

## Reapportionment and Redistricting

### Slide 1- title

Many of you were here about a year ago when we had another program that focused on reapportionment, but that was 2010, and 2010 was the year of the census, so we spent most of our time talking about census taking. Today I want to revisit the census, briefly, and then delve into the wonderful world of reapportionment and redistricting-- which are the next steps after the census, and so 2011.

The census was a major program for the entire league in 2010. We partnered with the Census Bureau, worked hard to educate and get out the census response, as well as the vote later in the year. Here in La Plata, Marilyn Brown chaired our local committee, which some of you helped with. We had a speaker's bureau, we distributed cloth grocery bags with a census message in Spanish and attempted to make some bit of an impact in reaching traditionally non-responding and under counted communities. And we have an acknowledgement from the regional Census office recognizing our involvement. But how well did we, and all the other leagues, partners and Census Bureau do?

### Side 2: mail participation rate

If you remember how the census worked, you will understand these statistics. The first step was the receipt by every household in the country of their census form, which was to be completed and mailed back. This was the cheapest, quickest and easiest way for the Census Bureau to get its information, and the way they measure a lot of their effectiveness. These numbers show you the rate of return for all those initial census forms. This doesn't mean that only 54% of the people in La Plata were counted. After the mail back period, census employees went out into the community and attempted to contact every household, or the neighbors of those households, and discover all the people who didn't mail in their forms. While most of these rates are not significantly different from the

2000 response, they are still worrisome, some more than others. There are explanations for our county's response---rural areas tend not to respond as highly as urban/suburban (Jefferson County's rate was 81%) and a large second home population will not respond at the 2d home place. Even so, I would have preferred to see a higher response, especially since I personally worked to make that happen. The really big question and concern, however, is the response on the Ute Mt. reservation. Notice the enormous change in their response rate from 2000 to 2010---62% to 26%. I don't know how to explain this difference---wishful thinking would say the Census got the figures reversed by mistake. There was no rate given on the Census national website for the Southern Utes, so I haven't any comparison there. I know the Ute Mt. tribe was

working as a census partner, but simply don't have any explanation for such an incredible switch.

While the Census Bureau trumpeted its success in getting as high a national response rate as it did in the face of a lot of very public talk of boycott and illegality of the census and general changes in the way people live and communicate today, the General Accounting Office, in a report to Congress on the effectiveness of the census, had some other things to say. It noted that the resources spent on the count were enormous, and probably not sustainable in the future. And recommended that the Cens. Bureau undertake a complete re-thinking of its methodology, which the Bureau acknowledged is needed. That may mean a 2020 census that is more technologically centered, maybe using private databases more, and, one hopes, costing less than the \$30 billion that the GAO projected for 2020 with the current system.

But now we have the first numbers reported from the 2010 census, which give us the best picture we can get of how many people live here, or, at least, lived here on April 1, 2010, as the Constitution declares we must have.

#### Slide 3-population change us

The official population number for the entire country is 308,745,538, a 9.7% increase from 10 years ago. This is the lowest decade's increase since the Depression-hit 30's, even though most of the "oughts" were years of economic boom.

#### Slide 4-CO pop. Change

Colorado grew during the decade to a population of 5,029,196, but the rate was slowed to 16.9%, not the almost 31% from 2000.

#### Slide 5-regions low growth

As you can see here, the Midwest and northeast did show increases in population, although not enormous. Michigan was the only state experiencing a decline in population from 2000, by .6%

The population growth continued to come in the south and west, tilting the country away from the north east and mid west. Nevada had the highest percentage gain with 35.1 %, followed by Arizona at 24.6%.

#### Slide 6 - high growth

These gross numbers were released by the Census Bureau on Dec. 21, 10 days ahead of its legally required end of the year report. In addition to the raw numbers, the Bureau announced its calculations for the re-apportionment of the Congress, the official reason for having a census.

#### Slide 7-apportionment map

This map shows the winners and losers in the apportionment game for 2011. Texas was the big winner, gaining 4 seats. All the gainers are southern or western; the losers are mostly in the northeast or Midwest, except Louisiana, an outlier possibly due to Hurricane Katrina caused population changes. The political spin that is being put on these changes is that Republican leaning states are becoming more important for federal elections (gaining seats in the House and electoral college votes), and the often Democrat leaning states in the rust belt, are becoming less so. Despite its significant population growth, Colorado's number of House seats did not change. And, for the first time in 100 years, California did not gain a new seat.

The new apportionment figures will officially be presented to the Congress by the President this month, but the Census Bureau continues to crank out numbers for the important work to be done at the state level---redistricting. Based on these newly apportioned seats, and the changes in population since 2000, each state must now go through the process of redrawing its congressional districts to make them meet legal requirements. The Census Bureau must provide to each state something called the Public Law 94-171 data for use in the district drawing effort. This is data divided into blocks and split up along demographics that allows the states to drill down into their populations in order to accurately draw its districts. For example, it will give information on population numbers in counties, towns and cities, even voting precincts if the state requests. These populations will, also, be broken down by race and voting ages to facilitate complying with Court and statutory mandates. Until this is done (deadline is April 1), a state can really not start redrawing districts. The time for release of these numbers for Colorado is late February.

Let's talk a little bit about what redistricting is, how it's done and why, so when the actual work begins we will be better informed about the process and know what to watch for. We know it is done every 10 years after the census, for Congress it is required by Article 1, sect. 2 of the Constitution, but other laws require it also for the CO state assembly.

#### Slide 8-redistricting

When courts adjudicate districting issues, when academics write about them or legislatures codify them, these are what they usually cite. The first standard, which is

now recognized as a bright line rule that must be met explicitly and absolutely, is "one person, one vote". In a long line of cases that started in the '60's the Supreme court articulated a requirement based on Article I, section 2 of the Constitution that, because differences in population among Congressional districts meant that the votes of residents of those districts had varying degrees of weight, or impact, in an election, those numbers had to be as mathematically equal as reasonably possible. That is a phrase the court used to say if the population in each district isn't exactly the same as every other one, you line drawers had better have a darned good reason for it. With the finely tuned numbers available from the census, it is possible, as some states have done, to have districts which will vary in population no more than one person. The Supreme Court has set standards which allow a bit more deviation among districts for State Legislatures---it is generally recognized that there may be up to 10% deviation here before it becomes suspect.

Closely related to this standard is the prohibition of voting practices, including redistricting, that dilute minority voting strength. These restrictions flow from the 14<sup>th</sup> Amendment and, specifically, from the Voting Rights Act. This is legislation that protects American Indians, Asian-Americans, Alaskan Natives, and persons of Spanish Heritage from voting discrimination on account of their race or ethnicity. Again, there are a string of cases from the Supreme Court defining what must be done to protect minorities from discriminatory districting decisions and practices. The rules enunciated there must be followed for a legally drawn district, either Congressional or at a lower political level.

Contiguity of a district has been recognized as a traditional districting standard. This means that all parts of a district must touch each other. There won't be a central district, then another part of the district completely separated from it. Unless, of course, part of the district is an island, perhaps.

The compactness of a district is another measure traditionally used, although not as easy to define. There are several ways to measure this, with names like the "Polsby-Popper" test or the "Reock" test. Or some people will say, that like pornography, they recognize it when they see it. If you see a completely round district (not likely), it is perfectly compact. A district that is spread out in thin tendrils in many directions is very non compact. One way to measure compactness is to take the outline of the district and, like a string, straighten it out. The test included in the CO constitution for state house or senate districts is to measure the "aggregate linear distance of all district boundaries", i.e. pull the boundaries out like a string, and make each as short as possible.

Some states ask those drawing the lines to preserve communities of interest, that is, groups of people concentrated in a geographic area who share similar interests and

priorities—cultural, social, ethnic, economic, religious, etc. These tend to be fuzzy delimiters—shared interests may be vague, may change over time, and people may move over time, splitting up the communities. And keeping together communities with similar interests may mean similar political preferences, which will weaken competitiveness.

Almost all plans are expected to recognize established political boundaries, and take into consideration physical boundaries. Co's constitution mentions this, and tells the line drawers to not split counties, if possible. If not, then don't split cities/towns within those counties. Use of physical boundaries, like a mountain range, as district boundaries, may clearly define groups of people with similar interests, as well as giving a representative an easier time of traveling through her district.

Making a district as competitive as possible is not as often cited as a criterion in redistricting, but it seems to me it is being used more often, and properly so. A competitive district would be composed of partisan voters who are evenly balanced, resulting in elections that are likely to be 55% to 45% or closer. Competitive districts just seem inherently more fair to most of us, and it is said they could have the effect of making elections more vigorous with higher voter turnouts. Another argument is that with close districts, the representative must be more middle of the road to appeal to more of her constituents.

#### Slide 9—gerrymander

This is the slanderous word of re-districting---nobody admits that he is actually engaging in gerrymandering---and might be seen as the opposite of "competitiveness". This slide, of course, is the original gerrymander, from which the word itself derives. It is a district in Mass., drawn by the venerated politician, Elbridge Gerry, then governor of Mass, in the year 1812. The Boston Globe said it looked like a salamander, created by Gerry, so it became the "Gerrymander". It has come to describe the process of making election districts that favor, or disfavor, a particular political group or politician. The basic techniques of creating a partisan gerrymander are **cracking**, **packing**, and **tacking**.

**Cracking** is the act of dividing groups of people with the same characteristics – in this case, voters likely to vote for a particular party – into more than one district. With their voting strength divided, the group is more likely to lose elections. **Packing** is just the opposite – cramming as many people with the same characteristic into as few districts as possible. In these few districts, the "packed" group is more likely to win ... but this drains their voting strength elsewhere. **Tacking** is the process of reaching out from the bulk of a district to grab a distant area with specific desired (usually partisan) demographics.

One common complaint about these gerrymanders is that prospecting for voters by party tends to interfere with other objectives of redistricting. For example, depending on where a party's supporters live, drawing lines that follow party preference may lead to districts that are not compact, that cross political boundaries, or that carve out chunks of social or economic communities of interest. Another complaint is that they distort representation in the state overall. For example, Democrats and Republicans can enjoy equal support statewide – but depending on the district lines, either party can win a disproportionate number of seats in the legislature.

Now we have the rules of redistricting, so to speak, let's see what must be done this year in Colorado and who will do it.

#### Slide 10—redistricting numbers

Remember that Colorado's number of Congressmen did not change in this reapportionment. That should mean that our redistricting effort can be a little less partisan and rancorous than it was in 2001. That year we had gained 1 seat, so major changes had to be made in Congressional districts. The Legislature was at an impasse, and the redistricting had to be done by the CO Supreme Court. This year, the changes can be made around the edges of districts, with no wholesale changes. For example, let's look at the numbers in this slide for the state and our District 3. Based on Colorado's population, each Congressional District should have as close to **720,704** as reasonably possible. (Note the slight difference between CO's district size and that for the nation as a whole---720k to 710k.)

#### Slide 11 redist. 2

Although the exact number for the population for each district has not been released yet (CO can expect to get those numbers in late February), an estimate in 2009 was that the 3d District of CO, where we live, would have c. 699,881 people, meaning there has to be an adjustment to the district of c. 21k people. Similar adjustments will need to be made all across the state, e.g. Dist 1 is projected to have 670,617 people and Dist. 6 808,256 and they will need to be 720k after redistricting. My expectation is that we won't see pieces of real estate flying around from district to district so much this year.

#### Slide 12-how CO redistricts

Under Colorado's Constitution, Congressional redistricting must be done by the General Assembly in its normal law writing procedure. But with the 2001 deadlock on its mind, and the split of control in the current legislature, this time legislature created a Joint Select Committee on Congressional Redistricting of 10 people, including five Republicans and five Democrats, with five from the House and another five from the Senate. First, the Committee will be visiting each district and soliciting suggestions

from citizens. When the PL 97-171 data is sent out from the Census Bureau, they will have the task of coming up with a proposed redistricting plan. When the Committee was announced by the Legislature and the Governor, the idea of competitiveness as a driver of the redistricting got a lot of mention. Gov. Hickenlooper said creation of too many safe districts turns off voters. The Republican speaker of the house and the democrat head of the senate both said that "keeping (redistricting) out of the courts and creating competitive districts" will be the committee's top objectives. We shall wait and see what the Committee actually draws, and whether the Legislature will accept it, tweak it, or fight about it until the Supreme Court intervenes. Another point these legislators should keep in mind is that there isn't any money in the State coffers to fund prolonged Legislative sessions and court cases about this redistricting. One hopes they will take all this into account. We should be diligent in watching and prodding them to be quick and to follow all the rules with a minimum of partisan gerrymandering.

### Slide 13—legislative districts

The process for state legislative redistricting is a bit different. Our Constitution sets out the standards that must be followed, and defines a independent group---the Reapportionment Commission—that will do the work of drawing state Senate and House districts. The Co League has a position supporting just such a commission, with essentially these same standards. In 1973, the League led a citizen initiative to adopt this Constitutional provision, which passed by a wide margin. It was first used in 1981 and seems to have worked well since. The State League supports a similar independent commission to implement Congressional redistricting. Perhaps the Joint Committee appointed for this year will be a step in that direction.

The Reapportionment Commission has 11 members-4 appointed by the General assembly, 4 by the Supreme Court, and 3 by the Governor. There is a mandate for bi-partisanship in membership and geographical distribution. The plan drawn by the Commission must be reviewed and approved by the Supreme court (and not the legislature) and must be finalized at least 55 days before the 2012 party caucus date.

With all this district-drawing to be done, 2010 should be an interesting year for those of us who are a bit of a political and legal junkies. I hope this discussion has helped prepare you to follow all the redistricting plots, counter plots, and machinations going on all over the country, and in our own state and district, with a little bit more savvy and interest. If there are any questions about any of this, please let's talk about it. And I want to give credit to Glenn Rodey, who put all these slides into a presentation for me, since I am pretty much of a technology idiot. He did great work with my limited presentation skills.