

# Realistic Guidelines: Making it Work

Jeffrey M. Wice  
Special Counsel to the Majority  
New York State Senate

# State Guidelines

---

# Population Deviations

- **0-2% Overall deviation**

- Montana 2%

- **3-5% Overall deviation**

- Utah 4%
- Virginia 4%

- **6-10% Overall deviation**

- Utah 8%
- Colorado 10%
- Iowa 10%
- Louisiana 10%
- Mississippi 10%
- Nebraska 10%
- Nevada 10%
- New Mexico 10%
- North Carolina 10%
- North Dakota 10%
- Ohio 10%

# Detailed Guidelines

- **Prioritizes/hierarchy**

- Virginia: 1) population equality, 2) compliance with Constitution, 3) Voting Rights Act
- Michigan: 1) population equality, 2) Voting Rights Act, 3) and all other criteria given equal weight
- Montana: 1) Mandatory criteria- population equality, compactness, contiguity, Voting Rights Act, 2) discretionary criteria- political and geographic boundaries, communities of interest

- **Types of Compactness**

- Iowa: length-width compactness, perimeter compactness
- South Carolina: geographical compactness, demographic compactness

# Detailed Guidelines

- **Cites to Supreme Court/State Court Cases**
- **Montana:** Race cannot be the predominant factor to which the traditional discretionary criteria are subordinated. (*Shaw v. Reno*, 509 U.S. 630 (1993))
- **South Carolina:** Population deviation should be within plus or minus five percent (+ or - 5%) and within an overall range less than ten (10%) percent. See, *Gaffney v. Cummings*, *Conner v. Finch*.
- **Michigan:** Senate and house districts shall not violate the precedents established in *Miller v Johnson*, 115 S Ct 2475; 132 L Ed 2d 762 (1995); *Bush v Vera*, 116 S Ct 1941; 135 L Ed 2d 248 (1996); and, *Shaw v Hunt*, 116 S Ct 1894; 135 L Ed 2d 207 (1996).

# State Guidelines

- Compactness- 37 states
- Contiguity- 48 states
- Communities of interest- 23 states
- Equal population- 36 states
- Voting Rights Act- 23 states
- Incumbent blind/ not favoring political party- 13 states
- Political boundaries- 38 states
- Geographic boundaries- 17 states

# New York City Charter

---

Good example of criteria working together to develop a plan

# New York City Charter

- **§ 51. Powers and duties of the commission; hearings; submissions and approval of plan.** a. Following each decennial census, the commission shall prepare a plan for dividing the city into districts for the election of council members. In preparing the plan, the **commission shall be guided by the criteria** set forth in section fifty-two.
- b. **The commission shall hold one or more public hearings not less than one month before it submits its plan to the city council, in accordance with subdivision c of this section. The commission shall make its plan available to the public for inspection and comment not less than one month before the first such public hearing.**
- c. The commission shall submit its plan to the city council not less than one year before the general election of the city council to be held in the year nineteen hundred ninety-three and every ten years thereafter.



# New York City Charter

- d. The plan submitted in accordance with subdivision c of this section shall be deemed adopted unless, within three weeks, the council by the vote of a majority of all of its members adopts a resolution objecting to such plan and returns the plan to the commission with such resolutions and a statement of its objections, and with copies of the written objections of any individual members of the council who have submitted objections to the speaker prior to such date. Any objections from individual members submitted to the speaker by such date shall be transmitted to the districting commission whether or not the council objects to such districting plan.
- e. Upon the receipt of any such resolution and objections, the commission shall prepare a revised plan and shall, no later than ten months before such general election of the city council, make such plan available to the council and the public for inspection and comment. The commission shall hold public hearings and seek public comment on such revised plan.
- f. Following its consideration of the comments received pursuant to subdivision e of this section, the commission shall, no later than eight months before such general election of the council, prepare and submit a final plan for the redistricting of the council.

# New York City Charter

- g. Notwithstanding the provisions of subdivision d or subdivision of this section, no plan shall be deemed adopted in accordance with either of such subdivisions until the commission files, with the city clerk, a copy of such plan and a statement signed by at least nine members of the **commission certifying that, within the constraint of paragraph a of subdivision one of section fifty-two, the criteria set forth in the other paragraphs of such subdivision have been applied in the order in which they are listed and that such criteria have been implemented, in such order, to the maximum extent practicable. Such certification shall also set forth the manner in which the commission implemented the requirements of paragraph b of subdivision one of section fifty-two.** Such plan shall be deemed adopted upon the commission's filing with the city clerk of such plan and such certification.
- h. After the commission files its final plan with the city clerk pursuant to subdivision g of this section, the commission shall take all steps necessary to ensure that such plan is effectuated, including but not limited to submitting such **plan for preclearance by the United States department of justice pursuant to the United States voting rights act of nineteen hundred sixty-five, as amended, and making such adjustments in its plan as may be necessary and appropriate to respond to a determination of a court or the United States department of justice.**

# New York City Council Charter

- **§ 52. District plan; criteria.** 1. In the preparation of its plan for dividing the city into districts for the election of council members, the commission **shall apply the criteria set forth in the following paragraphs to the maximum extent practicable. The following paragraphs shall be applied and given priority in the order in which they are listed.**
- a. **The difference in population between the least populous and the most populous districts shall not exceed ten percentum (10%) of the average population for all districts, according to figures available from the most recent decennial census.** Any such differences in population must be justified by the other criteria set forth in this section.
- b. Such districting plan shall be established in a manner that **ensures the fair and effective representation of the racial and language minority groups in New York city which are protected by the United States voting rights act of nineteen hundred sixty-five, as amended.**

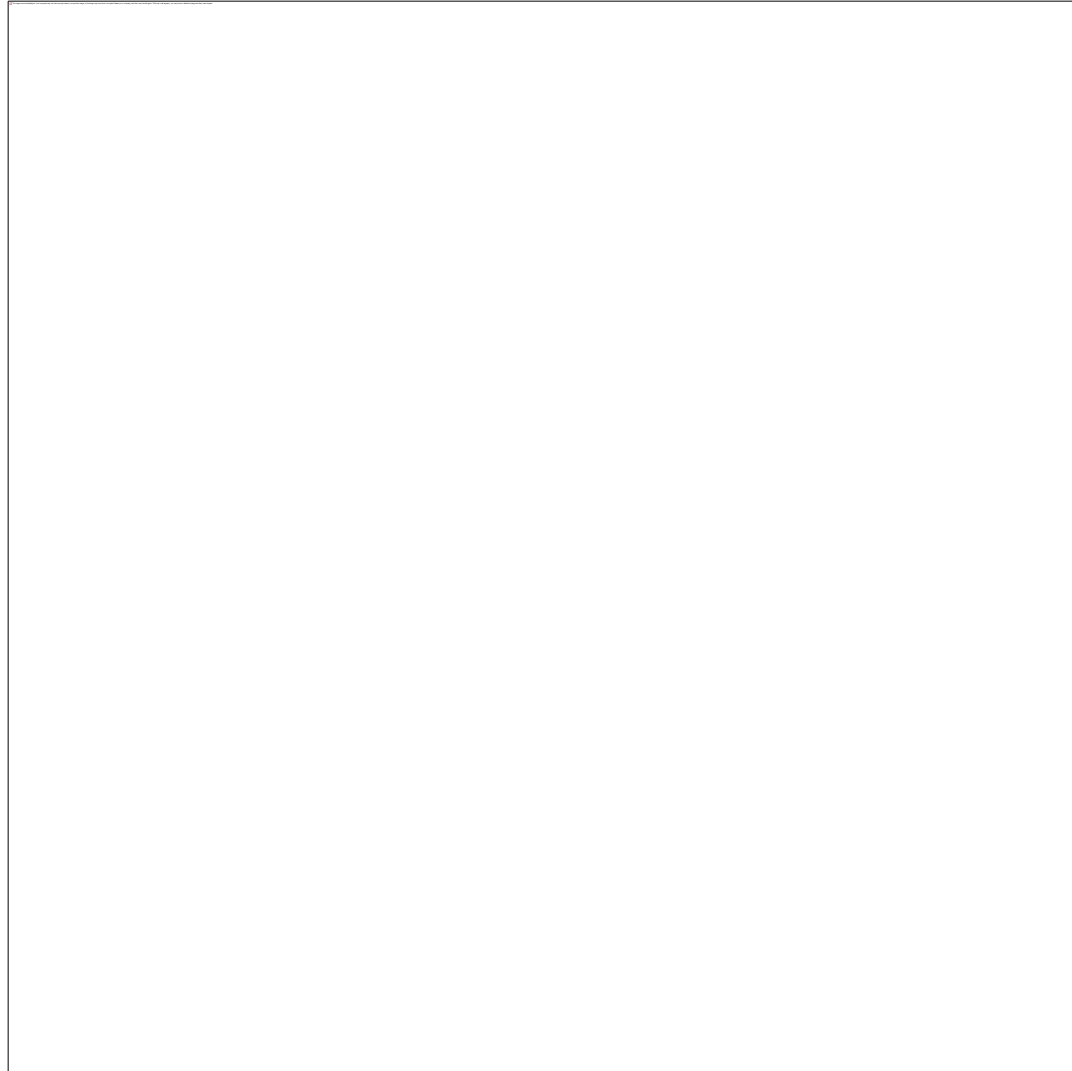
# New York City Council Charter

- **c. District lines shall keep intact neighborhoods and communities with established ties of common interest and association, whether historical, racial, economic, ethnic, religious or other.**
- **d. Each district shall be compact and shall be no more than twice as long as it is wide.**
- **e. A district shall not cross borough or county boundaries.**
- **f. Districts shall not be drawn for the purpose of separating geographic concentrations of voters enrolled in the same political party into two or more districts in order to diminish the effective representation of such voters.**

# New York City Council Charter

- **g. The districting plan shall be established in a manner that minimizes the sum of the length of the boundaries of all of the districts included in the plan.**
- **2. Each district shall be contiguous, and whenever a part of a district is separated from the rest of the district by a body of water, there shall be a connection by a bridge, a tunnel, a tramway or by regular ferry service.**
- **3. If any district includes territory in two boroughs, then no other district may also include territory from the same two boroughs.**

# District 33 and District 34



# Reconciling Criteria

- District 34 required to comply with Section 5 of the Voting Rights Act as an effective minority district; also crossed county line
- District 33 non-compact and not a minority district but the need to comply with Voting Rights Act and create 51 districts citywide working within limits of water boundaries and counties necessitated this district

## When Model Criteria Conflict

---

Example of reform group criteria that does not work in harmony- criteria in conflict with existing law and each other



# When Model Criteria Conflict

- THE FOLLOWING PRINCIPLES SHALL BE FOLLOWED IN THE CREATION OF SENATE, ASSEMBLY, AND CONGRESSIONAL DISTRICTS TO THE EXTENT PRACTICABLE.
- A PRINCIPLE WITH A LOWER NUMBER SHALL HAVE PRECEDENCE OVER A PRINCIPLE WITH A HIGHER NUMBER.  
(1) **THE MOST AND LEAST POPULOUS SENATE DISTRICTS SHALL NOT EXCEED OR BE LOWER THAN THE MEAN POPULATION OF ALL SENATE DISTRICTS BY MORE THAN ONE PERCENT, AND THE MOST AND LEAST POPULOUS ASSEMBLY DISTRICTS SHALL NOT EXCEED OR BE LOWER THAN THE MEAN POPULATION OF ALL ASSEMBLY DISTRICTS BY MORE THAN ONE PERCENT. IN NO EVENT SHALL THE COMMISSION ADVANTAGE ANY REGION OF THE STATE OVER ANY OTHER BY CREATING MULTIPLE DISTRICTS THEREIN EXCEEDING, OR LOWER THAN, THE MEAN POPULATION BY MORE THAN ONE PERCENT.**

# When Model Criteria Conflict

- (II) **COUNTIES SHALL NOT BE DIVIDED IN THE FORMATION OF DISTRICTS, EXCEPT TO CREATE DISTRICTS WHOLLY WITHIN A COUNTY. WHERE SUCH DIVISION OF COUNTIES IS UNAVOIDABLE, MORE POPULOUS COUNTIES SHALL BE DIVIDED IN PREFERENCE TO THE DIVISION OF LESS POPULOUS COUNTIES.**
- (III) COUNTY SUBDIVISIONS SHALL NOT BE DIVIDED IN THE FORMATION OF DISTRICTS, EXCEPT TO CREATE DISTRICTS WHOLLY WITHIN A COUNTY SUBDIVISION. FOR THE PURPOSES OF THIS ARTICLE, A COUNTY SUBDIVISION SHALL BE A CITY, EXCEPT THE CITY OF NEW YORK, A TOWN, OR AN INDIAN RESERVATION WHOSE TERRITORY IS EXCLUSIVE OF THE TERRITORY OF ANY CITY OR TOWN. COUNTY SUBDIVISIONS WITH LARGER POPULATIONS SHALL BE DIVIDED IN PREFERENCE TO THE DIVISION OF THOSE WITH SMALLER POPULATIONS.

# When Model Criteria Conflict

- (IV) INCORPORATED VILLAGES SHALL NOT BE DIVIDED IN THE FORMATION OF DISTRICTS.
- (V) **THE SENATE, ASSEMBLY, AND CONGRESSIONAL DISTRICTS SHALL BE AS COMPACT IN FORM AS POSSIBLE.**
- (VI) A SENATE, ASSEMBLY, OR CONGRESSIONAL DISTRICT SHALL UNITE COMMUNITIES DEFINED BY ACTUAL SHARED INTERESTS, TAKING ACCOUNT OF GEOGRAPHIC, SOCIAL, ECONOMIC, AND OTHER FACTORS **THAT INDICATE COMMONALITY OF INTEREST**, AND DISTRICTS SHALL BE FORMED SO AS TO PROMOTE THE ORDERLY AND EFFICIENT ADMINISTRATION OF ELECTIONS.

Model Criteria Moving Forward:  
S.7881A- New York Legislation (Dilan)

---

Example of new criteria working  
in concert with federal and state  
requirements

# S.7881A

- a. All districts of a house of the legislature shall be as nearly equal in population as is practical, except as necessary to satisfy the requirements of subdivisions c, e and f of this section, but **the difference in population between the most and least populous senate districts shall not exceed ten percent of the mean population of all senate districts, and the difference in population between the most and least populous assembly districts shall not exceed ten percent of the mean population of all assembly districts. For any contiguous group of senate or assembly districts, the percentage of the total number of such districts contained within such group, and the percentage of the total population of the state contained within such group, both expressed as two-digit numbers followed by two-digit decimals, shall not differ by an amount greater than 0.50. The populations of any two senate or assembly districts adjoining within a county subdivision, or, in New York city, within a county, shall not differ by an amount greater than two percent of the mean population of such two districts.**
- b. All congressional districts shall be as nearly equal in population as is practicable.
- c. Each district shall consist of **contiguous territory; no district shall consist of parts entirely separated by the territory of another district of the same body, whether such territory be land or water, populated or unpopulated. A populated census block shall not be divided by a district boundary, unless it can be determined that the populated part of such block is within a single district.**

# S.7881A

- d. The whole number of persons reported in the federal decennial census shall be the basis for determining populations for the purposes of this act, except that, for the purpose of determining the populations of senate and assembly districts, **no person shall be deemed to have gained or lost a residence by reason of conviction and incarceration in a federal or state correctional facility.**
- e. Senate, assembly, or congressional districts shall not be established that result in a denial to **members of racial and linguistic minority groups of an equal opportunity with other citizens to participate in the political process and to elect the representatives of their choice. The principles stated in subdivision f of this section shall be used to create districts that will afford fair representation to the members of those racial and linguistic minority groups who are sufficiently numerous and whose residential patterns afford the opportunity of creating districts in which they will be able to elect representatives of their choice.**
- f. Subject and subsidiary to the requirements of subdivisions a, b, c, d and e of this section, the following principles shall be followed in the creation of senate, assembly, and congressional districts. **A principle with a lower number shall have precedence over a principle with a higher number.**
  - i. To the extent possible, **counties shall not be divided in the formation of districts**, except to create districts wholly within a county pursuant to state law.
  - ii. Where possible, **county subdivisions** shall not be divided in the formation of districts, except to create districts wholly within a county subdivision. For the purposes of this act, a county subdivision shall be a city (except for a city with a population of one million or more), a town, or an Indian reservation whose territory is exclusive of the territory of any city or town. To the extent possible, county subdivisions with larger populations shall be divided in preference to division of those with smaller populations.
  - iii. **If a town must be divided, where possible, incorporated villages shall not be divided.**
  - iv. Senate, assembly, and congressional districts shall be as compact in form as is possible.

# S.7881A

- **Plans of senate, assembly, or congressional districts shall be compared, using average numerical measures, for each such plan, of: (A) geographic dispersion, the degree to which the territory of districts is either tightly packed or widely spread out; (B) the relation of the perimeter lengths to the areas of districts; and (C) the dispersion of the populations of districts; but no measure shall be employed that is scale-sensitive, according different weight to the compactness of districts in rural, as compared with urban areas, or yielding different measures for identically shaped districts that differ only in absolute size.**
- v. To the extent possible, a senate, assembly, or congressional district shall unite communities defined by actual shared interests, taking account of geographic, social, economic, and other factors that indicate commonality of interest, and districts shall be formed so as to promote the orderly and efficient administration of elections.
- vi. **To the extent possible, the residences of two or more incumbent members of the same body shall not be placed in the same district of such body, and the residences of incumbent legislators and members of congress shall be included in the district with the largest number of their existing constituents,** but the requirements of subdivisions a, b, c, d and e of this section, and of paragraphs i, ii, iii, iv and v of this subdivision, shall always take precedence over, and shall never be subordinated to, the requirements of this paragraph or the preservation of the cores of existing districts.

# Legislative Chamber Size

- Does your state law permit a change in the size of the chamber?
- Always let the public know if a change is being considered.
- If you can change the size of the membership, include it in your guidelines as a possibility.



# Prisoners, Students, and Military

- Hawaii: HI. Const. Art. IV, Section 4
  - **Excludes:** Non- resident students, non-resident military, non-resident military dependents
- Kansas: KS Const. Art. 10 Section 1
  - **Excludes:** Non-resident students, non-resident military personnel
  - **Includes:** Military personnel in district of permanent residence, college students in district of permanent residence

# Prisoners, Students, and Military

- New York Law: Chapter 57, Part XX, Section 1 (2010)
  - Prohibits incarcerated individuals at state and federal correctional facilities from being included in population counts used for redistricting of legislative districts.
  - Such individuals (with State residence prior to incarceration) would be reassigned to their last known address of record.
- Maryland Law (Chapter 66, Laws of 2010)
  - Prohibits incarcerated individuals at state or federal correctional facilities from being included in population counts used for redistricting of congressional, legislative, county and municipal districts
  - Such individuals (with State residence prior to incarceration) would be reassigned to their last known address of record.

# RE-REDISTRICTING

- Should criteria indicate that district lines remain unaltered for a decade?
- Several states already have laws limiting re-districting

## REDISTRICTING MORE THAN ONCE A DECADE?

- Texas, Georgia, New Hampshire, South Carolina all re-redistricted during mid-decade
- Colorado's attempt failed in court: based on State Constitution
  - "When a new apportionment shall be made by congress, the general assembly shall divide the state into congressional districts accordingly."  
Colorado Constitution, Article V, Section 44

# A Note on Competitiveness

- What is the political standard?
- **Vieth v Jubilier:** 541 U.S. 284-298 (2004)  
"There is no effective way to ascertain a party's majority status.....even if a majority party could be identified, it would be impossible to ensure that it won a majority of seats unless the State's traditional election structures were radically revised"
- **Arizona criteria:**
  - A. Districts shall comply with the United States Constitution and the United States voting rights act;
  - B. Congressional districts shall have equal population to the extent practicable, and state legislative districts shall have equal population to the extent practicable;
  - C. Districts shall be geographically compact and contiguous to the extent practicable;
  - D. District boundaries shall respect communities of interest to the extent practicable;
  - E. To the extent practicable, district lines shall use visible geographic features, city, town and county boundaries, and undivided census tracts;
  - **F. To the extent practicable, competitive districts should be favored where to do so would create no significant detriment to the other goals.**

# AND DON'T FORGET...

- Never go anywhere, say anything, do anything, write anything, or undertake anything else without competent counsel.
- Make sure your counsel has redistricting experience.

# Contact Information

Jeffrey M. Wice  
JMWice@gmail.com  
(202)494-7991

Lindsay Godt assisted in the development of this  
presentation.