

## Zero Deviation

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It is my understanding that at the very first meeting of the commission on January 18, 2011, a decision was made that the population standard for redistricting plans would be zero deviation. I got wind of this decision before the January 28 meeting and spoke to the commission on January 28 in opposition to the zero deviation standard. That such a decision was made is supported by the fact that I've subsequently been told that I'm wasting my time because the plans I'm presenting are not zero deviation plans. If such a decision was made, I'd like to point out that that the commission gave no public notice that it would be considering this question, it received no public input on the subject, and it has not made any public announcement regarding the decision. After an examination of the agenda and the minutes of the January 18 meeting, I can only conclude that this decision was made in the 26-minute executive session which was held. Surely this raises a question of the commission's compliance with the Open Meetings Act.

Now, the commission is inviting the public to submit plans but I am not aware of any notice having been given that all plans which do not provide for zero deviation are "wastes of time". The way this matter is being handled is not consistent with this being an open process or a process in which the public can have meaningful participation.

I have spoken several times to the commission about its fascination with the shiny but worthless bauble of zero deviation. The census is not accurate enough to justify this degree of exactness in district populations. Not everyone is counted in the census. Some people are counted who are inferred to exist. They may or they may not. For its work, our state's Office of Financial Management has substituted the results of state-certified censuses as of April 1, 2010 for the results of the federal census for several municipalities. I recognize that under the constitution the commission cannot do this for redistricting purposes, but the point is that this is another indication that the census is not necessarily the highest quality data.

The rubber doesn't meet the road on this until January 2013. It is in that month that the effects of the census, reflected in redistricting, will first impact the actual governance of the state. By that time, we will be more than a quarter of the way to the next census. Suppose we had two plans, a zero deviation plan and a sensible plan. Simply by examining differences among district populations in 2013, based on then current population estimates, I don't believe it would be possible to determine which plan was the zero deviation plan. Probably the only way to tell which was the zero deviation plan would be to look for the contorted boundaries which are usually necessary to satisfy the talisman of zero deviation. If, during the period when the new districting plans are actually controlling Washington government, one can't tell whether they were zero deviation plans or not, because of population changes between the census and January 2013, what can possibly justify the divisions of counties, municipalities and neighborhoods which are necessary to satisfy zero deviation?

From my point of view, this is a particularly relevant topic here in Walla Walla, because this is one of the counties in eastern Washington which is at risk of being split between congressional districts to satisfy zero deviation. It is not necessary to split Walla Walla county between two congressional districts, nor is it necessary to split any other county east of the Cascades, except to satisfy the passion for zero deviation.

I believe it would be a disservice to this, or any other, county to divide it unnecessarily.

It is my understanding that your choice to split some eastern county for congressional districts is

based upon a belief that our state's adopting the U S Supreme Court's formulation "as nearly equal as is practicable" requires zero deviation. I believe that when the state adopted that formulation in its constitution it was signaling an intent to comply with the standard set by the Supreme Court. It has however, been suggested to me that the words in our constitution mean something different than the Supreme Court means. This assertion boggles the imagination. If anyone has an evidence to support this bizarre notion, I ask that it be offered.

So, what satisfies the U S Supreme Court regarding population equality. The Court allows an overall range of congressional district populations of 1% and an overall range of legislative district populations of 10%, in both cases subject to the proviso that the deviation is required to satisfy some legitimate state purpose. In some cases, the Court has been sufficiently impressed regarding a legitimate state purpose to allow redistricting plans with an overall range greater than their rules of thumb I mentioned.. On the other hand, it clearly is the case that the Court does require zero deviation for plans which do not satisfy their "legitimate state purpose" test. For example, the overall range would not be a safe harbor for a plan in which all minority party districts were at the overpopulated end of the allowable overall range and all majority party districts were at the underpopulated end of the allowable range. For such a plan, zero deviation would be required.

This begs the question: does the commission intend to draw districts for purposes which do not satisfy the Supreme Court's "legitimate state purpose" test? The commission's apparent commitment to zero deviation suggests that that is what the commission intends to do..

I encourage the commission to rethink its decision. I ask you to place the matter of zero deviation on an agenda for a future meeting, receive public input regarding it, and make a commitment to utilize only "legitimate state purposes" in drawing congressional and legislative districts.

Until you do, I will continue to challenge your fascination with the shiny but worthless bauble of zero deviation.