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2021 Pennsylvania Legislative Reapportionment Commission Legal Requirements for Pennsylvania Legislative Redistricting in 2021

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Robert L. Byer

Chief Counsel, Legislative Reapportionment Commission

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Federal Regulations

U.S. Constitution, 14th Amendment – Equal Protection

- Substantial population equality among districts
- Deviations of less than 10% are prima facie Constitutional – Rebuttable presumption
 - Deviations within 10% range may be set aside if illegitimate or discriminatory factors predominated in redistricting process
- Deviations greater than 10% must be justified by significant state considerations
 - e.g. necessary to keep boundaries of political subdivisions whole

U.S. Constitution, 14th Amendment – Equal Protection

- Prohibits racial discrimination in redistricting

Voting Rights Act

- Prohibits redistricting that provides members of protected class (race, color, or member of language minority group) with less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice

Pennsylvania Requirements

Pa. Const. Art. II § 16 – Traditional redistricting criteria

- Compact
 - Contiguous
 - As nearly equal in population as practicable
- &
- “Unless absolutely necessary, no county, city, incorporated town, borough, township or ward shall be divided. . . .”

Compactness

- Pennsylvania case law has not adopted a definitive standard, but has cited with approval both Reock and Polsby-Popper tests
- Courts also look to the shape of the district

Contiguity

- Requirements that all parts of the district be connected

Equal Population

- Pennsylvania cases do not require absolute population equality, but, like federal cases, recognize permissible deviations

Political Subdivision and Ward Boundaries

- Would appear to be the most significant criterion under Article II, § 16 – “Absolutely necessary”
- Pa Supreme Court has discussed necessity for purpose of achieving population equality
- Pa Supreme Court also has recognized that population deviations could be increased in order to avoid dividing political subdivisions

Pa. Const. Art. I, § 5 – Free and Equal Elections

- *League of Women Voters v. Commonwealth*, 178 A.3d 737 (Pa. 2018)
 - Partisan gerrymandering that “dilutes the votes of those who in prior elections voted for the party not in power to give the party in power a lasting electoral advantage” violates the Free and Equal Elections clause
 - The principal method of assessing whether a redistricting plan violates the Free and Equal Elections clause is the extent to which the plan adheres to traditional redistricting criteria – compact and contiguous territory, as nearly equal in population as practicable, and which do not divide political subdivisions or wards “except where necessary to insure equality of population.”

League of Women Voters v. Commonwealth

- Recognizes that other factors have historically played a role in redistricting, including: preservation of prior district lines; protection of incumbents; or maintenance of the political balance that existed after the prior reapportionment
- “However, we view these factors to be wholly subordinate to the neutral criteria of compactness, contiguity, minimization of the division of political subdivisions, and maintenance of population equality. . . .These neutral criteria provide a ‘floor’ of protection for an individual against the dilution of his or her vote in the creation of such districts.”

League of Women Voters v. Commonwealth (cont.)

- When the neutral criteria have been subordinated to extraneous considerations, the plan violates Article I, § 5
- Does not require a showing of intent, but only effects, i.e. traditional criteria were subordinated to other factors

League of Women Voters v. Commonwealth (cont.)

- Compliance with traditional criteria is “not the exclusive means by which a violation” may be established
- Advances in map-drawing technology and analytical software can result in maps “which, although minimally comporting with these neutral ‘floor’ criteria, nevertheless operate to unfairly dilute the power of a particular group’s vote. . . .”

League of Women Voters v. Commonwealth (cont.)

Conclusions

- Consideration of political factors extraneous to Article II, § 16 traditional criteria not permitted unless the plan has maximized compliance with the enumerated traditional criteria; and
- Even if a plan maximizes compliance with the Article II, § 16 standards, the plan may not unfairly dilute voting power