

Thank you Chairman Owens and members of the Senate for allowing me the opportunity to comment on the proposed Buffalo 1 Senate map.

I am well aware that there are several maps being discussed amongst my Senate colleagues that draw my home into Senator Oletha Faust-Goudeau's district. I know this is the case with Buffalo 1, and the map that the Majority Leader is promoting behind closed doors.

This map clearly, and the map that is being promoted by the Senate Majority Leader, violates the principles adopted by this committee at its first meeting. I have attached a copy of those principles. I would refer the committee to item #4 D of the adopted "Guidelines and Criteria for 2010 Kansas Congressional and Legislative Redistricting." And I quote, "There should be recognition of similarities of interest. Social, cultural, racial, ethnic, and economic interests common to the population of the area, which are probable subjects of legislation (generally termed "communities of interest") should be considered." In addition, I have attached a memo dated April 29, 2011, from our Senior Assistant Revisor entitled "A Brief Preview of the Law on Redistricting". Please pay close attention to the bottom of page 3, where it is stated, a violation of the Federal Voting Rights Act is described as, and I quote, "based on a totality of the circumstances, it is shown that the political processes leading to the nomination or election in the State or political subdivision are not equally open to participation by members of . . . (a racial, color, or language minority class) . . . in that it's members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice."

Clearly, gerrymandering an area of Wichita where primarily caucasian voters reside, in homes that are upwards of \$800,000 and more in price, violates committee rules and federal redistricting guidelines. Any map that draws my home into Senator Oletha Faust-Goudeau's district is a violation of two communities interest.

Government belongs to the people, not the politicians. We are here today, each and every member of the Kansas House and the Kansas Senate, because of choices made by Kansas voters. This map is an attack on Kansas voters. Each and every time a majority of a committee in this body, or an incumbent elected official, uses the power of this office to gerrymander out an opponent, it is admission that retaining power is more important than letting voters have their say. It is arrogant. It is wrong. For the record, I stand with the people. I stand with Kansas voters. Let the people decide!

Thank you for your time and attention today ,



State Representative Brenda Landwehr Dist. 91

Senate Reapportionment
3/14/12
Attachment 2

**GUIDELINES AND CRITERIA FOR 2012
KANSAS CONGRESSIONAL AND LEGISLATIVE REDISTRICTING**

**Approved by the Senate Committee on Reappropriation April 28, 2011
Approved by the House Committee on Redistricting on January 9, 2012**

Legislative Redistricting

1. The basis for legislative redistricting is the 2010 U.S. Decennial Census as recalculated by the Kansas Secretary of State pursuant to Article 10, Section 1 of the *Constitution of the State of Kansas* and KSA 11-301 *et seq.*
2. Districts should be numerically as equal in population as practical within the limitations of Census geography and application of guidelines set out below. Deviations should not exceed plus or minus 5 percent of the ideal population of 22,716 for each House district and 70,986 for each Senate district, except in unusual circumstances. (The range of deviation for House districts could be plus or minus 1,136 persons, for districts that could range in population from 21,580 to 23,852. The overall deviation for House districts could be 2,272 persons. The range of deviation for Senate districts could be plus or minus 3,549 persons, for districts that could range in population from 67,437 to 74,535. The overall deviation for Senate districts could be 7,098 persons.)
3. Redistricting plans will have neither the purpose nor the effect of diluting minority voting strength.
4. Subject to the requirement of guideline No. 2:
 - a. The "building blocks" to be used for drawing district boundaries shall be voting districts (VTDs) as described on official 2010 Redistricting U.S. Census maps.
 - b. Districts should be as compact as possible and contiguous.
 - c. The integrity and priority of existing political subdivisions should be preserved to the extent possible.
 - d. There should be recognition of similarities of interest. Social, cultural, racial, ethnic, and economic interests common to the population of the area, which are probable subjects of legislation (generally termed "communities of interest"), should be considered. While some communities of interest lend themselves more readily than others to being embodied in legislative districts, the Committee will attempt to accommodate interests articulated by residents.
 - e. Contests between incumbent members of the Legislature or the State Board of Education will be avoided whenever possible.
 - f. Districts should be easily identifiable and understandable by voters.

Congressional Redistricting

1. The basis for congressional redistricting is the 2010 U.S. Decennial Census as published by the U.S. Department of Commerce, Bureau of the Census. The "building blocks" to be used for drawing district boundaries shall be Kansas counties and voting districts (VTDs) as their population is reported in the 2010 U.S. Decennial Census.
2. Districts are to be as nearly equal to 713,280 population as practicable.
3. Redistricting plans will have neither the purpose nor the effect of diluting minority voting strength.
4. Districts should attempt to recognize "community of interests" when that can be done in compliance with the requirement of guideline No. 2.
 - a. Social, cultural, racial, ethnic, and economic interests common to the population of the area, which are probable subjects of legislation (generally termed "communities of interest"), should be considered.
 - b. If possible, preserving the core of the existing districts should be undertaken when considering the "community of interests" in establishing districts.
 - c. Whole counties should be in the same congressional district to the extent possible while achieving population equality among districts. County lines are meaningful in Kansas and Kansas counties historically have been significant political units. Many officials are elected on a countywide basis, and political parties have been organized in county units. Election of the Kansas members of Congress is a political process requiring political organizations which in Kansas are developed in county units. To a considerable degree most counties in Kansas are economic, social, and cultural units, or parts of a larger socioeconomic unit. These interests common to the population of the area, generally termed "community of interests" should be considered during the creation of congressional districts.
5. Districts should be as compact as possible and contiguous, subject to the requirement of guideline No. 2.

*Senator Jim Owens
District 8*

MARY ANN TORRENCE, ATTORNEY
REVISOR OF STATUTES
JAMES A. WILSON III, ATTORNEY
FIRST ASSISTANT REVISOR
GORDON L. SELF, ATTORNEY
FIRST ASSISTANT REVISOR



OFFICE OF REVISOR OF STATUTES
KANSAS LEGISLATURE

Legal Consultation—
Legislative Committees and Legislators
Legislative Bill Drafting
Legislative Committee Staff
Secretary—
Legislative Coordinating Council
Kansas Commission on
Interstate Cooperation
Kansas Statutes Annotated
Editing and Publication
Legislative Information System

A Brief Overview of the Law On Redistricting

Jason B. Long
Senior Assistant Revisor
Office of Revisor of Statutes

April 29, 2011

The Census

Section 2 of article 1 of the United States Constitution requires that a census be conducted every ten years to determine the number of persons in the United States. Congress has delegated the duty of conducting the decennial census to the Bureau of Census, which is within the U.S. Department of Commerce. The U.S. Secretary of Commerce is required by law to prepare a report on the population of the United States and present this report to the President by December 31st of the census year. The census numbers are then reported to the states during the first months of the following year. The majority of states use the decennial census numbers tabulated by the Bureau as the basis for redrawing the representative districts within the state.

Kansas also uses the decennial census numbers, but makes an additional calculation. Section 1 of article 10 of the Kansas Constitution provides that the census numbers tabulated by the Bureau must be adjusted to: “(1) *exclude* nonresident military personnel stationed within the state and nonresident students attending colleges and universities within the state; and (2) *include* military personnel stationed within the state who are residents of the state and students attending colleges and universities within the state who are residents of the state in the district of their permanent residence.” (emphasis added) K.S.A. 11-301 requires the Secretary of State to

use the federal census numbers and then perform the adjustments in accordance with section 1 of article 10. The Kansas congressional and state legislative districts are then redrawn based on the adjusted population numbers.

Reapportionment of Legislative Seats

Section 2 of article 1 of the U.S. Constitution also mandates that the seats in the U.S. House of Representatives be apportioned among the states according to the number of persons residing in the state. The apportionment requirement for Kansas state representative and senatorial districts is found in K.S.A. 4-3,731, which establishes 125 single member representative districts and mandates reapportionment in accordance with section 1 of article 10 of the Kansas Constitution, and in K.S.A. 4-4,451, which establishes 40 single member senatorial districts and provides the same reapportionment mandate.

Redistricting plans for both congressional seats and state legislative seats must be validated pursuant to section 1 of article 10 of the Kansas Constitution. First, a redistricting plan is enacted the same as any other act. Then the attorney general has 15 days to petition the Kansas Supreme Court requesting the court's approval of the plan. If the court determines the plan is invalid, then the legislature must enact a new plan within 15 days after the court's judgment. This subsequent plan is again presented to the court by the attorney general for approval. Only after the court rules that the plan is valid does it become final and effective.

Equality Standards

One of the primary issues in drawing representative districts is whether the districts are equal in terms of the population included in each district. This issue is often litigated and the courts have developed two standards for determining equality depending on the type of district being drawn.

First, if the district is a congressional representative district, courts use a strict standard in measuring equality. The U.S. Supreme Court has held that the U.S. Constitution requires near absolute equality between the congressional districts within a state. Any deviation from exact equality must be justified by the state. A state may justify deviations from absolute equality if such deviations were due to the state adhering to one or more of the following policies in

drawing district boundaries: making districts compact; maintaining political subdivision boundaries; preserving the cores of prior districts; or avoiding contests between incumbents.

To successfully defend a congressional redistricting plan that deviates from absolute equality a state must show that each deviation is specifically tied to one of the above policies. In other words, the state must have a specific legitimate policy reason for *each* particular deviation. In determining the validity of a deviation the court also considers the size of the deviation, the state's interest in the stated policy, the consistency with which the policy is applied and possible alternative plans that may achieve more equality while still promoting the stated policy.

The second type of district is the state and local representative district. The courts have typically applied a less stringent standard to the equality of these types of districts. The U.S. Supreme Court has generally followed a 10% rule when determining the validity of these types of districts. If the total deviation between the largest and the smallest districts is less than 10% then the party challenging the validity of the plan must demonstrate some other reason why the plan is invalid, such as discriminatory intent. If the total deviation is above 10% then the state must justify the deviation. The same policies that may justify congressional district plans may also be used by a state to justify a state legislative district plan.

The Voting Rights Act

The other major legal concern when redrawing representative districts is the Voting Rights Act (VRA). This act, originally passed in the 1960s, is intended to prevent minority discrimination and underrepresentation through racially biased district gerrymandering. Section 2 of the act applies to all states and political subdivisions and prohibits discriminatory voting procedures and practices. Section 5 is only applicable to certain states with a history of discriminatory voting practices and requires those entities to obtain preclearance by the U.S. Justice Department or the U.S. District Court for the District of Columbia before any changes to voting laws or practices may become effective. Kansas is not subject to section 5; thus this memorandum will focus primarily on section 2 of the VRA.

A violation of section 2 occurs when

based on a totality of the circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not

equally open to participation by members of . . . [a racial, color, or language minority class] . . . in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. the extent to which members of a protected class have been elected . . . is one circumstance which may be considered: Provided, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population. 42 U.S.C. §1973.

Violations typically occur through the use of vote dilution practices, such as the use of multimember districts, packing of minorities into a single district, or fracturing minorities into several districts. Each of these practices can have the effect of diluting the vote of the minority group so that the group has less of an opportunity to participate in the political process.

A plaintiff challenging a proposed redistricting plan under a section 2 claim must demonstrate that the plan will have a discriminatory effect or result. The U.S. Supreme Court has articulated a three-part test a plaintiff must satisfy to prove a section 2 violation. The plaintiff must show that: (1) the minority population is relatively compact in size and geography; (2) the minority population is politically cohesive; and (3) the majority population usually votes as a bloc to defeat the minority group's preferred candidate.

In determining whether a plaintiff has met the test courts must look at the "totality of the circumstances" surrounding the drawing of the plan. This involves looking at the following factors which can assist the court in identifying the characteristics of the minority group in question and the voting history of the subject district:

1. The extent of the history of official discrimination touching on the minority group participation;
2. Racially polarized voting;
3. The extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, antisingle-shot provisions, or other voting practices that enhance the opportunity for discrimination;
4. Denial of access to the candidate slating process for members of the class;
5. The extent to which the members of the minority group bear the effects of discrimination in areas such as education, employment and health that hinder effective participation;

6. Whether political campaigns have been characterized by racial appeals;
7. The extent to which members of the protected class have been elected;
8. Whether there is a significant lack of responsiveness by elected officials to the particular needs of the group; and
9. Whether the policy underlying the use of the voting qualification, standard, practice or procedure is tenuous. *Thornburg v. Gingles*, 478 U.S. 30, 36-37 (1986).

To avoid a section 2 claim states generally rely on applying the many race-neutral policies available when drawing district boundaries, such as the contiguity and compactness of districts, and keeping political subdivisions and communities of interest together. Adherence to these and similar policies often negates the legal argument that race was the primary factor in drawing district boundaries and makes it difficult to prove a section 2 claim.