

AN OUTLINE OF REDISTRICTING STANDARDS AND GUIDELINES  
Vermont House of Representatives  
Prepared by the Legislative Council  
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**I. EQUAL REPRESENTATION STANDARD – ‘ONE PERSON-ONE VOTE’**

**A. Sources of the Equal Representation standard**

“...no state shall deny to any person within its jurisdiction the equal protection of the laws...”, 14th Amendment, U.S. Constitution, as interpreted by the U.S. Supreme Court in *Reynolds v. Sims* (1964) and others.

“... in establishing representative districts, which shall afford equality of representation...” Chapter II, §13, Vt. Constitution;

“...to maintain equality of representation among the respective districts as nearly as practicable...”, Chapter II, §73, Vt. Constitution.

“...to form districts with minimum percentages of deviation from the apportionment standards...” 17 V.S.A. §1903

**B. The Arithmetic and Terminology of Equal Representation**

(1) An “*ideal district*” is determined by dividing the population of the state by the total number of representative districts. With 150 House districts in Vermont, following the 2000 census, the “*ideal district*” will have a population of exactly 4,059.

(2) The “*deviation from the ideal*” of each individual district is then calculated and expressed as a percentage. For example, a district with ten percent more population than the ideal district has a deviation of +10% and a district with nine percent less population than the ideal has a deviation of -9%.

(3) The “*overall deviation*” from the ideal for the entire plan is calculated by adding the percentage deviation from the ideal of the largest district in the state plan to the percentage deviation from the ideal of the smallest district in the state plan (disregarding positives or negatives). In the example above, if the largest district has a deviation of + 10% and the smallest has a deviation of - 9%, the “*overall deviation*” of the plan for the entire state is 19%. For reference, the redistricting plan enacted by legislature for the House in 1992 had an overall deviation of 17.6%

(4) Other mathematical measures can be made (e.g. averages, medians, ranges, and other even more sophisticated statistical measures) but are rarely used. Only the measure of a plan’s *overall deviation* is used by the Courts to determine whether a plan meets the requirements of equal representation. *Overall deviation* measures the degree of

inequality between a single voter in the largest district with a single voter in the smallest district, a concept important to the Court's equal protection jurisprudence. So only the smallest and largest districts count in this measurement. In the previous example, although 148 House districts might be "ideal" districts, if one of the remaining districts had a deviation from the ideal of + 10% and the other had a deviation from the ideal of - 9%, the plan as a whole would still have an "overall deviation" of 19%, and this is likely to be the *only* measure used by the courts to evaluate the mathematical equality of the plan.

### **C. The application of the mathematical standards – How much deviation is allowed?**

(1) *Congressional Redistricting*: Courts have allowed virtually *no* deviation from strict mathematical equality in establishing Congressional districts. See *Karcher v Daggett* (1983). It is important to take note of this, because Congressional districting plans, under constitutional standards not applicable to state redistricting, require mathematical perfection.

(2) *State Legislative Redistricting*. Courts have allowed *some* deviation from mathematical equality in establishing state legislative districts. The amount of deviation allowed depends on *how much* linked with *why it is necessary*; that is some deviation from mathematical equality is permitted for legitimate reasons.

(a) *How much deviation?* The U.S. Supreme Court case of *Mahon v Howell* (1972) sketched the following scheme for evaluating allowable deviation among state legislative districts

*10% or less*. If a plan has an overall deviation of 10% or less, it is presumed to meet the requirements of equal representation.

*Greater than 10%*. If a plan has an overall deviation above 10% it must be justified by the state, if challenged, to show that the deviation is necessary for the plan to achieve a legitimate state interest. This is the "why", see below.

*Some deviation much greater than 10%*. At some point, which the Court has never fixed with precision, a plan's overall deviation may be so large that the plan fails to meet the equal representation requirements regardless of whether the deviation is justified by a legitimate state interest.

*The House plan in 1992*. The overall deviation of the plan enacted by the legislature in 1992 for the House was 17.6%. It was upheld in court.

(b) *What legitimate reasons may justify some deviation (and what may not).* If the overall deviation of a redistricting plan is greater than 10%, (and sometimes even when it is less), and the plan is challenged on the grounds that it fails to achieve equal representation, the state must justify the plan by showing that the deviation from equality is necessary to accommodate some other legitimate state interest. These other “legitimate state interests” are embodied and reflected in the other non-numerical redistricting standards which are discussed in the following.

## **II. NON-NUMERICAL CONSTITUTIONAL STANDARDS. – GEOGRAPHICAL COMPACTNESS AND CONTIGUITY AND PRESERVATION OF POLITICAL SUBDIVISIONS.**

The Vermont Constitution also sets out two other standards for legislative redistricting plans. They are subordinate to the constitutional standard of one-person/one-vote, but may nevertheless be the justification for some deviation from mathematical equality otherwise required by that standard.

Chapter II, §13 of the Constitution contains these non numerical constitutional standards. It reads: “In establishing representative districts, which shall afford equality of representation, the General Assembly shall seek to *maintain geographical compactness and contiguity and to adhere to boundaries of counties and other existing political subdivisions.*”

(A) *Geographical compactness and contiguity.* Districts should be compact and towns within a district should be contiguous to each other, and to achieve this some deviation from mathematically equal districts is allowable.

(B) *Boundaries of counties and other political subdivisions (Towns).* Districts should be drawn that adhere to town and county boundaries, and again, to achieve this, some deviation from mathematical equality is allowed.

## **III STATUTORY REDISTRICTING STANDARDS – PATTERNS OF GEOGRAPHY, SOCIAL INTERACTION, TRADE, POLITICAL TIES AND COMMON INTERESTS.**

The legislature, by statute, has added to the constitutional standards that must guide legislative redistricting. Because they are statutory, they could be amended, repealed or revised by the legislature. However, these standards have proven to be among the most important to the people in evaluating a proposed legislative district and the focus of much public testimony. Achievement of these standards may also justify some overall deviation from mathematical equality of a districting plan.

Section 1903 (b) (2) directs the legislature to provide: *Recognition and maintenance of patterns of geography, social interaction, trade, political ties and common interests.*

That same section, at (b)(1) and (3) also repeats in statute the constitutional standards of (1) preservation of existing political subdivision lines; and (3) use of compact and contiguous territory.

*Incumbency.* In addition, statutory recognition is given to another “consideration” to be taken into account in redistricting – *incumbency*. Under 17 V.S.A. §1906b(c)(4) and 1906c(c)(4), which permits towns to recommend internal district lines in subdividing multi-member initial districts, in doing so towns are directed to consider the traditional districting standards discussed above – plus *incumbency*. It is legitimate to consider incumbency among the many other standards established to guide the redistricting process. However, this factor is unlikely to be viewed by a court as much of a justification to support any significant deviation from mathematical equality.

**IV. COMMITTEE REDISTRICTING POLICIES.** The redistricting standards established by the constitution are mandatory, and those established by statute are mandatory until the statute is amended or revised. They cannot be altered or revised by the Committee through the adoption of its own policies. However, the Committee may adopt policies and practices that reflect or implement these constitutional and statutory standards. For example, in the 1992 redistricting process, the House Committee on Government Operations adopted the committee policy that it would not consider a plan for redistricting which would split a small town (population of 3,700 or less). This of course is a reflection of the Constitutional directive “to adhere to boundaries of counties and other political subdivisions”.