as practicable.
2. State districts shall be substantially equal in population; no plans for state office will be considered that include any district with a total population that deviates more than plus or minus five percent from the ideal.
3. The legislature shall use 2010 federal decennial census data generated by the United States bureau of the census.
4. Since the precinct is the basic building block of a voting district in New Mexico, proposed redistricting plans to be considered by the legislature shall not be comprised of districts that split precincts.
5. Plans must comport with the provisions of the Voting Rights Act of 1965, as amended, and federal constitutional standards. Plans that dilute a protected minority's voting strength are unacceptable. Race may be considered in developing redistricting plans but shall not be the predominant consideration. Traditional race-neutral districting principles (as reflected in paragraph seven) must not be subordinated to racial considerations.
6. All redistricting plans shall use only single-member districts.
7. Districts shall be drawn consistent with traditional districting principles. Districts shall be composed of contiguous precincts, and shall be reasonably compact. To the extent feasible, districts shall be drawn in an attempt to preserve communities of interest and shall take into consideration political and geographic boundaries. In addition, and to the extent feasible, the legislature may seek to preserve the core of existing districts, and may consider the residence of incumbents.

Adopted by the New Mexico legislative council
January 17, 2011

GLOSSARY OF REDISTRICTING TERMS

Apportionment: The process of assigning the number of members of Congress that each state may elect following each census.

At Large: When one or several candidates run for an office, and they are elected by the whole area of a local political subdivision, they are being elected at large.

Census: The enumeration or count of the population as mandated by the United States Constitution.

Census Block: The smallest unit of geography used by the Census Bureau for counting people. Blocks are almost always bounded by visible features such as roads and rivers.

Census Tract: A geographic area made up of block groups recommended by the states and used by the Census Bureau for the collection and presentation of decennial census data.

Community of Interest: A community defined by actual shared interests, be they political, social or economic.

Compactness: Having the minimum distance between all the parts of a constituency (a circle is the most compact district). There are various methods of measuring compactness.

Contiguity: All parts of a district being connected at some point with the rest of the district and not divided into two or more discrete pieces.

Deviation: The degree by which a single district's population varies from the "ideal" may be stated in terms of "absolute deviation" or "relative deviation". Absolute deviation is equal to the difference between a district's actual population and its ideal population, expressed as a plus (+) or minus (-) number indicating that the district's population exceeds or falls short of that ideal. Relative deviation is the more commonly used measure and is attained by dividing the district's absolute deviation by the ideal population.

Digital Map Layer: A set of polygons representing geographic units. For redistricting, the primary map layers used include the following:

—**Minor Civil Divisions (MCD):** Includes cities, towns and villages;

—**Voting Tabulation Districts (VTD):** The census geographic equivalent of an election precinct, created for the purpose of relating election data to census data; and

—**Census Blocks (CNS):** The smallest unit of census geography, normally bounded on all sides by visible features such as city or county limits and property lines or by imaginary extensions of roads.

Floterial District: A legislative district whose geographic boundaries overlap those of another legislative district in the same house. The consequence is that the voters living in the overlapping territory are entitled to vote twice, once in each district.

Fracturing/Fragmentation: The splitting of an area where a minority group lives so that it cannot form an effective majority in a district, for the purpose of minimizing the group's voting strength.

Gerrymander: To draw districts in a way that gives one group or party an advantage over another.

Geographic Information System (GIS): A computer-based method for the automation, storage, manipulation, integration, analysis, display and dissemination of spatial data and related attribute data in the form of maps.

Homogenous District: A voting district in which at least 90 percent of the population share a common ethnic background.

Ideal District Population: A population measure equal to the total state population divided by the total number of districts.

Majority-Minority Districts: A term used by the courts for seats where an ethnic minority constitutes a majority of the population.

Metes & Bounds: A detailed description of district boundaries using specific geographic features.

Method of Equal Proportions: A mathematical formula provided by federal statute to reapportion congressional seats after each decennial census.

Multi-Member District: A district that elects two or more members to a legislative body.

Natural Boundaries (Visible Boundaries): District boundaries that are natural geographic features.

One Person, One Vote: The constitutional standard established by the Supreme Court mandating or directing that all legislative districts should be approximately equal in population.

Overall Range or Overall Deviation: For a redistricting plan, the difference in population between the smallest and largest district, normally expressed as a percentage.

Packing: A term used when one group is consolidated into a small number of districts in a districting plan. Drawing a minority-controlled district with an excessively high percentage of a minority population "wastes" the additional people who could increase the minority population of another district.

Phase I and Phase II: The programs run by the Census Bureau to collect boundary information from state and local governments. Phase I allows states to suggest boundaries for census blocks. Phase II lets states group blocks into precincts so the official census data will contain precinct population totals.

PL 94-171: The law passed in 1975 by Congress that requires the Census Bureau to furnish state governments data by April 1 of the year after the census for use in redistricting. The law requires that the bureau allow states to define the boundaries of the areas in which population data is collected.

Plurality: A winning total in an election involving more than two candidates, where the winner received less than a majority of the votes cast.

Population Projection: An approximation of the population of a geographic unit at a point in the future based on specific assumptions regarding future demographic trends.

Reapportionment: The allocation of seats in a legislative body (such as Congress) among established districts (such as states) where the district boundaries do not change but the number of members per district does.

Redistricting (Districting): The drawing of new political district boundaries.

Retrogression: The drawing of a redistricting plan that reduces the chances for minority groups to elect representatives of their choice.

Sampling: A statistical technique used to estimate the whole population based on a sample. Proposed as a remedy for the undercount.

Single-Member District: A district that elects only one representative.

Standard Deviation: A statistical formula measuring variance from a norm.

Tabulation: The totaling and reporting of the census data.

Topologically Integrated Geographic Encoding and Referencing (TIGER): The TIGER/Line files are a digital database of geographic features, such as roads, railroads, rivers, lakes, political boundaries, census statistical boundaries, etc., covering the entire United States. The database contains information about these features, such as their location in latitude and longitude, the name, type of feature, address ranges for most streets, geographic relationship to other features and other related information. TIGER was developed by the Census Bureau to support the mapping and related geographic activities required by the decennial census and sample survey programs.

Undercount: The estimated number of people who are not counted by the census.

Voting Age Population (VAP): The number of people over the age of 18.

Voting Rights Act of 1965: The federal law prohibiting discrimination in voting practices on the basis of race or language group.

Voting Tabulation District (VTD): The census geographic equivalent of an election precinct created for the purpose of relating elections data to census data.