

Redistricting Plan Section 4

Section 4 of the congressional and legislative redistricting plans of 2001 reads as follows:

Sec. 4. (a) Any area not specifically included within the boundaries of any of the districts as described in this plan and that is completely surrounded by a particular district, shall be a part of that district. Any such area not completely surrounded by a particular district shall be a part of the district having the smallest number of inhabitants and having territory contiguous to such area.

(b) Any area described in this plan as specifically embraced in two or more noninclusive districts shall be a part of the adjacent district having the smallest number of inhabitants and shall not be a part of the other district or districts.

(c) Any area specifically mentioned as embraced within a district but separated from such district by one or more other districts, shall be assigned as though it had not been included in any district specifically described.

The application of these provisions to resolve geography problems in the commissioners' proposed congressional and legislative districts creates absurd results.

Here are some examples.

In Commissioner Huff's congressional plan, Herron Island is assigned to district 6 in Pierce county. However, it is separated from the rest of district 6 by an uninhabited water area which is, probably mistakenly, assigned to district 9, which otherwise is not in Pierce county. Under the provisions of section 4, Herron Island must be assigned to district 9, the only area in Pierce county which would be in that district and clearly contrary to Commissioner Huff's intention. The problem is not the assignment of Herron Island. The problem is the misassigned water blocks. Section 4 provides no procedure to switch these uninhabited blocks to district 6. So Pierce county would have the extra expense of a separate ballot face for Herron Island to allow its voters to vote in district 9, contrary to Commissioner Huff's obvious intention.

In Commissioner Gorton's legislative plan, one uninhabited block in Thurston county is assigned to district 20, but it is located between districts 22 and 35. The boundary between those two districts in that area is US Highway 101. The block is on the west side of the highway, which is in district 35. Fortunately, district 35's population is less than district 22's population, so the correction was to assign the block to district 35 which maintains the highway as the district boundary. However, if district 22's population was smaller than district 35's, the block would have to be assigned to district 22 even though it is on the wrong side of the highway and has no population.

In Commissioner Gorton's legislative plan, one block in Whatcom county on the border of Skagit county is assigned to district 40. That area of Whatcom county is in district 42. Across the county boundary, Skagit county is in district 39. This block has a population of 2 people. The application of section 4 requires the assignment of this block to district 39 in spite of the fact that it is many miles from any other Whatcom county voters in district 39. It is pretty clearly Commissioner Gorton's intention that this block be in district 42, but section 4 does not allow that sensible assignment. So, presumably, in these days of economic austerity and limitation of financial resources, the Whatcom county auditor will need to make a precinct for these 2 people (are they even registered to vote?) and then deal with the efforts which must be made to protect ballot privacy for these two possible voters.

In Commissioner Gorton's legislative plan, one block in the North Highline annexation area to the city of Burien is assigned to district 33. It is located on the boundary of district 34 in Burien and district 37 in Tukwila. It has a population of 23. Fortunately, district 34 in that plan has a smaller population than district 37, allowing the assignment of the block in accordance with Commissioner Gorton's obvious intention, to place this Burien block in district 34. But if the population of district 34 had been higher than that of district 37, the block would have to be assigned, under section 4 to district 37, and election administrators would need to create a Burien precinct for these 23 people with a different ballot face than any other Burien precinct and with the potential depending on numbers of ballots cast to have to deal with ballot privacy issues.

In Commissioner Huff's legislative plan, four precincts with an aggregate population of 2,309 people have been assigned to district 16, but they lie in an area adjacent to districts 8, 13 and 15. Since district 15 is the smallest in population of these three, the 2,309 people need to be added to district 15. District 16 from which they are being taken has only five more people than district 15, but there is no provision allowing adjustments to be made to allow Commissioner Huff's intention that these people be in district 16 to be carried out. The problem is that a string of water blocks in the Yakima river should have also been assigned to district 16 but were not. This is what creates the discontinuity. The proper fix would be to move those uninhabited water blocks to district 16 as was undoubtedly intended rather than to create a population imbalance of about 4,600 people between districts 15 and 16, clearly outside the population tolerance Commissioner Huff is comfortable with. But section 4 does not allow the sensible thing to be done.

I could go on.

It's my guess that section 4 was written by someone who knew a lot more about logic and legal drafting than about redistricting. It appears to me to be based upon several unstated premises, the validity of which should be in question.

The first of these premises appears to be that if areas are left out of a plan or are assigned to the wrong district in a plan, population is such an overriding factor in redistricting that population should control the corrective decision even if the area in question has no population.

The second premise appears to be that, in the case of an area assigned to a district with which it does not share contiguity, the assignment problem is with this area. As some of the examples given show, this is not at all necessarily the case. The discontinuity may be the result of the assignment of the area which separates the two parts of the district.

The third assumption is that moving populations in accordance with the rules of section 4 will not create unacceptable population imbalances.

Here is a draft of some considerably more complicated assignment provisions which are intended to prevent the absurd results mandated by section 4. A part of the complication is caused by the whole issue of zero deviation and the uncertainty about why the commissioners think that zero deviation is important but not enough to actually satisfy it. If we could be assured that only legitimate state purposes in redistricting would be utilized in creating districts, we would qualify for the tolerances the US Supreme Court allows for carrying out legitimate state purposes in redistricting. I believe that most of the population contortions in the following language would be unnecessary were that the case.

What follows here is a first draft of suggestions. I have not had opportunity to check the language for consistency and I'm not sure that I've covered every possible issue which could arise.

Obviously the very best solution to this whole problem is for the redistricting plans to be done to a professional standard which does not require the application of section 4 at all. But we can't count on that happening.

So I encourage the commission to adopt a different section 4. What I'm offering is a starting point for that different section.

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An area not assigned to any district but surrounded by a single district.

Any unpopulated area not specifically included within the boundaries of any of the districts described in this plan and which is completely surrounded by one district shall be part of that district. Any populated area not specifically included within the boundaries of any of the districts described in this plan and which is completely surrounded by one district shall be part of that district, unless this would result in violation of the applicable population standard. Any populated area not specifically included within the boundaries of any of the districts described in this plan and which is completely surrounded by one district but which cannot, consistent with the applicable population standard, be assigned to that district, shall be assigned to the nearest district to which it can be assigned by moving uninhabited blocks which lie between the area and the district to which it is to be assigned. If it is not possible to do this, census blocks along the boundary of the district which surrounds the area and which are on the boundary of the district to which the area would otherwise have been assigned shall be moved as necessary to the second district to allow the unassigned area to be included in the district which surrounds it, all in compliance with the applicable population standard. Unless it is not possible, this shall be done without dividing any county or municipality.

An area not assigned to any district nor surrounded by a single district.

Any unpopulated area not specifically included within the boundaries of any of the districts described in this plan and which is adjacent to two or more districts shall, if it is part of any precinct, be assigned to the same district as is the remainder of the precinct. If it is not part of any precinct or is part of a precinct divided between districts or if it is part of a precinct composed of non-contiguous parts, it shall be assigned to the district whose perimeter would be most reduced or least increased by the addition of the area. Any populated area not specifically included within the boundaries of any of the districts described in this plan and which is adjacent to two or more districts shall, if it part of any precinct, be added to same district as the rest of the precinct if this can be done without violating the population standard and the contiguity requirement. If this is not possible, it shall be added to any other district to which it is adjacent to which it can be added without violating the applicable population standard, giving preference to a district which contains other territory in the same county. If it is not possible to add it to any adjoining district without violating the population standard, it shall be added to that district which shares the same precinct, municipality or county and the boundary of that district shall be adjusted by transferring blocks of that district to an adjacent district which can accept the necessary population without violating the population standard.

An area assigned to two or more districts.

Any unpopulated area specifically included in more than one district in this plan shall be a part of a district to which it is adjacent which contains the rest of the precinct, if any, in which the area is located. If it is not in any precinct or if it is in a precinct divided between districts or if it is part of a precinct composed of non-contiguous parts,, it shall be assigned to that adjacent district whose perimeter would be most reduced or least increased by the addition. Any populated area specifically included in more than one district in this plan shall be a part of any adjacent district to which it can be added without violating the applicable population standard, giving preference to a district including other parts of the same municipality and county. If this is not determinative, then it shall be added to the adjacent district with the smallest population. If this results in a violation of the applicable population standard, census blocks shall be added or removed along the boundary of the district which is in violation of the applicable population standard to bring it into compliance with the population standard. If possible, this shall be done without creating any additional division of any municipality or county.

An area assigned to a district to which it are not contiguous.

Any unpopulated area specifically included within the boundaries of any of the districts described in this plan but which is not contiguous to the district within which it is included shall be assigned to an adjacent district which includes territory in the same precinct, if any. If the area is not in any precinct or if it is in a divided precinct or if it is part of a precinct composed of non-contiguous parts, it shall be added to an adjacent district the boundary of which will be most reduced or least increased by the addition, provided that it must be added to a district which includes territory contiguous to it in the same county and municipality, if any. Any populated area specifically included within the boundaries of any of the districts described in this plan but which is not contiguous to the district within which it is included shall nevertheless be assigned to that district if it is separated from its district by unpopulated territory. That unpopulated territory shall be assigned to the district as necessary to unite the area to the district with which it was included but from which it was separated by another district. If this transfer of unpopulated territory should result in the creation of a new area which is not contiguous to the district within which it is included, the unpopulated territory shall be assigned to the district which would have the larger non-contiguous population and the non-contiguous populated area in the other district shall be treated as if it had not been included in any district.