# A GUIDE TO LOCAL REDISTRICTING IN TENNESSEE

## 2011 Edition


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# A GUIDE TO LOCAL REDISTRICTING IN TENNESSEE

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# Introduction

Both federal and state law mandate reapportionment and redistricting. In the most technical sense, reapportionment refers to the allocation of political seats among units and is most commonly used in reference to the distribution of congressional seats among the fifty states. Redistricting refers to the delineation of boundaries for political units, such as state legislative and county commission districts.

According to Tennessee Code Annotated 5-1-111, county governments in Tennessee are required to redistrict by January 1, 2012. In order to complete this task, local officials must be equipped with the knowledge of the relevant legal, technical, and procedural aspects of redistricting. This manual attempts to provide a summary of this information.

The manual is divided into three chapters plus a glossary and a redistricting quick reference. The first chapter details the state and federal laws that govern redistricting at the local level. Since litigation sometimes follows redistricting, this chapter is important, especially as it relates to equal population (pp. 7-9) and minority representation (pp. 9-11). The second chapter highlights the data requirements and provides a technical overview of redistricting. Included is an example of an existing county district plan and precinct map with associated population statistics. Chapter 3 provides basic suggestions for local officials to develop new district plans and relates the process to the legal and technical concepts in the first two chapters.

**Appendix 1: Glossary** defines many of the terms used in the redistricting process and may be consulted during the reading of any of the chapters.
**Appendix 2: Local Redistricting Quick Reference** provides an at-a-glance overview of what you need to know about local redistricting.

**Note: Before starting the redistricting process, local officials should review state laws for any changes or new requirements. We also suggest that you seek legal advice when matters of law are in question.**

# Chapter 1: Local Redistricting and the Law

For the year 2011 Tennessee will use geographic information systems (GIS) technology to accomplish redistricting at federal, state and local levels. But while GIS is a powerful mapping tool, it does not do all the work. Local officials must have a strong understanding of the state and federal redistricting laws, and recent attorney general opinions. Also, redistricting standards of equal population and minority representation are addressed that provide direction and guidelines for drawing district lines. Understanding these concepts and applying them effectively is the ultimate key to a successful redistricting effort.

## A. Tennessee Constitution and Statutes

The 1978 Constitutional Convention amended the Tennessee Constitution, Article VII, Section 1, changing the reapportionment and redistricting requirements for county governments:

> "The legislative body shall be composed of representatives from districts in the county as drawn by the county legislative body pursuant to statutes enacted by the General Assembly. Districts shall be reapportioned at least every ten years based upon the most recent federal census. The legislative body shall not exceed twenty-five members, and no more than three representatives shall be elected from a district."

Here, the constitution provides some general parameters for county apportionment/redistricting. The number of representatives within a county is set at a maximum of 25 and allows for up to three representatives within a single district. This task must be completed at least once every ten years.

Additional membership requirements are provided by Tennessee statute (T.C.A. 5-5-102). Here, the county legislative body is limited to a minimum of nine members and reiterates the constitutional maximum of twenty-five members. Metropolitan government counties are not bound by this requirement. In these counties the metropolitan government charter establishes the size of the legislative body.

The Tennessee Code Annotated 5-1-111(a) through (g) provides more specific guidelines and standards on how reapportionment and redistricting is conducted at the local level. The subsections are provided as a foundation which counties should use in the process of drawing political lines.

> "(a) Prior to January 1, 1982, and at least every ten (10) years thereafter, county legislative bodies of the different counties shall

meet and, a majority of the members being present and concurring, shall change the boundaries of districts or redistrict a county entirely if necessary to apportion the county legislative body so that the members represent substantially equal populations."

This section identifies a few key points that county officials must be aware of. **First, the deadline to complete local redistricting is January 1, 2012.** Based on the Census Bureau's data delivery schedule and the time required to develop new district plans, county officials must be prepared and plan accordingly.

The other point identifies a goal in redistricting, equal population. Throughout the decade, population shifts within a county may result in unequal population among the various districts. Using the most recent census data, district boundaries can be adjusted or redrawn to equalize population among districts. This concept, known as "one person-one vote" was born out of many 1960's court cases, most notably *Baker v. Carr* 1962.

The 1968 Supreme Court ruling in *Avery v. Midland County, Texas*[1] is important to local governments. The decision extended the equal population principle of apportionment to the more than 80,000 units of local government.[2] The court found that "the Constitution permits no substantial variation from equal population in drawing districts for units of local government having general governmental powers."[3] With this ruling, the Court extended to county and city governments the one person, one vote standard that was being applied to congressional and state legislative districts.

**County school boards and highway commissions are also subjected to the federal requirement of one person – one vote. Historically, these districts coincide or share the same boundaries as the county commission districts.**

In addition to county government, municipalities in Tennessee are subject to the equal population principle of one person – one vote. In many cases, city charters provide specific details of how local officials are elected.

Equal population is discussed in greater detail on pages 7-9.

"(b) The county legislative body may increase or decrease the number of districts when the reapportionments are made."

Here, the statute allows some flexibility to determine the appropriate number of districts within a county. Based on significant population changes or other factors, the county may decide to increase or decrease the number of districts and size of the commission accordingly. This decision is usually completed prior to drawing new district boundaries.

"(c) A county legislative body may reapportion at any time if the county legislative body deems such action necessary to maintain substantially equal representation based on population."

To aid in the interpretation of this section, the attorney general opined in 1996 (No. U96-005) that State law does not authorize a county commission to reapportion its commissioner districts prior to the next decennial census so as to make them more compact where the existing districts are **already** substantially

equal in population. The attorney general continues, "Although this section authorizes a county legislative body to reapportion more than once every ten years, this authority may be exercised only when the county legislative body finds that reapportionment is necessary to **maintain** districts that are substantially equal in population. There is no express or implied authority in Section 5-1-111 to reapportion at any time merely to create more compact districts."

This means that once a new, substantially equal in population district plan based on 2010 census totals is approved, the county commission does not have the authority to change it or create a new one. The county commission can reapportion more than once every ten years only when a district plan does not meet equal population standards.

## "(d) The county legislative body must use the latest federal census data whenever a reapportionment is made."

While in the past, courts have accepted other population bases, this statute carries out the constitutional requirement that the latest federal census data be used when reapportioning and redistricting the county legislative body.

The census taken in 2010 continues the practice which began in 1790, the purpose being to apportion the congressional representatives among the "several states according to their respective numbers... counting the whole of persons in each State." [Constitution of the United States, Article 1, Section 2] It is census data that state legislatures use to draw the Congressional district lines and the state legislative district lines. The same population data must be used to develop new district plans at the county level.

Although the use of the federal census data is an accepted practice, some have questioned the use of including military, inmate, and university population in redistricting plans. In 1991, the state attorney general opined (No. 91-21) that with regard to county legislative bodies, "**military personnel stationed at military installations in Tennessee, inmates at state correctional facilities and students attending colleges in Tennessee cannot be excluded from the population base in such reapportionment plans**."

Chapter 2 provides more detail regarding census data and its use in redistricting.

## "(e) Districts shall be reasonably compact and contiguous and shall not overlap."

The concepts of drawing districts that are compact and contiguous are not new and can be defined in a larger context of "traditional districting principles". In fact, these principles are required in developing state legislative and congressional districts[4]. In the congressional case of *Shaw v. Reno*, 1992, the court said, "Reapportionment is one area in which appearances do matter."

Compactness can be most easily understood in terms of a district's shape. Violation of this principle results in districts with "irregular shapes", better known as gerrymandering. Although statistical methods have even been developed to measure compactness, a 1994 partisan gerrymandering case[5] took a different view of this principle. It viewed compactness not as a geometric shape that could be measured, but rather "the ability of citizens to relate to each other and their representatives and to the ability of representatives to relate effectively to their constituency."

While the redistricting principle of "reasonably compact" may be somewhat obscure in its definition, contiguity is more easily understood. Simply put, a district must be one homogeneous piece of land, not split into two discrete areas. In addition to districts being contiguous, they shall not overlap or share the same land area.

"(f) (1) Except as provided in subdivision (f)(2), in the establishment of boundaries for districts, no precinct shall be split.
(2) Upon written certification by the coordinator of elections, a county election commission may establish a precinct that encompasses two (2) or more districts in any county that has twenty (20) or more county legislative districts. In making this determination the coordinator of elections shall consider, among other things, the type of voting equipment used in the county, as well as racial makeup of the districts and the cost savings to the county."

Tennessee Code Annotated 2-3-101 through 106 contains the regulations for polling places that are generally designed to make voting accessible and simple. The law authorizes county election commissions to determine where elections are held. The maximum size of a precinct should be 5,000 registered voters. If there is only one voting machine for a precinct, the number of registered voters should not exceed 1,000. **The law requires written descriptions or maps of sufficient detail of precinct boundaries to be filed and recorded in the office of the clerk of the county legislative body and at the state level in the Office of Local Government and the Coordinator of Elections office**. They should also be available for public inspection.

"(g) Upon application of any citizen of the county affected, the chancery court of such county shall have original jurisdiction to review the county legislative body's apportionment, and shall have jurisdiction to make such orders and decrees amending the apportionment to comply with this section, or if the county legislative body fails to make apportionment, shall make a decree ordering an apportionment."

Any citizen of the county may apply to the chancery court within that county to review the county legislative body's apportionment. The court can issue a decree ordering an apportionment to comply with the law's requirements. A citizen may also apply for a review if the county legislative body has failed to apportion itself.

It is important that the county officials involved with reapportionment/redistricting follow these statutes as carefully as possible. With easy access to the 2010 census data via the internet, the proliferation of personal computers, and software development, more persons and special interest groups will be able to draw district lines that may challenge those drawn by county legislative bodies. Chapter 3 provides additional suggestions for county officials that may reduce potential redistricting litigation.
It is also important to note the following: **Minutes and records should be collected and maintained for all redistricting meetings. Public notice should be given every time the redistricting committee meets. All records generated from these meetings are considered public records.**

# B. Equal Population

While avoiding redistricting litigation may be impossible, the Supreme Court ruling in *Avery v. Midland County, Texas* set a precedent that local officials should use the equal population standard when drawing new district boundaries. In order to use this standard it is important to provide an overview of the relevant case law history and have an understanding of the statistical terms used in this standard.

## One Person, One Vote

In the first half of the twentieth century, various courts, including the Supreme Court, questioned whether reapportionment, basically a political process, was a justiciable issue.[6] This changed in 1962, when the Supreme Court ruled in *Baker v. Carr* that the apportionment system in Tennessee violated the equal protection of the laws guaranteed by the Fourteenth Amendment. The majority opinion written by Justice William J. Brennan, Jr., held that, under the 14th Amendment equal protection clause, the court did possess jurisdiction of the subject matter. Justice Brennan stated "that a justiciable cause of action had been stated upon which appellants would be entitled to appropriate relief"[7] and that the Tennessee apportionment statutes could be challenged.

After ruling in *Baker v. Carr* 396 U.S. 186 (1962) that state-legislative apportionments are justiciable, the U.S. Supreme Court enunciated the "one person, one vote" rule for congressional districts in *Wesberry v. Sanders* (376 US 1, 1964). This ruling required districts to be equal in population: 'as nearly as practicable one man's vote in a congressional election is to be worth as much as another's.'[8]

The concept of "one person, one vote" actually had been described the year before *Wesberry* in *Grey v. Sanders,* 372 U.S. 368 (1963), by Justice William 0. Douglas. The court ruled "once the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote—whatever their race, whatever their sex, whatever their occupation, whatever their income, and wherever their home may be in that geographic unit. This is required by the Equal Protection clause of the fourteenth amendment."[9]

## Measuring Population Equality

In order to determine whether district plans are "substantially equal in population", there must be a statistical method to measure this standard. The following terms are used to measure population equality.

**Ideal population –** or optimum population represents the target population total for each district within a county. This is calculated by dividing the total county population by the number of districts.

For example, the 2010 census reveals that XYZ County has a total of 100,000 people with 10 commissioners, one for each district. The ideal population for each district is calculated:

100,000 / 10 = 10,000 people per commission district

When dealing with multi-member districts where representation varies among the districts an additional step is required. In this example, XYZ County has a total of 100,000 people with 12 commissioners among 10 districts. District 1 has 3 commissioners and the remaining nine districts have only one commissioner.

First, the ideal population per commissioner is calculated by dividing the total county population by the total number of members:

100,000 / 12 = 8,333 people per commissioner

Next, each district's ideal population is calculated multiplying this total with the number of members in the district:

District 1 Ideal Population: 8,333 x 3 = 24,999

or

District 2-10 Ideal Population: 8,333 x 1 = 8,333

While the ideal population is a target that redistricters should aim for it is almost impossible to exactly hit this mark. When the ideal population is not reached, a **deviation** is calculated for individual districts.

**Deviation –** this term represents the difference between the ideal population and a district's actual population, and can be expressed in two ways, absolute and relative.

Absolute deviation is the positive or negative population total from the ideal population. For example, if a District has an actual population of 10,500 and an ideal population of 10,000, the absolute deviation is calculated:

10,500 – 10,000 = 500

Relative deviation is calculated by dividing the absolute deviation by the ideal population and expressed in terms of a percentage. Using the same population totals, relative deviation is calculated:

500 / 10,000 = .05 or 5%

For practical purposes, relative (percent) deviation is the generally accepted statistic used in redistricting.

**Overall Range –** once the relative deviation is calculated for each individual district, the overall range is determined. This statistic is calculated by determining the difference between districts with highest and lowest relative deviation. For example, if the highest and lowest deviations are +5% and –4% respectively, the overall range is 9%.

Overall range is most commonly used in evaluating whether a district plan meets the one-person one-vote equal population standard. Page 17 shows an example of these statistics and a county district map.

Although state and federal statutes provide specific guidelines for redistricting, Congress and the Tennessee General Assembly have not gone so far as to pass a law that defines an acceptable overall range. In reference to state legislative districts, the Supreme Court has also steered clear of "mathematical exactness" but rather insisted only on a "good faith effort to set up districts on an equal population basis." [10]

## The Ten-Percent Standard

In spite of these comments, further Supreme Court rulings in *Gaffney v. Cummings* and *White v. Regester* have established a 10 percent (overall range) *de minimis* standard for state legislative districting, with states "not required even to try to justify overall ranges of that or a lesser degree." [11] Although this standard was formulated based on state legislative cases, it is generally accepted that local governments are subjected to this standard[12] but may be given greater latitude than state plans.

This ten percent standard was challenged in Tennessee, in *Langsdon v. Millsaps*. The 1992 House of

Representatives apportionment plan had an overall range of 13.9 percent and was drawn to minimize splitting of counties. However, the plaintiff's plan had an overall range of only 9.8 percent and split fewer counties. The district court held, and the Supreme Court affirmed, that, although the "constitutional provision against splitting counties is a rational state policy to be considered in apportionment legislation," in this case it was "patently unreasonable to justify a 14% variance on the basis of not splitting counties" because, as plaintiffs had shown, fewer counties may be split while decreasing the variance below the goal of 10 percent. [13]

A Supreme Court ruling in 1971 dealt with an overall range for local governments. "In *Abate v. Mundt*, 18 members of county government were apportioned among five cities resulting in an overall range of 11.9 percent. The Court noted that:

> 'The facts that local legislative bodies frequently have fewer representatives than do their state and national counterparts and that some local legislative districts may have a much smaller population than do congressional and state legislative districts, lend support to the argument that slightly greater percentage deviations may be tolerable for local government apportionment schemes. Of course, this Court has never suggested that certain geographic areas or political interests are entitled to disproportionate representation. Rather, our statements have reflected the view that the particular circumstances and needs of a local community as a whole may sometimes justify departures from strict equality.'"[14]

While a prima facie constitutional violation is not established by an overall range below 10 percent, a redistricting plan with an overall range below 10 percent may still be deemed to be unconstitutional if the county legislative body does not make an honest good faith effort to set up districts on an equal population basis. In *Hulme v. Madison County*, 188 F. Supp. 2d 1041 (S.D. Ill. 2001), the court held that a county redistricting plan with an overall range of 9.3 percent was unconstitutional because the actions of the county legislative body demonstrated a "complete disregard for the Constitutional mandate that a legislative body make an honest good faith effort to construct districts … as nearly of equal population as practicable" since the plan divided political subdivisions, placed minority party incumbents in the same district, and technology easily enabled a more equitable plan.

In summary, local officials should keep the 10 percent standard in mind when developing district plans but should not consider the standard a safe harbor in light of the Constitutional mandate that they make an honest good faith effort to construct districts based on the "one person, one vote" standard. Additionally, if district plans exceed the 10 percent standard, local officials should be prepared to justify the excess with "consistently applied, nondiscriminatory redistricting policies." [15]

# C. Minority Representation

In addition to the "one person, one vote" or equal population standard, county legislative bodies must consider minority representation when developing new district plans. The past 45 years have provided local officials with a general set of parameters when considering the need to draw majority-minority districts. Specifically, the federal Voting Rights Act and racial gerrymandering provide a framework when trying to balance this delicate issue.

**Voting Rights Act**

The original purpose of the Voting Rights Act passed in 1965 was to protect minority voters against discriminatory voting tests and to equalize electoral opportunity. The Act was amended in 1982. Two of the sections, Sections 2 and *5*, directly affect redistricting efforts.

Section 2 of the Voting Rights Act can apply to any jurisdiction in any state. It provides that any voting practice which results in discrimination on the basis of race, color or membership in a language minority

is unlawful. It enables a person filing suit to prove a violation of Section 2 if, as a result of the challenged practice or structure, plaintiffs did not have an equal opportunity to participate in the political process and to elect representatives of their choice.

The 1982 amendment to Section 2 specifies that courts must look at the "totality of circumstances" in determining whether a voting rights violation of Section 2 has occurred. Factors to be considered include, but are not limited to, bloc voting, a history of discrimination, depressed levels of minority employment, income, and few minorities elected to office. (See "Voting Rights Act Extension Cleared for President Reagan", in the *Congressional Quarterly Weekly Report***,** Vol. 40, No. 26, June 26. 1982.)

The 1982 amendment also provides that the results standard does not create a right of proportional representation, i.e. a right to have members of a protected class elected in numbers equal to their proportion in the population. The ultimate question to be answered under a Section 2 challenge is whether the minority has been denied an equal opportunity to participate and elect candidates of its choice.

In a Supreme Court case, *Thornburg v. Gingles*, 478 U.S. 30,44 (1986), a three-part test was developed that "a minority group must meet in order to establish a vote dilution claim under Section 2 of the Voting Rights Act. The test requires that a minority group prove that (1) it is sufficiently large and geographically compact to constitute a majority in a single-member district; (2) it is politically cohesive; and (3) in the absence of special circumstances, bloc voting by the white majority usually defeats the minority's preferred candidate." *(Reapportionment Law: The 1990s,* NCSL Reapportionment Task Force, NCSL, October, 1989, pp. 63-64.)

In a summary of the *Thornburg v. Gingles* ruling, Peter Wattson, counsel for the Minnesota Senate writes, "If you have a minority population that could elect a representative if given an ideal district, but bloc voting by whites has prevented members of the minority from being elected in the past, you will have to create a district that the minority has a fair chance to win. To do that, the minority will need an effective voting majority in the district."[16]

The results test of Section 2 is also being applied to vote dilution cases targeting at-large or multimember districts. Under an at-large plan, the majority can vote as a bloc, choosing all officeholders and denying the minority an effective opportunity to elect candidates of its choice. While these districts are not considered unconstitutional per se, courts are scrutinizing them closely. Any plan drawn by a federal court, absent special circumstances, must use single-member districts. Even though at times at-large or multimember districts may be judged to provide equal opportunity to the electoral process, they should be used with care as attacks against them are increasing. The Supreme Court has repeatedly held in disfavor of local multimember district plans that dilute minority voting strength. [17]

Unlike Section 2 of the Voting Rights Act, Section *5* does not apply to all jurisdictions. It applies only to those subject to preclearance as a result of certain criteria in Section *5.* Preclearance jurisdictions are required to submit to the Department of Justice or to the U.S. District Court for the District of Columbia *all* of their election law changes, not just district changes. Tennessee is not a preclearance state.

**Racial Gerrymandering**

While the Voting Rights Act protects minorities against discrimination and attempts to equalize electoral opportunity, Supreme Court decisions, most notably *Shaw v. Reno* 1992, have provided some guidance on the extent that race can be used in redistricting. Known as racial gerrymandering, many states (North Carolina, Georgia, Louisiana, et al.) during the 1990's excessively used race as criteria to develop district plans. Ignoring "traditional districting principles", the Supreme Court ruled that these districts violate the Equal Protection Clause of the Fourteenth Amendment. However, these rulings were not unanimous and in some circumstances the court has stated that a State may intentionally create majority minority districts.

The courts consider a variety of factors to determine whether a district is considered a racial gerrymander. One of the principle characteristics in this process is district shape. The 12th congressional district in North Carolina was most symbolic in relating shape to racial gerrymandering. The district was approximately 160 miles long and wound its way across the state in an attempt to include predominantly black neighborhoods. The Supreme Court, in *Shaw v. Reno,* addressed this irregular shape by stating that, "reapportionment is one area in which appearances do matter." [18]

Viewing a district's shape on a map is obviously the most visible way to evaluate a racial gerrymander but doesn't necessarily reveal the intent for creating such a district. Statements and other correspondence from legislators and legislative staff can also determine whether race was used as the predominant factor when drawing district boundaries.

When applying and documenting the use of traditional districting principles throughout the redistricting process, a state or local government is more likely to defeat a claim of racial gerrymandering. These principles vary among jurisdictions, but in the *Shaw* case, the Supreme Court listed these principles as compactness, contiguity, respect for political subdivisions, respect for communities of interest, and protection of incumbents. While the Supreme Court, in *Shaw v. Reno*, has limited the use, or abuse, of race in redistricting, it recognizes that race should not be excluded all together. Rather, race should have equal standing with traditional districting principles when legislators or other government officials develop district plans.

In summary, local officials must be aware of minority representation issues. They should respect the Voting Rights Act that protects against discrimination and dilution of minority voting strength, but also avoid racial gerrymandering by factoring race in conjunction with traditional redistricting principles.

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[1]390 U.S. 474 (1968).

[2]Cortner, op cit, p. 256.

[3]*Avery v. Midland County,* 390 U.S.

[4]*Redistricting Law 2000,* NCSL Redistricting Task Force, Denver, Colorado, February 1999, pp.72-73.

[5]*The Realists' Guide to Redistricting,* "Avoiding the Legal Pitfalls", Hebert, et al, Jenner &Block, 1998, p. 46.

[6]*The Apportionment Cases,* Richard C. Cortner, The University of Tennessee Press: Knoxville, 1970. Chapter 1, "Courts, Politics and Reapportionment", pp. 3-27, gives a brief history of the cases ruled on in state courts and the apportionment of state legislatures before *Colegrove v. Green* in 1946.

[7]*Reapportionment Revolution,* Gordon E. Baker, Random House, New York, 1967, p. 157.

[8]*M*athew D. McCubbins and Thomas Schwartz, "Consequences of One Man, One Vote Rule", *American Journal of Political,* 1988, Vol. 32.

[9]*Gray v. Sanders,* 372 U.S. (March 18. 1963) at 379 as quoted in *The Apportionment Cases,* Richard C. Cortner, The University of Tennessee, Knoxville, 1970 pp. 193-194.77 U.S. 533 at 565.

[10]*Political Studies,* "Representation, Reapportionment and the Supreme Court," Charles M. Redenius, Pennsylvania State University, p. 518.

[11]*Redistricting Law 2000,* NCSL Redistricting Task Force, Denver, Colorado, February 1999, p. 32.

[12]*Redistricting Law 2000,* NCSL Redistricting Task Force, Denver, Colorado, February 1999, p. 132.

[13]*Redistricting Law 2000,* NCSL Redistricting Task Force, Denver, Colorado, February 1999, p. 38.

[14]*Abate v. Mundt,* 403 U.S., 182, 185.

[15]*The Realists' Guide to Redistricting,* "Avoiding the Legal Pitfalls", Hebert, et al, Jenner &Block, 1998, p. 9.

[16]*State Legislatures,* "Maps That Will Stand Up in Court," Peter S. Wattson, September, 1990, p. 17

[17]*Redistricting Law 2000,* NCSL Redistricting Task Force, Denver, Colorado, February 1999, p. 133.

[18]*The Realists' Guide to Redistricting,* "Avoiding the Legal Pitfalls", Hebert, et al, Jenner &Block, 1998, p. 42.

# Chapter 2: Redistricting Data Requirements

While court decisions, state and federal law, and other redistricting guidelines provide a legal and conceptual framework for redistricting, local officials will need specific data to develop new district plans. The Census Bureau provides states and local governments with two types of redistricting data: **maps and population figures**. The census bureau also identifies the Office of Local Government as one of the official recipients of this information. **This office will distribute census data and other map related information to county officials charged with redistricting through two organizations, the County Technical Assistance Service (CTAS) and the Department of Economic And Community Development, Local Planning Assistance Offices (LPO).** Chapter 3 discusses the role of these organizations in greater detail.

## A. 2010 U.S. Census Data

Tennessee law mandates the use of census data (maps and population totals) and refers to its use in local redistricting and in the establishment of voting precincts. The first, TCA 5-1-111(d), states that, "the county legislative body must use the latest federal census data whenever a reapportionment is made." Map references are found in this section and TCA 2-3-102, where precincts and districts must follow census block boundaries.

### Census Maps (T.I.G.E.R.)

To support a variety of mapping functions within the Census Bureau, a digital map product has emerged that will be critical for redistricting officials. This digital database, known as T.I.G.E.R. (Topologically Integrated Geographic Encoding and Referencing) was initially developed for the 1990 census and marked the first time that the Census Bureau had a "computerized map" for the entire United States. Other programs or projects within the Census Bureau rely on specific map products, but local redistricting in Tennessee will rely on TIGER and maps produced from this database.

TIGER consists of a number of files containing geographic information that can be viewed on a computer using GIS software. The geographic data is divided into either areas or lines. Linear data are defined as roads, railroads, utilities, hydrography (streams and rivers), landmarks, and other non-visible features. More significant to the redistricting process are area features.

Area features are structured within a hierarchy of geographic units and are divided into political and statistical subdivisions. The following units will be used in the local redistricting process.

**Political Areas**

1. **County –** defines the geographic extent of redistricting and reapportioning commission seats.

2. **Voting Tabulation District (VTD) or Precinct –** a portion of a county that uniquely identifies where citizens cast their vote in elections. In 2008-2009 during Phase II of the Census Bureau's Redistricting Data Program, the Office of Local Government submitted digital versions of all

county precinct maps. The Census Bureau used these precinct maps to tabulate 2010 population totals**. Due to city annexations and changes in block boundaries however, some of these maps do not reflect actual precinct boundaries**. Precincts with modified boundaries are identified as pseudo precincts.

3. **Place.**
   a. **Incorporated place.** A governmental unit incorporated under state law as a city, town, village or borough having legally prescribed limits, powers and functions.
   b. **Census designated place.** An area designated by the census bureau comprising a densely settled concentration of population that is not incorporated but which resembles an incorporated place.

**Statistical Areas**

1. **Block -** An area bounded on all sides by visible features such as streets, roads, streams and railroad tracks (see page 15). In size, they resemble city blocks but can be quite large in rural areas. In 2005-2007 during Phase I of the Census Redistricting Data Program, county officials were able to help define new block boundaries that more closely resemble precinct boundaries and will provide redistricting officials with more choices when drawing new districts.

***Note:** *Only geographic areas used in the redistricting process are defined here. Other political and statistical area features found in TIGER and other census map products (e.g. tracts, block groups, census county divisions, etc.) are detailed on the Census Bureau's web site.* ***http://www.census.gov***

The 2010 TIGER area and line features are significantly improved from the 2000 census. Highly detailed GIS data from the Tennessee Base Mapping Program was leveraged by the Census Bureau to create TIGER for our state. This data's high spatial fidelity, in combination with TIGER's ability to link geographic features to census population figures, will allow local redistricting to take place with confidence and accuracy.

## Population Data (PL 94-171)

The 2010 Census will provide population data for a variety of political and statistical geographic areas. The redistricting effort will utilize population data at the block, VTD (precinct), and county levels, as it did in both the 1990 and 2000 rounds of redistricting.

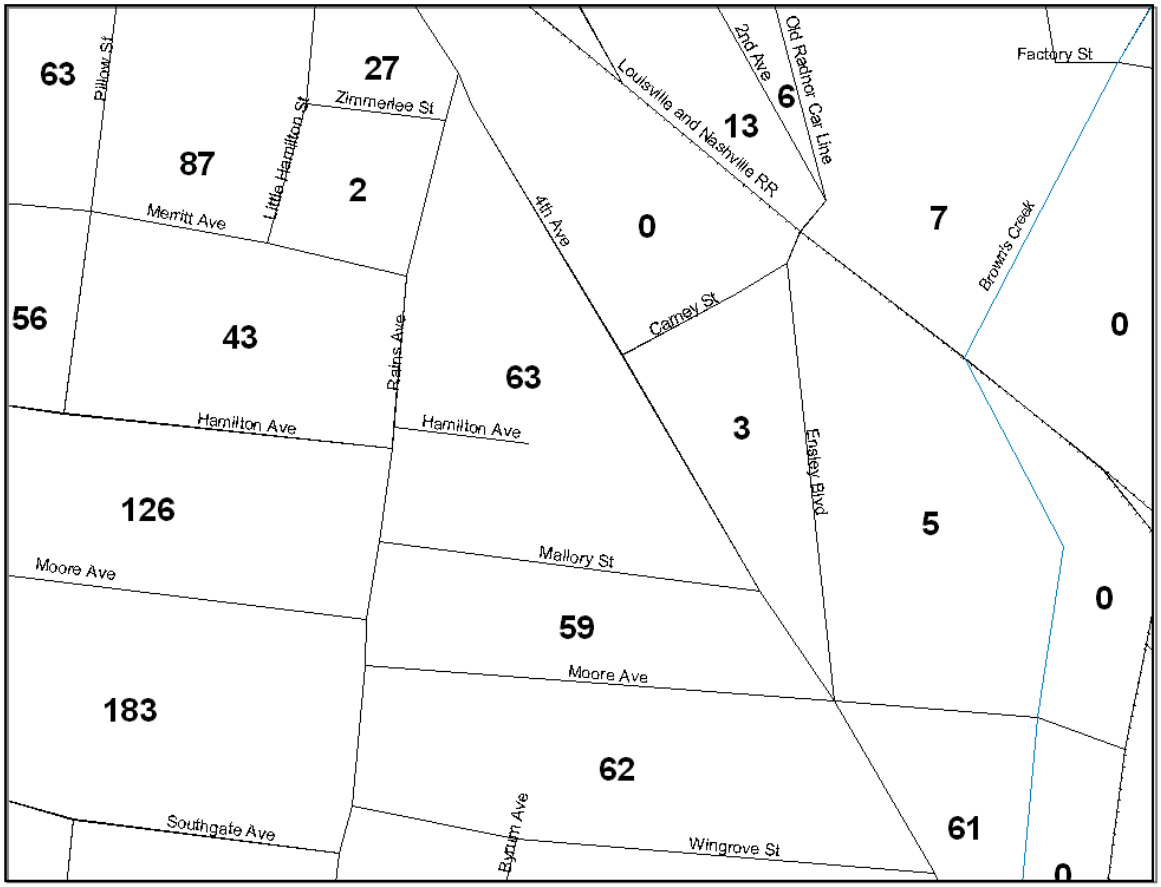
On December 31, 2010, in accordance with federal law, the President received the first figures from the 2010 census. The total U.S. population, 308,745,538 and the fifty state totals are used to apportion the seats in congress. Throughout 2011, the Census Bureau will release additional population totals, including block, VTD, and county population data required for redistricting. Population data for these three levels of geography will include total population, voting age population, and population by race.

1. **Block level** – is the smallest geographic area that the Census Bureau collects and tabulates population data and is the foundation for constructing or modifying county commission districts (see example on page 15).

2. **VTD or precinct level** – this feature resembles or approximates county voting precincts. Population data collected and tabulated at this level is also applied to local redistricting.

3. **County** – population tabulated at this level is used to help define measures of equal population, such as ideal population, deviation, and overall range.

While Tennessee law indicates that the 2010 census population figures are the official data set used for




**Example of Census blocks with labeled population**.

redistricting, (U.S.) Public Law 94-171 also requires the Census Bureau to report these population totals to all organizations charged with redistricting by April 1, 2011. In 2000 these population totals included racial categories for the first time (White, African American or Black, American Indian or Alaska Native, Asian, Native Hawaiian and Other Pacific Islander, Other Race.) In 2010 the racial categories listed on the Census Questionnaire were expanded to 15 racial categories. Places were provided as well to write in races not listed on the form. The 2010 Census also continues the option, first introduced in the Census 2000, for respondents to choose more than one race.

## B. Existing County Maps

While census maps and 2010 population totals are essential data sources for local redistricting, existing county commission district and precinct maps can provide a starting point for local officials. The Office of Local Government is the steward of these maps and has worked with county officials throughout the decade to keep these current and well maintained. District boundaries have remained constant in most counties, but precinct lines may have changed in others. Population increases, shifts and voting trends may result in precinct consolidation, creation, and boundary modification. As previously mentioned, city annexations present the biggest challenge for election administrators to keep precinct lines on census block boundaries.

**County Commission District Maps**

The Census Bureau will tabulate 2010 population data for VTDs or precincts, as well as for existing commission districts. The Office of Local Government will produce maps and data of the new 2010 census blocks and the existing commission districts and precincts, showing population totals for each. Although some district or precinct adjustments to new census blocks are required, the results are more accurate than the estimates produced for the 2001 redistricting when the 2000 population tabulations for existing commission districts were not available from the Census Bureau. These district totals are an excellent starting point to begin the redistricting process. An example of a district map is found on page 17. Districts are color coded from the highest to lowest relative (percent) deviation, while the statistical table shows overall population ranges. These statistics are used to determine if the existing districts comply with the ten-percent standard and will identify districts that may need significant boundary adjustments.

An assumption is made that county officials will start redistricting with the existing districts as a foundation. Based on an increase or decrease in the number of commissioners and/or districts, and the increase/decrease or shift in population, local officials may elect to start with a clean slate and disregard existing districts. More details are provided in Chapter 3.

**Voting Precinct Maps**

Another option for county officials is to use voting precincts as the foundation for creating county commission districts. **Rather than using existing districts or new 2010 census blocks as a starting point, local officials may choose to create districts by aggregating voting precincts or VTDs.** While these VTDs may not precisely define true voting precincts as administered by election officials due to block boundary changes and city annexations, population summaries by precinct are available and the Office of Local Government can provide maps that define these areas. An example of a county precinct map is provided on page 18.

Through the use of geographic information system (GIS) software, county maps detailing 2010 census blocks with existing districts and precincts will be available from the Office of Local Government. Flexibility exists to produce maps of varying size, scale, and geographic features (city boundaries, census blocks, roads, districts, precincts, etc.) for each county. These map and data products will meet local redistricting requirements.

**It is highly recommended that the county commission include the Administrator of Elections in the redistricting process.**

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# Chapter 3:
# A Guide to Local Redistricting

The legal and data requirements of redistricting covered in the first two chapters can be summarized procedurally by simply aggregating census blocks to create city wards. However, reaching that point requires some appropriate planning and organization within each city and among various State agencies involved with local redistricting. The following chapter identifies a series of recommended steps or suggestions to complete this task.

**Step 1)**

Local governments must decide who will be responsible for drawing the ward lines. The whole legislative body itself can work in this capacity. Vickie Koelman, Administrator of Elections and David Riggins, Regional Planning Commission Director, will serve as staff to prepare the redistricting plan. Vickie and David have extensive experience preparing plans for the past several decades and recent training from state officials with the Office of Local Government with the State Comptroller's Office. Due to the impact of redistricting on voting precincts, it is highly recommended that the Administrator of Elections is included. Vickie and David are identified as the main point of contact for the redistricting project and will be responsible for communicating with state officials from the Office of Local Government.

**Step 2) Acquire or collect redistricting data.**

As indicated in Chapter 2, the Census Bureau is the primary data provider for local redistricting. The Office of Local Government will receive census maps (TIGER files) and population data for each county in Tennessee. Montgomery County works directly with the Office of Local Government.

Using 2010 census data with existing districts and precincts, a variety of maps can be produced.

1. Existing wards
2. Proposed wards
3. Wards and precincts with 2010 census blocks and population per block

All of these maps will include roads, rivers/creeks, railroads, power lines, and city boundaries.

Conventional use of paper maps is no longer the preferred method used in redistricting. Improvements in hardware and software have made it possible for local officials to develop ward plans using Geographic Information Systems (GIS) and digital maps. Through the support of Local Planning Assistance Offices and existing county staff, ward plans can be developed "on the fly", making the redistricting process much more efficient and timely. Population totals are automatically calculated as census blocks are assigned to various wards. While this process may not be error proof, GIS can provide local officials with an improved redistricting tool.

**Step 3) Evaluate current wards with 2010 population to determine what changes, if any, must be made.**

**First: Decide if the number of wards and council members will remain the same.**
The charter for the City of Clarksville requires 12 wards.

**Second: Examine the population of each ward as presently drawn.**
Use the chart provided to examine 2010 population totals for each ward.

**Third: Determine if the current ward plan adheres to the "Ten-Percent Standard".**
Based on the population totals and percent deviations per ward determine if the overall range (see Chapter 1 and page 17) is acceptable. Also, identify which wards have exceedingly high or low deviations. The redistricting effort will probably begin in these areas.

**Fourth: Examine any existing majority minority wards.**
First, determine if majority minority wards exist in the old ward plan. If they do, to avoid a claim of retrogression and a potential lawsuit, the new ward plan should probably include these wards or a modified version of these wards. However, based on significant population changes, adding new or modifying old minority wards may or may not be justified.

**Step 4) If necessary, draw one or more new ward plans.**
After receiving maps with population data, and evaluating the existing wards, the actual redistricting work will begin.

The redistricting project should keep complete records and minutes of meetings and ward plans. Tennessee's Open Records law requires that complete minutes be taken and retained.

Public notice must also be given whenever a meeting is held. Specific guidelines such as keeping wards compact and contiguous, adhering to the ten-percent standard and the need to consider majority minority wards can be written into the record. Documentation is also critical when, on the rare occasion, ward plans exceed an overall range of ten percent. Based on disproportionate population distribution between urban and rural areas and county physiography problems (e.g. ridge and valley in East Tennessee) it may be difficult to create plans that have an overall range of less than ten percent. Keeping a record of why a plan was developed that exceeds this standard may prove beneficial if challenged in court. All records, minutes and ward plans are subject to the Tennessee Open Records Act.

Factors that may be considered include incumbents' residences, preserving communities of interest, and other factors important within the city.

There are three basic choices on how to start redistricting:

**1. Use census blocks with current wards.** When the number of wards and council members remain the same, the existing wards can be used as a starting point. Balancing the population is accomplished by simply swapping census blocks between wards.

**2. Use census blocks only.** If the number of wards and/or council members increase or decrease it may be more appropriate to disregard the existing wards and begin a new plan from scratch, using census blocks as the foundation. In this scenario, every census block in the city will be assigned a new ward. Once this is

completed, balancing the population or fine-tuning the ward plan is accomplished the same way as the first option.

**3. Use Precinct boundaries.** In addition to census blocks, voting precincts or VTD's can be used as the means of drawing new wards. Individual or multiple precincts can be aggregated to create new wards. Attempting to preserve (existing precincts is an idea) that should be considered.

Technically speaking, redistricting is assigning census blocks and/or precincts to city wards. The sum of census blocks within a ward will generate a population total for each ward. While this appears to be a straightforward process, other factors need to be considered when drawing new wards.

When the staff submits a proposed ward plan, it should be reviewed with the following legal guidelines in mind:

> **Equal Population.** State and federal law requires wards to represent substantially equal populations. The "Ten-Percent" standard provides some guidelines for what constitutes equal population. Ward plans should attempt to have an overall range of less than ten percent deviation.
>
> **Minority Representation.** The final plan should include a balance between the Voting Rights Act, which protects against discrimination and dilution of minority voting strength, and racial gerrymandering, by using race consistent with the traditional redistricting principles.
>
> **Making wards both compact and contiguous.** State law (TCA 5-1-111(e)) details the requirements of these two traditional redistricting principles. New wards should be one undivided parcel of land that is not irregular in shape.

After the legislative body reaches consensus on a final ward plan, it should be adopted by ordinance. The ordinance should contain either descriptions or a map of sufficient detail of each ward.

The following excerpts are from Tennessee Code Annotated concerning revisions of precinct boundaries by the county election commission.

> **"…any precinct boundary in such county which is altered in accordance with the provisions of this subdivision (a)(2) shall coincide with a census block … as designated on United States bureau of the census maps prepared for the 2010 federal decennial census." (T.C.A. 2-3-102 (a)(2)(B)) 1**

"Immediately after any alteration of precinct boundaries or change of district, the county election commission shall publish the changed boundaries in a newspaper of general circulation in the county. The county election commission shall mail to each active voter whose polling place is changed a notice of the voter's new polling place and precinct number. Furthermore, immediately after any alteration of precinct boundaries, the county election commission shall give written notification of such changes to the office of local government, comptroller of the treasury." (T.C.A. 2-3-105)

Descriptions of voting precincts or maps of sufficient detail should also be created and submitted to the Office of the State Coordinator of Elections, and filed and recorded in the office of the Clerk of the legislative body.

*Chapter 3 – Revised, July 2011 by Vickie Koelman & David Riggins to apply to ward redistricting for the City of Clarksville.*

# Appendix 1
# Glossary

**Apportionment or Reapportionment—**Often confused with or used interchangeably with redistricting, these terms refer to the allocation of political seats among districts and are most often used in reference to the allocation of seats for the U.S. House of Representatives among the states. At the local level, this refers to changing the size of the commission or redistributing commission seats among districts. Commonly referred to as "drawing the district lines."

**Bloc Voting—** a combination of persons or groups with a common interest or purpose who vote as a bloc or unified group.

**Block (Census Block)—**An area bounded on all sides by visible features, such as streets, roads, streams and railroad tracks, or by other limited non-visible boundaries such as city, town or county limits, and extensions of streets. A block is the smallest statistical area for which the census bureau collects and tabulates population data (see page 15).

**Block Number—**A four-digit number identifying a census block. 1990 blocks were three digit numbers. This change will allow the Census Bureau to create additional blocks, providing more flexibility when drawing new districts. Block numbers are unique within block groups and tracts.

**Census Tract—**A small, relatively permanent division of metropolitan statistical areas and selected non-metropolitan counties, delineated for the purpose of presenting census data. When census tracts are established, they are designed to be relatively homogeneous with respect to population characteristics, economic status and living conditions, and to contain between 2,500 and 8,000 inhabitants. Census tract boundaries are established cooperatively by local census statistical areas committees and the Census Bureau in accordance with Bureau-defined guidelines that impose limitations on population size and specify the need for visible and stable boundaries. Census tracts do not cross county boundaries.

**Census Tract Number—**A four-digit number between 0001 and 9999, possibly with a two-digit suffix, for example 9999.01 used to identify a census tract uniquely within a county and usually with a metropolitan area. Leading zeroes are not shown on census maps.

**CorporateLimit—**The legally defined boundary of an incorporated place. This boundary is subject to change through the process of locally initiated annexation, detachment and/or disincorporation.

**Deviation –** see relative deviation.

**Fracturing—**This term is used when a minority population is divided into multiple districts, diluting the strength of racial bloc voting and resulting in the inability to elect candidates of their choice.

**GIS—(Geographic Information System)-**Computer mapping system used by the State of Tennessee to create and maintain districts and precincts. GIS establishes a link between the PL 94-171 (population) data and the TIGER (map) data for easier and faster calculations in the redistricting process and allows for map customization and analysis.

**Ideal District Population—**In single-member district plans, the ideal district population is equal to the total population divided by the total number of districts. In multimember districts, the ideal population is instead expressed as the ideal population per representative.

**Incorporated Place**—A political unit, incorporated as a city or town having legally prescribed limits, powers and functions. Also known as "incorporated municipality."

**Majority-minority districts**—Districts where an ethnic or language minority group(s) has the largest percentage of the total population in that district.

**Map—**A printed or digital visual representation of an area; a symbolic depiction showing elements of that space such as regions, objects and themes.

**Multimember Districts—**Districts where citizens vote for and are represented by more than one member or commissioner. County commissions in Tennessee may have up to three members per district.

**One person, one vote**—An often cited phrase written by former Supreme Court Justice William 0. Douglas in the 1963 *Grey v. Sanders* decision in which the Court held that unit voting (at-large) systems are unconstitutional per se. ("The conception of political equality from the Declaration of Independence, to Lincoln's Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments can mean only one thing—one [person], one vote.")

**Overall Range—**A simple statistical measure of variability, overall range measures the difference between the highest and lowest values in a distribution. For example, if a county had 5 districts, the highest with a relative deviation of 5.4% and the lowest with a relative deviation of –3.8%, the overall range would be 9.2%.

**Packing—**This term is used when a minority group is concentrated into one or more districts so that the group constitutes an overwhelming majority in those districts, thereby wasting a percentage of the vote.

**PL 94-171—**Law passed by Congress in 1975, requiring the U.S. Census Bureau to furnish state governments population data by April 1 of the year following the census count for use in redistricting. The law requires that the bureau allow the states to define the boundaries of the areas for which the population data is collected.

**Precinct (see also Voting Tabulation District, VTD) —**A subdivision of a county commission district that contains a polling place where registered voters cast ballots in elections. **County commission districts can not split precincts.**

**Preclearance—**A term applied to specific jurisdictions or parts of jurisdictions, including states, counties or cities, which fall under the provisions of Section 5 of the Voting Rights Act. These jurisdictions are required to "preclear" all revisions to their election laws or practices prior to their implementation through review by either the U.S. Department of Justice or the U.S. Court of Appeals for the District of Columbia. (Tennessee, at present, is not a preclearance state.)

**Reapportionment –** see apportionment

**Redistricting—**This term refers to the redrawing of political boundaries, such as county commission or city council districts to achieve equal population among the various districts.

**Relative Deviation**—A percentage, indicating the difference in the ideal population from a districts actual population.

**Results Test—**In 1982 Congress amended Section 2 of the Voting Rights Act to provide that any voting practice which "results" in discrimination on the basis of race, color or membership in a language minority is unlawful. Before the 1982 amendment, plaintiffs were required to prove discriminatory *intent* rather than *effect.*

**Retrogression --** Term usually applied to redistricting where a new district plan reduces or eliminates old majority minority districts by packing or fracturing minority population resulting in the inability of minorities to elect candidates of their choice.

**Single-Member Districts—**These are districts represented by one person.

**T.I.G.E.R.**—(Topologically Integrated Geographic Encoding and Referencing) Digital map created from the Census Bureau containing selected geographic and cartographic information used to support its mapping requirements. It is the base map that is used for redistricting in the State of Tennessee.

**Undercount**—The estimated number of people who are not counted by the census.

**Vote Dilution**—"A process whereby election laws or practices, either singly or in concert, combine with systematic bloc voting among an identifiable group to diminish the voting strength of at least one other group." (From "The Quiet Revolution in Minority Voting Rights" by Laughlin McDonald, *Vanderbilt Law Review*, Vol.42:1249)

**Voting Rights Act—**Originally passed by Congress in 1965, the Act was designed to protect the right to vote as guaranteed by the 15th Amendment, and to enforce the 14th Amendment and Article 1, Section 4 of the Constitution. Since 1965, Congress has amended it in 1970, 1975 and 1982. Sections 2 and 5 of the Voting Rights Act directly affect redistricting efforts. Section 2, which applies to all jurisdictions, prohibits imposing any voting practice that results in the denial of the right to vote. It mandates that all citizens must have an equal opportunity "to participate in the political process and to elect representatives of their choice." Section 5 applies only to jurisdictions subject to preclearance by the U.S. Justice Department as a result of meeting certain criteria established in Section 5.
Both sections create legal causes of action against violating jurisdictions.

**Voting Tabulation District—**(VTD) a term used by the census bureau to define local voting districts, or precincts in Tennessee.