LEGISLATIVE GUIDE TO REDISTRICTING IN IOWA

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I.   Introduction.

Redistricting, the redrawing of congressional and legislative district boundaries, has always been a political process which has generally been fought at the state level.[1] For both congressional and legislative districts, constitutional and statutory provisions generally required the drawing of district boundaries based in part upon population.[2] However, until 1962 most states generally ignored any requirement to redistrict congressional and legislative districts based upon changes in the state's population.

In 1962, however, the U.S. Supreme Court ruled that a person could challenge, and seek judicial redress for, an allegedly improper redistricting plan.[3] As a result, state legislatures were forced to draw redistricting plans consistent with constitutional and statutory requirements or else be subject to having their congressional and legislative districts drawn by the courts.

This Legislative Guide is intended to provide some basic information concerning the process of redistricting in Iowa. Specifically, this Guide will discuss the relevant constitutional, statutory, and case law requirements that apply when establishing congressional and legislative district boundaries in Iowa. Code citations, unless otherwise noted, are to the 2007 Iowa Code and Iowa Code Supplement.

II.   Redistricting in Iowa — Historical Perspective.

A.   1960s — Establishing Base Principles.

Redistricting in Iowa, as well as the rest of the nation, forever changed in 1962 when the U.S. Supreme Court ruled that a challenge to a redistricting plan could be brought and resolved in court.[4] Shortly thereafter, the U.S. Supreme Court ruled that redistricting plans which were not based upon population would be rejected.[5] For congressional districts, the Court ruled that Article I, section 2, of the United States Constitution required that districts within states had to be drawn with the population in each district to be equal "as nearly as practicable."[6] The Court also held that the Equal Protection Clause of the 14th Amendment to the United States Constitution required states to make an honest and good faith effort to construct districts for both houses of its Legislature based on population.[7]

The Iowa Constitution was amended in 1968 to fulfill the constitutional mandate to draw boundaries based upon population and to provide the basis and timeline for establishing state senatorial and representative districts following the federal decennial census.[8] Article III, section 35, of the Iowa Constitution requires the General Assembly to establish by September 1 of the year following the decennial census state legislative districts for both the Senate and House of Representatives. Furthermore, if the General

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[1] Congressional districts: 2 U.S.C. § 2a; Legislative districts: Iowa Const. Art. III, § 34. See Chapman v. Meier, 420 U.S. 1, 27 (1975).
[2] Congressional districts: U.S. Const. Art. 1, § 2; 2 U.S.C. §§ 2a-2c; Legislative districts: Iowa Const. Art. III, §§ 34 and 35 (1962); Iowa Code chs. 41 and 42 (Code 1962).
[3] Baker v. Carr, 369 U.S. 186 (1962).
[4] Id.
[5] See Wesberry v. Sanders, 376 U.S. 1 (1964); Reynolds v. Sims, 377 U.S. 533 (1964).
[6] Wesberry at 7-8.
[7] Reynolds at 569, 577.
[8] Iowa Const. Art. III, §§ 34-36.

Assembly fails to enact legislation establishing Senate and House of Representative districts which becomes law by September 15 of that year, the Iowa Constitution provides that the Iowa Supreme Court shall establish the districts based on constitutional requirements.[9]   The Iowa Constitution further provides that legislative districts be apportioned based on population and be of compact and contiguous territory.[10]

B.   1970 Redistricting — Court Challenge.

Pursuant to the new constitutional mandates for redistricting adopted in 1968, the General Assembly adopted legislative plans for the Senate and House that featured overall range ratios[11] of 1.13 to 1 in the Senate and 1.14 to 1 in the House.[12]   This apportionment scheme was challenged in court and eventually resulted in the Iowa Supreme Court striking down the adopted plans and redrawing legislative districts for use during the 1970s.[13]   The Court rejected the legislative plan as establishing too wide a variation in population without valid justification.   The legislative districts as redrawn by the Court provided for an overall range ratio of 1.0005 to 1 for the Senate and 1.0009 to 1 for the House.[14]

C.   Post 1970 Redistricting — Statutory Redistricting Process.

During the 1980 Legislative Session, House File 707 was enacted to establish a statutory process for drawing legislative and congressional districts in Iowa following each decennial census beginning with the 1980 census.[15]   The procedure gave the Legislative Service Bureau, a nonpartisan bill drafting agency of the General Assembly, the primary responsibility for drawing proposed congressional and legislative districts, subject to legislative and gubernatorial approval.[16]   Since 1980 the Legislative Service Bureau has been combined with other nonpartisan agencies of the General Assembly to form the Legislative Services Agency,[17] but the procedure for redistricting has largely remained the same.[18]

Based on the statutory process established in 1980, the third redistricting plan submitted by the Legislative Service Bureau was enacted into law during the 1981 Legislative Session, without amendment.[19]   In 1991 the first proposed redistricting plan submitted by the Legislative Service Bureau was enacted into law.[20]   In 2001 the second proposed redistricting plan submitted by the Legislative Service Bureau was enacted into law.[21]   Since the statutory process for redistricting was established in 1980, the redistricting plans adopted have not been challenged in court.

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[9] Iowa Const. Art. III, § 35.

[10] Iowa Const. Art. III, § 34.

[11] See definition of "overall range ratio" in part III, paragraph A, subparagraph 2, of this Guide.

[12] 57 Ia. L. Rev. 1272, 1295 (June 1972).

[13] In re Legislative Districting of General Assembly, 193 N.W.2d 784 (Iowa 1972); supplemented 196 N.W.2d 209 (Iowa 1972); amended 199 N.W.2d 614 (Iowa 1972).

[14] In re Legislative Districting, 196 N.W.2d at 210.

[15] 1980 Iowa Acts ch. 1021; codified at Iowa Code ch. 42.

[16] 1980 Iowa Acts ch. 1021; codified at Iowa Code ch. 42. See discussion in part V of this Guide.

[17] 2003 Iowa Acts ch. 35.

[18] See 2007 Iowa Acts ch. 78, which updated the statutory tests for compactness and modified the timelines applicable to the submission of proposed redistricting plans by the Legislative Services Agency to the General Assembly. The 2007 legislation was recommended by the Legislative Services Agency.

[19] 1981 Iowa Acts, 2nd Extraordinary Session, ch. 1.

[20] 1991 Iowa Acts ch. 223.

[21] 2001 Iowa Acts, 1st Extraordinary Session, ch. 1.

III. Redistricting Standards — Population.

A. Introduction.

1. Overview.

The U.S. Supreme Court has articulated the general requirement that congressional and legislative districts should be drawn to effectuate the constitutional mandate to provide equal weight to every person's vote, i.e., one person, one vote.[22] The question for states, then, is how equal in population must each district in a redistricting plan be to satisfy the constitutional requirement of one person, one vote? In grappling with this issue, the U.S. Supreme Court has articulated a somewhat more exacting equality standard for congressional districts in contrast with legislative districts. This section of the Guide examines the general population standards that must be considered when drawing congressional and legislative districts.

2. Measuring Inequality.

In determining whether districts are equal in population it is important to develop a basis for articulating population inequality between districts. Unfortunately, courts and state legislatures have used a myriad of terms to describe various methods of measuring inequality. To avoid confusion and to establish a common point of reference for considering constitutional and statutory population requirements, this Guide will use the following terms as a basis for describing various population inequality measures.[23]

a. Ideal Population. The ideal population for a district is determined by dividing the total population of the state by the number of single member districts to be created. Thus, if a state's population is 1,000,000 and it has five congressional districts, 50 state Senate districts and 100 state House of Representative districts, the ideal population for a congressional district would be 200,000, a state Senate district would be 20,000 and a state House of Representatives district would be 10,000.

b. Deviation. This measure of inequality examines the degree to which a single district's population varies from the ideal population of the district. The "absolute deviation" is the difference between a single district's population and the ideal population. The "deviation percentage variance" is the difference between a single district's population and the ideal population divided by the ideal population, expressed as a percentage. Thus, if the ideal population of a district is 100,000 and the population of a particular district in a redistricting plan is 102,000, the absolute deviation would be 2,000 and the deviation percentage variance would be .02 or 2 percent for that district.

c. Mean Deviation. This measure of inequality examines the degree to which the populations of all districts in a redistricting plan vary from the ideal population of a district. The "absolute mean deviation" is the sum of the absolute deviations of all districts divided by the number of districts. The "mean deviation percentage variance"

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is the absolute mean deviation for a particular redistricting plan divided by the ideal population, expressed as a percentage. Thus, if the ideal population of a district is 100,000 and there are five districts with populations of 102,000, 99,000, 101,000, 100,000, and 99,000 respectively, the "absolute mean deviation" would be 1,000 (the sum of the absolute deviations of the five districts, which equals 5,000 divided by 5) and the "mean deviation percentage variance" would be .01 or 1 percent for that redistricting plan (the absolute mean deviation of 1,000 divided by the ideal population of 100,000).

d. Overall Range. This measure of inequality examines the population difference between the most populous district and the least populous district within a particular redistricting plan. The "absolute overall range" is the difference in population between the most populous and least populous districts in a redistricting plan. The "overall range ratio" is the ratio calculated by dividing the population of the most populous district by the least populous district. The "overall range percentage variance" is the absolute overall range for a particular redistricting plan divided by the ideal population, expressed as a percentage. Thus, if the ideal population of a district within a particular redistricting plan is 100,000 and there are five districts with a population in each district of 102,000, 99,000, 101,000, 100,000, and 99,000 respectively, the "absolute overall range" would be 3,000 (102,000 minus 99,000), the "overall range ratio" would be 1.0303 to 1(102,000 divided by 99,000), and the "overall range percentage variance" would be .03 or 3 percent for that redistricting plan (3,000 divided by 100,000). The overall range, specifically the overall range percentage variance, is the method most courts have used in measuring population inequality for a particular redistricting plan.[24]

e. Miscellaneous Measurements. Another measurement of population inequality is to determine, for a particular redistricting plan, the smallest percentage of a state's total population that could be represented by a majority of the districts in a particular redistricting plan.[25] Thus, if the population of all districts in a particular redistricting plan is 500,000 and there are five districts in the plan with populations of 102,000, 99,000, 101,000, 100,000, and 99,000 respectively, the smallest percentage of the total population of all districts that could be represented by a majority of the districts would be 59.6 percent (the sum of the populations of the three smallest population districts constituting a majority of the districts, which population sum equals 298,000 divided by the population of all districts 500,000).

B. Congressional Districts.

1. Federal Constitutional Requirements.

Article I, section 2, of the United States Constitution establishes the basic standard that congressional districts be apportioned to achieve population equality as nearly as practicable.[26] This standard has been interpreted to mean that congressional districts should be drawn to be as equal in population as possible. In

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[24] See, e.g., Karcher v. Daggett, 462 U.S. 725 (1983).
[25] In re Legislative Districting of General Assembly, 193 N.W.2d 784 (Iowa 1972); Iowa Const. Art. III, § 34.
[26] Wesberry at 7-8.

Karcher v. Daggett, a New Jersey congressional redistricting plan with an overall range percentage variance of .69 percent was held unconstitutional.[27] The Court found that the overall range percentage variance could have been reduced or eliminated by a good faith effort to draw districts of equal population and that the overall range percentage variance was not otherwise justified by some legitimate state objective.[28] The Court specifically rejected establishing some de minimus standard of population inequality, such as allowing an overall range percentage variance of less than 1 percent, which would be per se constitutional without justification.[29] As such, no precise mathematical cutoff point exists when it comes to establishing a valid congressional redistricting plan which will withstand constitutional scrutiny based on population alone. The Court's review would scrutinize any variance by examining the inequality of districts.

Although the Court in *Karcher* rejected New Jersey's attempts to justify the deviation in their congressional redistricting plan, the Court did indicate that "(a)ny number of consistently applied legislative policies might justify some variance, including, for instance, making districts compact, respecting municipal boundaries, preserving the cores of prior districts, and avoiding contests between incumbent Representatives."[30] The Court further noted that a state must, however, show with some specificity that a particular objective required the specific deviations in its plan, rather than simply relying on general assertions.[31] Subsequent to *Karcher* several congressional redistricting plans with overall range percentage variances of up to .73 percent have been approved based upon identifiable state objectives such as minimizing the number of counties and the number of people relocated to new districts;[32] compactness, respect for political boundaries and communities of interest, the use of undivided census tracts, and compliance with the federal Voting Rights Act;[33] and avoiding the splitting of precincts, avoiding splitting less populous counties, and maintaining the cores of prior districts.[34] Still, mere reliance on valid state objectives will not automatically guarantee that a particular overall range percentage variance will be approved; courts will still examine each plan on a case-by-case basis.[35]

2.   Iowa Standards.

Code section 42.4(1) requires that a congressional redistricting plan contain districts which have a population as nearly equal as practicable to the ideal population for a congressional district in the plan. Specifically, the Code provides that the deviation percentage variance for any congressional district in a redistricting plan shall not exceed 1 percent unless necessary to comply with constitutional requirements as

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[27] Karcher at 725.
[28] Id. at 730.
[29] Id. at 732-733.
[30] Id. at 740.
[31] Id. at 741.
[32] Turner v. State, 784 F. Supp. 585, 588-589 (E.D. Ark. 1991), summarily aff'd, 504 U.S. 952 (1992) (.73 percent overall range percentage variance allowed).
[33] DeWitt v. Wilson, 856 F. Supp. 1409, 1410-15 (E.D. Cal. 1994), summarily aff'd in relevant part, 515 U.S. 1170 (1995) (.49 percent overall range percentage variance allowed).
[34] Abrams v. Johnson, 521 U.S. 74, 99-100 (1997) (.35 percent overall range percentage variance allowed).
[35] Id. at 99-100.

provided in Article III, section 37, of the Iowa Constitution.[36] Article III, section 37, of the Iowa Constitution provides that counties shall not be split between more than one congressional district and that a congressional district containing more than one county shall not be entirely separated by a county belonging to a different congressional district. Important to note, however, is that the Code provides that if a redistricting plan is challenged in court based upon an excessive population variance among districts, the General Assembly has the burden of justifying any deviation percentage variance in excess of 1 percent for any district in the plan.[37]

3. Summary.

Since the U.S. Supreme Court has specifically rejected authorizing a particular percentage variance, however calculated, as constitutionally permissible,[38] strict reliance on the 1 percent deviation percentage variance threshold provided by the Code does not guarantee that a particular Iowa congressional redistricting plan would withstand a court challenge. To ensure that a congressional redistricting plan in Iowa meets constitutional requirements, a proposed congressional plan should attempt to meet the strict equality requirements established by the U.S. Supreme Court with deviations from that requirement specifically tied to identified state objectives as provided in the Iowa Constitution and the Code.[39]

C. State Legislative Districts.

1. Federal Constitutional Requirements.

The Equal Protection Clause of the 14th Amendment to the United States Constitution has been interpreted to establish the basic requirement that state legislative districts be apportioned to achieve substantial equality of population among the various districts.[40] This standard for legislative districts has been interpreted by the U.S. Supreme Court to mean that an overall range percentage variance of less than 10 percent generally does not violate the equal protection standard and need not be specifically justified by some particular state policy.[41] The Court further noted that an overall range percentage variance that exceeds 10 percent, while not automatically a violation of constitutional population equality requirements, will be a violation unless the state has a valid justification for the otherwise excessive percentage variance.[42] For example, in at least two cases, states have justified overall range percentage variances in excess of 10 percent where the excessive percentage variances resulted from respecting the boundaries of political subdivisions.[43] Conversely, though, an overall range percentage variance of under 10 percent is not a guarantee that a plan

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[36] Iowa Code § 42.4(1)(b).
[37] Iowa Code § 42.4(1)(c).
[38] Karcher at 725.
[39] See discussion of nonpopulation redistricting criteria in part IV of this Guide.
[40] Reynolds at 569.
[41] Brown v. Thompson, 462 U.S. 835, 842-843 (1983).
[42] Id.
[43] Mahan v. Howell, 410 U.S. 315 (1973) (Virginia - 16 percent overall range percentage variance); Voinovich v. Quilter, 507 U.S. 146 (1993) (Ohio - overall range percentage variance exceeded 10 percent).

will be upheld, especially if the deviation in a plan results from the utilization of criteria deemed improper.[44]

2. Iowa Standards.

Article III, section 34, of the Iowa Constitution provides that state senatorial and representative districts be apportioned on the basis of population. This constitutional provision further provides that Iowa law may, consistent with the United States Constitution, establish other factors for apportioning senatorial districts, but only if the law does not result in a senatorial redistricting plan whereby a majority of senators could represent less than 40 percent of the state's population.

After the 1970 census, controversy arose as to whether the Iowa General Assembly properly created a legislative redistricting plan in compliance with United States and Iowa constitutional requirements. The Iowa Supreme Court rejected the legislatively drawn redistricting plan[45] and subsequently adopted its own redistricting plan for Senate and House districts following the 1970 census.[46] The legislatively drawn plans rejected by the Iowa Supreme Court had an overall range percentage variance for the Senate of 3.2 percent and for the House of 3.8 percent. In finding these percentage variances excessive, the Iowa Supreme Court rejected establishing a certain de minimis standard regarding percentage variances which, if met, would justify any basis for how the individual districts were drawn.[47] Instead, the court found that the percentage variances were excessive and avoidable, and were created for the unjustifiable purposes of protecting incumbents, preserving present districts, avoiding joining part of a rural county with an urban county, and ensuring the passage of the redistricting plan.[48] Furthermore, the court found that the proposed legislative redistricting plan failed to meet the Iowa constitutional requirement of establishing districts of compact territory.[49] After rejecting the legislative redistricting plan, the Iowa Supreme Court adopted its own plan based primarily on providing substantial voting equality of population in each district while endeavoring to create compact districts of contiguous territory. The plan provided for overall range percentage variances of approximately .05 percent for the Senate and .09 percent for the House.[50]

In 1980, Code chapter 42, which includes provisions establishing standards for governing population equality, was enacted. Code section 42.4(1) provides that each Senate and House district in a redistricting plan shall have a population as nearly equal as practicable to the ideal population for a Senate or House district in that plan. Specifically, the Code provides that the mean deviation percentage variance for a Senate or House redistricting plan shall not exceed 1 percent and that the overall range percentage variance for a Senate or House plan shall not exceed 5 percent.[51]

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[44] Larios v. Cox, 300 F.Supp.2d 1320, 1352-1353 (N.D.Ga. 2004), summarily aff'd Cox v. Larios, 542 U.S. 947 (2004). Overall range percentage variance of 9.98 percent in Georgia state legislative plan ruled invalid by ignoring traditional redistricting criteria and instead improperly favoring rural and inner-city interests at the expense of suburban areas and by favoring incumbent Democrats.

[45] In re Legislative Districting of General Assembly, 193 N.W.2d 784 (Iowa 1972).

[46] In re Legislative Districting of General Assembly, 196 N.W.2d 209 (Iowa 1972), as modified 199 N.W.2d 614 (Iowa 1972).

[47] In re Legislative Districting of General Assembly, 193 N.W.2d at 788.

[48] In re Legislative Districting of General Assembly, 193 N.W.2d at 788-789.

[49] In re Legislative Districting of General Assembly, 193 N.W.2d at 791.

[50] In re Legislative Districting of General Assembly, 196 N.W.2d at 210.

[51] Iowa Code § 42.4(1)(a).

In addition, the Code provides that if a redistricting plan is challenged in court based upon an excessive population variance among districts, the General Assembly has the burden of justifying any deviation percentage variance in excess of 1 percent for any district in the plan.[52]

3. Summary.

In contrast to congressional redistricting, population equality standards for legislative redistricting as established by Code chapter 42 and as articulated by the Iowa Supreme Court in 1972[53] are generally stricter than those established by federal case law. As such, Iowa legislative redistricting plans that meet the population equality standards provided in Iowa law should be sufficient to withstand a federal or state court challenge based upon population equality.

IV. Redistricting Standards — Nonpopulation Criteria.

A. Introduction.

Population is by far the most important criteria for establishing valid congressional and legislative districts. However, strict mathematical equality in population among all districts in a redistricting plan is not absolutely required, even for congressional redistricting, if the state can justify the variation by proving that the variation is due to some legitimate state objective or rational state policy.[54] In contrast, mere reliance on strict population equality is no guarantee that a particular redistricting plan will withstand a court challenge if the court determines that the particular plan was drawn for an improper purpose.[55] As such, standards other than population that have been established at both the state and federal level need to be carefully considered during the redistricting process. This part of the Guide will examine some of these "traditional redistricting principles" and their viability for guiding the redistricting process in Iowa.

B. Federal Strictures on Redistricting — Race Standards.

The 15th Amendment to the United States Constitution guarantees that the right of citizens to vote shall not be denied or abridged based on race or color. In part to implement the requirements of this constitutional amendment, the federal Voting Rights Act of 1965 was enacted to ensure that states do not discriminate against the right of minorities to vote and be represented. The two sections of the Voting Rights Act that impact redistricting are Section 2[56] and Section 5.[57] Section 5 establishes requirements for certain states and locations to gain prior approval from the United States Department of Justice of a particular redistricting plan. Section 5 does not apply to Iowa. Section 2 of the Voting Rights Act of 1965, however, applies to all states and prohibits a state or political subdivision from imposing or applying voting qualifications; prerequisites to voting; or

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[52] Iowa Code § 42.4(1)(c).
[53] In re Legislative Districting of General Assembly, 193 N.W.2d 784 (Iowa 1972); supplemented 196 N.W.2d 209 (Iowa 1972); amended 199 N.W.2d 614 (Iowa 1972).
[54] Congressional redistricting: Karcher at 725; Legislative redistricting: Brown at 842-843.
[55] See, e.g., Shaw v. Reno, 509 U.S. 630 (1993).
[56] 42 U.S.C. § 1973.
[57] 42 U.S.C. § 1973(c).

standards, practices, or procedures to deny or abridge the right to vote on account of race or color or because a person is a member of a language minority group.[58]

To establish a potential Section 2 violation, courts have established several preconditions that, if met, give rise to a further analysis of whether a Section 2 violation exists, thus requiring the establishment of a majority-minority district. These preconditions include consideration of whether the minority group is sufficiently large and geographically compact to constitute a majority in a single-member district; whether the minority group is politically cohesive, that is, whether it usually votes for the same candidates; and whether, in the absence of special circumstances, bloc voting by the white majority usually defeats the minority's preferred candidate.[59] If the minority group challenging a particular redistricting plan establishes that the three preconditions exist, the minority group can attempt to establish that the effect of the challenged redistricting plan is discriminatory by proving by the totality of the circumstances that the members of the minority group have "less opportunity than other members of the electorate to participate in the electoral process and to elect representatives of their choice" under the challenged redistricting plan.[60]

Creating a district where a minority group constitutes a majority of the district, even if population equality standards are met, however, does not insulate a state from a challenge to that district. Attempts to maximize the number of majority-minority districts have been challenged as violative of the Equal Protection Clause of the 14th Amendment of the United States Constitution as being drawn solely on the basis of race.[61] The mere fact that the district was drawn ostensibly for the purpose of meeting a Voting Rights Act challenge has been deemed insufficient to uphold the validity of such districts. An important factor courts have used in determining whether race was the predominant factor in drawing districts is the "appearance" of the challenged district, more specifically, its apparent lack of compactness, as well as whether other "traditional redistricting principles" can explain the final redistricting plan.[62] Since appearance, compactness, and traditional redistricting principles are such subjective measures, courts will likely continue to struggle with attempts by states to meet Voting Rights Act concerns while not violating the Equal Protection Clause prohibiting racial gerrymandering.

In Iowa, establishing a Voting Rights Act violation for any particular minority group would be difficult since the first precondition to proving such a claim, that a minority group is sufficiently large and geographically compact to constitute a majority in a single-member district, would be difficult to establish for congressional or legislative redistricting. Even if a federal violation would be difficult to establish given the small minority population of the state, Iowa law still prohibits establishing a district which discriminates against a particular minority group. Specifically, the Code provides that no district shall be drawn for the purpose of augmenting or diluting the voting strength of a language or racial minority group

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[58] 42 U.S.C. § 1973.
[59] Thornburg v. Gingles, 478 U.S. 30, 50-51 (1986); Growe v. Emison, 507 U.S. 25 (1993) (preconditions apply to single-member districts).
[60] 42 U.S.C. § 1973(b).
[61] Shaw v. Reno at 630; Shaw v. Hunt, 517 U.S. 899 (1996).
[62] Shaw v. Reno at 630; Shaw v. Hunt at 899-900.

and that consideration of demographic information, other than population head counts, should not be considered unless constitutionally required.[63]

C. Traditional Redistricting Factors in Iowa.

1. Respect for Political Subdivisions.

For both congressional and legislative redistricting, Iowa law provides that, consistent with population equality requirements, district boundaries should coincide with the boundaries of political subdivisions of the state.[64] Moreover, for congressional redistricting, Article III, section 37, of the Iowa Constitution specifically provides that no county shall be divided in forming a congressional district.

To assist the redistricting process, the Code provides some guidance as to how to apply and meet the goal of respecting political subdivisions when preparing any particular legislative redistricting plan. Specifically, the Code provides that the number of counties and cities divided among more than one district in a redistricting plan shall be as small as possible.[65] In addition, when a choice exists as to dividing political subdivisions, the most populous subdivision shall be divided first.[66] However, the preference for dividing the most populous political subdivision does not apply to a legislative district boundary drawn along a county line which passes through a city that lies in more than one county.[67]

2. Contiguousness.

The Iowa Constitution establishes the basic requirement that congressional and legislative districts be composed of contiguous territory.[68] Specifically, Article III, section 34, of the Iowa Constitution provides that "(e)ach district so established shall be of compact and contiguous territory." As for congressional redistricting, Article III, section 37, of the Iowa Constitution provides that a congressional district consisting of more than one county shall not be entirely separated by a county belonging to another congressional district.

The Code also provides that congressional and legislative districts shall be composed of convenient contiguous territory.[69] The Code further states that a district which includes areas which meet only at the points of adjoining corners is not contiguous.[70]

3. Compactness.

Iowa law provides that congressional and legislative districts should be reasonably compact in form. As noted previously, the requirement to establish

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[63] Iowa Code § 42.4(5).
[64] Iowa Code § 42.4(2).
[65] Iowa Code § 42.4(2).
[66] Iowa Code § 42.4(2).
[67] Iowa Code § 42.4(2).
[68] Iowa Const. Art. III, § 34. Contiguousness for purposes of redistricting generally means that a person can reach any point in a district without having to cross the district boundary.
[69] Iowa Code § 42.4(3).
[70] Iowa Code § 42.4(3).

legislative districts compact in form is specifically provided for in the Iowa Constitution.[71]

Code section 42.4(4) provides more specific guidance regarding the requirement to establish congressional and legislative districts compact in form. The Code describes a compact district as "... those which are square, rectangular, or hexagonal in shape, and not irregularly shaped, to the extent permitted by natural or political boundaries."[72] The Code provides, however, that districts shall be compact only to the extent consistent with requirements concerning population equality, respect for political subdivisions, and contiguousness.[73]

In order to compare the relative compactness of two or more districts or of two or more alternative redistricting plans, the Code provides that two measures of compactness, length-width compactness[74] and perimeter compactness,[75] shall be used.

Length-width compactness determines the relative "squareness" of a district in a redistricting plan by comparing the length of the district with the width of the district.[76] The compactness of a district based on this measure is greatest when the length and width of a district are equal.

Perimeter compactness determines how regularly shaped a district in a redistricting plan is by measuring the distance to traverse the perimeter boundary of the district.[77] The compactness of a district based on this measure is greatest when the distance needed to traverse the boundary is as short as possible.

4. Improper Considerations.

Iowa law also provides that certain factors shall not be taken into account when preparing redistricting plans. Specifically, the Code provides that districts shall not be drawn to favor any political party, an incumbent legislator or member of Congress, or any other person or group, or for the purpose of augmenting or diluting the voting strength of a language or racial minority group.[78] To ensure compliance with these requirements, the Code provides that data concerning the addresses of incumbents, the political affiliation of registered voters, previous election results, and demographic data, other than population head counts, not otherwise required by federal law are not to be considered or used in establishing districts.[79] Prior to the adoption of Code chapter 42, the Iowa Supreme Court found that protecting incumbents, preserving

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[71] Iowa Const. Art. III, § 34.

[72] Iowa Code § 42.4(4).

[73] Iowa Code § 42.4(1-4).

[74] Iowa Code § 42.4(4)(a). 2007 Iowa Acts ch. 78 eliminated the requirement that a complex mathematical formula involving geographic unit centers be utilized to determine length-width compactness if electronic data processing is used. The method used to determine length-width compactness by manual measurement prior to 2007 is now made applicable regardless of whether electronic or manual methods of measurement are used.

[75] Iowa Code § 42.4(4)(b). 2007 Iowa Acts ch. 78 substituted perimeter compactness for a population dispersion test which used a complex formula to measure the dispersion of population within a district by comparing the population center of a district with the geographic center of the district. This change was made upon the recommendation of the Legislative Services Agency, which concluded that the population dispersion measurement had not been an effective tool in measuring the relative compactness of districts, especially since the dispersion measurement had always been statutorily subservient to length-width compactness.

[76] Iowa Code § 42.4(4)(a).

[77] Iowa Code § 42.4(4)(b).

[78] Iowa Code § 42.4(5).

[79] Iowa Code § 42.4(5).

present districts, avoiding joining part of a rural county with an urban county, and ensuring the passage of the redistricting plan to be improper grounds for the General Assembly to rely on to justify the extent of the population variances among districts in a particular legislative redistricting plan.[80]

5. Interrelationship of Districts.

Iowa law provides that each representative district shall be wholly included within a single senatorial district.[81] In addition, each Senate and House district shall, as far as possible, be within a single congressional district. However, the requirement to include state legislative districts wholly within a particular congressional district is subservient to the requirements provided in subsections 1 through 5 of Code section 42.4, i.e., population equality, respect for political subdivisions, contiguousness, compactness, and political and racial neutrality.

V. Iowa Redistricting Process.

A. Preliminary Work.

1. Reporting of Population Data to the States — Establishing Geographic Boundaries.

Redistricting in Iowa is not a one-year event. In fact, the process for establishing new congressional and legislative boundaries begins long before the census is conducted and redistricting plans are prepared. One aspect of redistricting which is accomplished prior to the collection of census data is the establishment of geographic areas for the reporting of population data collected by the Census Bureau.[82] The boundaries of these geographic areas must coincide with recognizable map features, such as roads and rivers, and can represent current local election precincts. Specific geographic areas for a state can be determined by the state subject to the approval of the Census Bureau. In Iowa, legislative leadership and the Governor have authorized the Legislative Services Agency to establish, in coordination with the Census Bureau, permissible geographic areas based on recognizable political boundaries, such as precincts.[83] The Census Bureau reports population data collected based on these geographic areas to the states, which is then used by the states in drawing congressional and legislative districts within constitutional constraints.

2. Census Day — Apportionment.

Article I, section 2, of the United States Constitution establishes the requirement for conducting an enumeration of persons in each state every 10 years. The census enumeration date is April 1 of each year ending in zero. Title 13 of the U.S. Code requires that the apportionment counts, i.e., the resident population totals for each state, be delivered to the President within nine months of the census enumeration date, i.e., by December 31 of that same year. Within a week of the opening of the next

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[80] In re Legislative Districting of General Assembly, 193 N.W.2d 784, 788-789 (Iowa 1972).
[81] Iowa Code § 42.4(6).
[82] Pub. L. No. 94-171 (1995) establishes the ability of states to designate geographic areas for the reporting of population data from the Census Bureau.
[83] Iowa Code § 42.2(1) provides the general authority for the Legislative Services Agency to make preparations for redistricting.

session of Congress, the President must report to the Clerk of the House of Representatives the census counts for each state and the number of representatives to which each state is entitled. The U.S. Code provides that the number of representatives to be apportioned to each state shall be determined by the mathematical formula known as the "method of equal proportions."[84] Within 15 days of the President's report, the Clerk of the House informs each state governor of the number of representatives to which the state is entitled. The legislatures in each state are then responsible for geographically defining the boundaries of their congressional districts through redistricting.[85]

B. Iowa Redistricting Plan Adoption — Timeline and Process.

1. Legislative Services Agency — Duties.

Code section 42.2 requires the Legislative Services Agency to take the necessary steps to prepare for the process of redistricting. Specifically, the Legislative Services Agency is authorized to acquire the necessary equipment and materials to perform the duty of redistricting.[86] In addition, by December 31 of each year ending in zero,[87] the Legislative Services Agency is directed to prepare the necessary geographic descriptions for the geographic units that will be used by the Census Bureau in reporting population data and to begin preparing maps of counties and cities for use in visually describing proposed new districts.[88] The Legislative Services Agency is also required to assign each geographic unit with population totals from the Census Bureau as soon as possible after January 1 of each year ending in one,[89] in order to begin the process of redistricting.[90] Finally, once the Legislative Services Agency releases a proposed redistricting plan to the General Assembly, the Legislative Services Agency is required to make available to the public copies of the bill embodying the plan, maps illustrating the plan, a summary of redistricting standards used to develop the plan as prescribed by the Code, and a statement about the population of each proposed district and its deviation from the ideal district population.[91]

2. Temporary Redistricting Advisory Commission.

a. Selection. Code section 42.5 provides for the establishment of a five-member Temporary Redistricting Advisory Commission by February 15 of each year ending in one.[92] Four of the commission members are to be selected by the respective Majority and Minority Floor Leaders for the General Assembly convening in each year ending in zero. Within 30 days after the four appointments have been

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[84] 2 U.S.C. § 2a(a). The U.S. Supreme Court has upheld using the method of equal proportions in apportioning congressional representatives. United States Department of Commerce v. Montana, 503 U.S. at 442 (1992).
[85] 2 U.S.C. § 2a(b). (2 U.S.C. § 2a(c) establishes congressional district boundaries in a state for purposes of congressional elections conducted following reapportionment but prior to the state's establishment of new district boundaries based on the results of the census.)
[86] Iowa Code § 42.2(1).
[87] Iowa Code § 42.2(2).
[88] Iowa Code § 42.2(2).
[89] Iowa Code § 42.2(3).
[90] Iowa Code § 42.2(3). Pub. L. No. 94-171 (1995) specifies that within one year following Census Day the United States Census Bureau must send to the Governor and legislature in each state the population data they need to redraw districts for the United States Congress and state legislatures.
[91] Iowa Code § 42.2(4).
[92] Iowa Code § 42.5(1).

made, but in no event later than February 15, the four commission members shall select, by a vote of at least three members, the fifth commission member who shall also serve as chairperson.[93] The Code provides that a commission member shall be an eligible voter of this state but shall not hold a partisan political office or political party office or be related to or employed by a member of the United States Congress or the Iowa General Assembly or be employed by the Congress or Iowa General Assembly itself.[94]

b. Duties. Code section 42.6 describes the functions of the commission. Generally, the commission's role is twofold, to provide advice and guidance to the Legislative Services Agency on certain redistricting matters[95] and to conduct public hearings and submit a report to the General Assembly on the first proposed plan.[96]

Specifically, the commission may provide direction to the Legislative Services Agency as to how to resolve certain redistricting questions that are not clearly answered by the Code or applicable constitutional mandates, upon written request by the Legislative Services Agency.[97] In addition, the commission has the authority to establish guidelines governing the release of information by the Legislative Services Agency about a particular redistricting plan prior to its formal release to the Senate and House.[98]

Once the first proposed redistricting plan is released to the General Assembly, the commission is required to schedule and conduct at least three public hearings in different geographic regions of the state and to issue a report to the General Assembly summarizing the information and testimony received.[99] The commission is not required to conduct public hearings or issue a report following submission of a second or third proposed redistricting plan.

3. Plan Preparation.

The timetable for preparing and finally approving a congressional and legislative redistricting plan is detailed in Code section 42.3 and Article III, section 35, of the Iowa Constitution.

a. First Plan. The Legislative Services Agency is required to deliver the first proposed congressional and legislative redistricting plan to both chambers of the General Assembly by April 1 of each year ending in one.[100] This deadline is extended, however, if the necessary population data to prepare a legislative redistricting plan is not received from the Census Bureau by February 15. If the information is received after February 15, the April 1 deadline is extended by the same number of days by which the receipt of the necessary census information is delayed beyond February

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[93] Iowa Code § 42.5(1)(b).
[94] Iowa Code § 42.5(2).
[95] Iowa Code § 42.6(1-2).
[96] Iowa Code § 42.6(3).
[97] Iowa Code § 42.6(1).
[98] Iowa Code § 42.6(2).
[99] Iowa Code § 42.6(3).
[100] Iowa Code § 42.3(1)(a).

15.[101] For example, if the census data is received February 28, then the Legislative Services Agency is required to submit a redistricting plan by April 14.

Once the first redistricting plan is submitted to the General Assembly, the Temporary Redistricting Advisory Commission is required to hold at least three public hearings about the plan in different geographic regions of the state and to submit a report concerning the hearings to the General Assembly.[102] The commission is required to submit its report no later than 14 days after the first plan is submitted to the General Assembly.[103] Once the report is submitted, the General Assembly is required to bring the redistricting bill to a vote in one of the chambers expeditiously, but in no event less than three days after the commission report is submitted.[104] If the bill passes in one chamber, then the second chamber is required to take the bill up in an expeditious manner. Only corrective amendments to the redistricting plan bill are allowed.[105]

b.   Second Plan. If the first redistricting plan fails to be enacted, the Legislative Services Agency is required to submit a second plan.[106] The second plan must be prepared in accordance with the reasons cited, if any, by the Senate or the House by resolution[107] or the Governor by veto message, for the failure to approve the first plan, as long as the reasons do not conflict with any redistricting standard provided by the Code. The second redistricting plan is required to be submitted to the General Assembly no later than 35 days after the first plan is disapproved. The General Assembly shall proceed to a vote on the second plan no sooner than seven days after the bill is submitted and, like the first plan, only corrective amendments are allowed. The Temporary Advisory Redistricting Commission is not required to hold public hearings concerning the second plan.

c.   Third Plan. If the second redistricting plan fails to be enacted, the Legislative Services Agency is required to submit a third plan.[108] The third redistricting plan is required to be submitted to the General Assembly no later than 35 days after the second plan is disapproved. As is the case with the second plan, the third plan shall be prepared in accordance with the reasons cited for the rejection of the second plan, the Temporary Advisory Redistricting Commission is not required to hold public hearings concerning the plan, and the General Assembly is directed to proceed to a vote on the third plan no earlier than seven days after submission of the bill. However, unlike the first two plans, the third plan is subject to amendment in the same manner as any other bill.

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[101] Iowa Code § 42.3(1)(b).
[102] Iowa Code § 42.6(3)(a, b).
[103] Iowa Code § 42.6(3)(b).
[104] Iowa Code § 42.3(1)(a).
[105] Iowa Code § 42.3(1)(a).
[106] Iowa Code § 42.3(2).
[107] Iowa Code § 42.3(1)(a). Reasons submitted by the Senate or House for rejection shall be transmitted to the Legislative Services Agency no later than seven days after the date the bill failed to be approved.
[108] Iowa Code § 42.3(3).

d. **Judicial Intervention.** If no redistricting plan is enacted into law or if a plan is challenged in court and rendered invalid, the Iowa Supreme Court will likely assume or be given the responsibility for establishing a valid redistricting plan.[109]

- *Legislative redistricting*: For state legislative redistricting, Article III, section 35, of the Iowa Constitution specifically directs the Iowa Supreme Court to develop a redistricting plan for the General Assembly prior to December 31 of any year ending in one if the General Assembly fails to pass an apportionment plan by September 1 of that year that becomes law by September 15. If a plan is enacted by the General Assembly but is subsequently challenged and struck down by the Iowa Supreme Court, Article III, section 36, of the Iowa Constitution provides that the Supreme Court has 90 days to adopt a valid apportionment plan.

- *Congressional redistricting*: For congressional redistricting, Article III, section 36, of the Iowa Constitution provides that the Iowa Supreme Court has original jurisdiction of all litigation questioning any apportionment plan adopted by the General Assembly. In addition, this constitutional provision provides that the Iowa Supreme Court shall review any apportionment plan adopted by the General Assembly (which would include both congressional and legislative redistricting plans) upon a verified application to the court by any qualified elector. As noted when discussing legislative redistricting, if a redistricting plan is enacted by the General Assembly but is subsequently challenged and struck down by the Iowa Supreme Court, the Supreme Court has 90 days to adopt a valid apportionment plan. Unlike legislative redistricting, however, the Iowa Constitution does not provide a time deadline for the General Assembly to redraw congressional boundaries or any requirement for the Iowa Supreme Court to redraw congressional districts if the General Assembly is unable to enact a new plan. However, if a state has not yet adopted new congressional district boundaries prior to the next congressional election, the U.S. Code provides for election of representatives on a statewide basis if the number of representatives for the state has increased or decreased based on the census, or, if the number of representatives for a state remains unchanged, permits election from the previously created districts.[110] However, if districts that were drawn based on the prior census but not the current census are used, shifts in population within a state from one census to the next would probably result in population variations between districts that would not meet the constitutional requirement to have districts equal in population as nearly as practicable.

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[109] See Growe at 25 (reapportionment is primarily a state issue and federal courts are generally required to defer consideration of redistricting disputes if the state, through the Legislature or its courts, is addressing the issue).

[110] 2 U.S.C. § 2a(c).

C. Postredistricting Effects — Senators.

1. Overview.

The Iowa Constitution provides that senators shall be elected to four-year terms and that, as nearly as possible, one-half of the members of the senate shall be elected every two years.[111] To implement this constitutional requirement, elections in Iowa for state Senate seats are staggered over two general election year cycles, with elections in odd-numbered senatorial districts held in one general election year and elections in even-numbered senatorial districts held in the next general election year.[112] Based on this, elections for odd-numbered senatorial districts are required to be held in 2002, 2006, 2010, 2014, and every four years thereafter. Conversely, elections for even-numbered senatorial districts are required to be held in 2000, 2004, 2008, 2012, and every four years thereafter.

Redistricting impacts this staggered election year cycle by occurring just two years after an election for half of the seats in the Senate and by inevitably changing the boundaries and numbering of senatorial districts. While the Iowa Constitution recognizes this potential impact of redistricting by permitting the reapportioning authority to shorten the term of any senator if necessary when establishing new senatorial districts,[113] Iowa law does not mandate an election in every senatorial district for the next general election cycle following redistricting. Instead, Iowa law provides that certain senate incumbents shall be allowed to continue serving for a four-year term without being subject to an election during the first general election following redistricting.

2. Senate Elections Following Redistricting.

a. Overview. Code section 42.4(8) resolves the question as to whether, following redistricting, an incumbent senator[114] will be required to seek reelection for a four-year term at the next general election, will be required to seek reelection for a shortened two-year term at the next general election, or will be permitted to continue serving for a four-year term without an election during that first general election following redistricting. However, in no event will an incumbent senator be allowed to serve a six-year term without an intervening election. The determination of whether an election is required for a particular incumbent senator depends on the following factors:

i. Whether a particular senatorial district is required to conduct an election during that general election.

ii. Where the incumbent senator resided during the senator's last election and on the first Wednesday in February of the year ending in two.[115]

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[111] Iowa Const. Art. III, §§ 5, 6.
[112] See, generally, Iowa Code § 42.4(8); 1980 Iowa Acts ch. 1021; 1990 Iowa Acts ch. 1244; 1994 Iowa Acts ch. 1179.
[113] Iowa Const. Art. III, § 35.
[114] Incumbent senator is defined in Iowa Code § 42.4(8)(c)(2) as "a state senator who holds the office of state senator on the first Wednesday in February of the year ending in two, and whose declared residence on that day is within the district from which the senator was last elected."
[115] February 1, 2012; February 2, 2022.

iii. Whether more than one incumbent senator resides in a particular new senatorial district on the first Wednesday in February of the year ending in two.

iv. Whether an incumbent senator has resigned the senator's seat, effective prior to the convening of the next General Assembly, by the third Wednesday in February of the year ending in two.[116]

b. Senate Election Required — Four-Year Term. Every senatorial district in the plan that is numbered with an even or odd number in the same manner as senatorial districts which were required to elect a senator in the year ending in eight, is required to elect a senator in the year ending in two for a four-year term. As a result, odd-numbered senatorial districts following redistricting in 2001 were required to elect a senator in 2002 for a four-year term, and all even-numbered senatorial districts following redistricting in 2011 will be required to elect a senator in 2012 for a four-year term. The fact than an incumbent senator who was just elected from a district in the general election just prior to redistricting may now reside in a district required to conduct an election in the year ending in two does not modify the requirement that an election will still be required since no incumbent senator is allowed to serve for six years without an election.[117]

c. Holdover Senatorial Districts. Newly created senatorial districts which are numbered such that an election is not required in the general election following redistricting are defined as holdover senatorial districts.[118] As a result, new even-numbered senatorial districts created following redistricting in 2001 were considered holdover senatorial districts, and new odd-numbered senatorial districts created following redistricting in 2011 will be considered holdover senatorial districts. While each holdover senatorial district will elect a senator in the year ending in four for a four-year term, the question is who shall serve in the holdover senatorial district during the General Assembly convening in January of the year ending in three and whether or not an election in the year ending in two for a shortened two-year term will have to be held.

i. Election required for shortened two-year term.[119] An election for a shortened two-year term in a holdover senatorial district is required under any of the following circumstances:

- If no incumbent senator resides in a new holdover senatorial district.

- If at least two incumbent senators reside in a holdover senatorial district as of the first Wednesday in February of the year ending in two and have not resigned from office effective no later than January of the following year by the third Wednesday in February of the year ending in two.

- If only one incumbent senator resides in a new holdover senatorial district as of the first Wednesday in February of the year ending in two but the requirements described in subparagraph ii below are not met.

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[116] February 15, 2012; February 16, 2022.
[117] Iowa Code § 42.4(8)(a).
[118] Iowa Code § 42.4(8)(c)(1).
[119] Iowa Code § 42.4(8)(b)(2).

ii. Election not required for shortened two-year term.[120] An election for a shortened two-year term in a new holdover senatorial district shall not be required and the affected incumbent senator can serve in that district until the year ending in four, if all of the following requirements are met:

- Only one incumbent senator, who has not resigned and who was elected from a district requiring an election in the year ending in zero, is residing in a new holdover senatorial district as of the first Wednesday in February of the year ending in two. Even if two or more incumbent senators reside in the holdover senatorial district as of that date, if all but one incumbent senator in the new district resigns effective no later than January of the following year by the third Wednesday in February of the year ending in two, then the district shall be deemed to have but one incumbent senator for purposes of determining whether an election shall be required.

- The place of residence of the incumbent senator on the first Wednesday in February of the year ending in two and the senator's place of residence on the date of the senator's last election are located in the same holdover senatorial district of the new plan; or the place of residence of the incumbent senator on the first Wednesday in February of the year ending in two is located in a new holdover senatorial district contiguous to another new senatorial district that includes the place of residence of the incumbent senator on the date of the senator's last election, and the place of residence of the incumbent senator on the first Wednesday in February of the year ending in two would have been located in the senatorial district from which the senator was last elected. This provision means, so long as all other requirements are met, that an incumbent senator who was elected from a senatorial district requiring an election in a year ending in zero can move to any part of that senator's old district by the first Wednesday in February of the year ending in two and avoid an election in November of that year, if the senator's new place of residence is in a newly created holdover senatorial district and the senator's old place of residence on the date of the senator's last election is in another newly created contiguous senatorial district.

3. **Renumbering Criteria.**

The Code provides that any redistricting plan shall provide for the election of senators which shall be consistent with the requirement of Article III, section 6, of the Iowa Constitution that, as nearly as possible, one-half of the members of the Senate shall be elected every two years. Based on this mandate, then, every attempt is made to avoid elections for a shortened two-year term in holdover senatorial districts by numbering the newly drawn districts so that a holdover senatorial district includes the

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[120] Iowa Code § 42.4(8)(b)(1).

residence of an incumbent senator who was elected from a senatorial district requiring an election in the year ending in zero.[121]

VI.   Conclusion.

The redrawing of congressional and legislative district boundaries following each decennial census is a difficult process, fraught with many critical legal and political considerations. Iowa, though, is rather unique in the country since Iowa law requires a nonpartisan legislative agency to perform many of the essential components of the redistricting process based upon fairly specific constitutional and statutory guidelines governing the drawing of district boundaries. Hopefully this Guide has provided those interested in the redistricting process in Iowa with some background as to the procedure for congressional and legislative redistricting in the state and the relevant constitutional and statutory provisions that apply.

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[121] Since Iowa Code § 42.4(5) provides that the residence of incumbent senators cannot be examined in developing the redistricting plan, the residence will be looked at only after the lines have been drawn and district numbers are being determined.