

## Arizona History of Discrimination

Prior to 1948, Arizona largely excluded indigenous peoples from the electoral process due to the guardian-ward relationship that exists between Indian nations and the federal government even though indigenous peoples were granted the right to vote in 1924. Although, indigenous peoples had the right to vote, indigenous peoples could not vote until they could cast a “meaningful ballot” which meant they were required to pass literacy tests in order to vote. The Voting Rights Act and U.S. Supreme Court decision, *Oregon v. Mitchell* effectively banned the use of literacy tests because they were unconstitutional.

Because of this type of discriminatory treatment of indigenous peoples and minority groups, the Navajo Nation is acting to ensure Navajo people’s voting rights are protected.

## Summary: Voting Rights Act of 1965

Congress enacted the Voting Rights Act in response to the methods used by states which prevented minority populations from voting. The purpose of the Act is to ensure that the right of all citizens to vote, including the right to register to vote and cast meaningful votes, is preserved and protected as guaranteed by the Constitution. Congress found that vestiges of discrimination in voting continue to exist as demonstrated by second generation barriers constructed to prevent minority voters from fully participating in the electoral process. Section 2 and Section 5 are of particular importance for the Navajo Nation because the two sections prohibit discrimination.

**Section 2** applies to all jurisdictions and prohibits the imposition of a “voting qualification or prerequisite to voting, or standard, practice or procedure to deny or abridge the right to vote on account of race or color.”

**Section 5** applies to certain jurisdictions that have a previous history of discrimination. Arizona is a covered jurisdiction under Section 5 because of the State’s past history of discriminatory practices with regards to voting. Arizona must submit redistricting plans and any changes to electoral laws, practices, or procedures for preclearance to the United States Department of Justice or the United States District Court for the District of Columbia before enacting any changes.

## ARIZONA COMMISSION & NEW MEXICO AND UTAH COMMITTEES

Arizona appoints five individuals for its Arizona Independent Redistricting Commission. Arizona is a Section 5 covered jurisdiction. Any changes in the voting process including redistricting must be submitted to the U.S. Department of Justice or the District Court for the District of Columbia.

[www.azredistricting.org](http://www.azredistricting.org)

New Mexico and Utah legislatures form a legislative redistricting committee composed of senators and representatives. New Mexico was a former Section 5, covered jurisdiction. It is no longer a Section 5, covered jurisdiction.

[www.le.utah.gov](http://www.le.utah.gov)

[www.nmlegis.gov/lcs/redcensus2010/preredinfo.aspx](http://www.nmlegis.gov/lcs/redcensus2010/preredinfo.aspx)

## FEDERAL & STATE STANDARDS FOR VOTING DISTRICTS

The federal standard originates from the U.S. Constitution and the Voting Rights Act of 1965. The federal standard is one person one vote which satisfies the equal protection mandate.

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States must consider, compactness, contiguity, community of interest, and competitiveness when redrawing their districts. However, competitiveness should not take away from the other factors.

Visit [www.nnhrc.navajo-nsn.gov](http://www.nnhrc.navajo-nsn.gov) for more information about the Commission.



# NAVAJO NATION HUMAN RIGHTS COMMISSION

*“All human rights are civil rights, but not all civil rights are human rights.”*

P.O. Box 1689, Window Rock, Navajo Nation (AZ) 86515 Telephone: (928) 871-7436 [www.nnhrc.navajo-nsn.gov](http://www.nnhrc.navajo-nsn.gov)

The handout serves to provide an overview of the redistricting process in Arizona, New Mexico and Utah and includes definitions of redistricting terminology and provides information on federal and state standards for redistricting. It also provides the Navajo Nation Human Rights Commission’s goals.



## REDISTRICTING

Redistricting occurs when states use population information from the decennial census to reapportion their congressional and legislative districts. Population shifts, growth and decline determine where congressional and legislative districts are drawn. To satisfy the one person to one vote requirement, states must create districts with substantially equal population

## COMMISSION’S GOALS

- to improve the legislative districting in which the Navajo Nation is located and preserve a majority-minority standard;
- to improve the congressional districting in which the Navajo Nation is located;
- to remain intact in a single legislative district—avoiding cracking;
- to ensure the Navajo peoples’ equal opportunity to elect a candidate of their choice—avoiding dilution; and
- to ensure that Navajo voting rights are protected and preserved—avoiding retrogression.

# REDISTRICTING TERMINOLOGY

## Benchmark

A benchmark is the number of minority majority districts that exists under the current redistricting plan using new decennial census data released for the ensuing decade.

## Benchmark Plan

The last legally enforceable redistricting plan in force for a Section 5 covered jurisdiction is the “benchmark” against which a new plan is compared.

## Census

Enumeration of the population as mandated by the U.S. Constitution.

## Community of Interest

Geographical areas, such as neighbourhoods of a city or regions of a state, where the residents have common political interest that do not necessarily coincide with the boundaries of a political subdivision, such as a city or country. In the 2000, Arizona Redistricting identified three major communities of interest: the Hispanic communities of interest, the Native American communities of interest and the rural/urban areas of the state.

## Compactness

Having the minimum distance between all the parts of a constituency (a circle square or a hexagon is the most compact district).

## Competitiveness\*

According to the Arizona Independent Redistricting Commission, “Competitive means that either party or other parties would have an opportunity to prevail in an election. A district shall be deemed competitive if the difference in the ‘JudgeIt’ (computer scores between the two major parties in that district is seven percent or less.”

## Contiguity

All parts of a district being connected at some point with the rest of the district.

## Covered Jurisdiction

Arizona is a “covered jurisdiction” under the Voting Rights Act in Section 5, which means that Congress determined that the State of Arizona had maintained a “test or device” restricting the opportunity of minorities to register and vote repeatedly.

## Cracking

A term used when the electoral strength of a particular group is divided by a redistricting plan.

## Deviation

The measure of how much a district or plan varies from the ideal number of people in a district.

## Dilution

When minority voters are deprived of equal opportunity to elect a candidate of their choice.

## District

The boundaries that define the constituency of an elected official.

## Gerrymander

A district intentionally drawn to the advantage of one group or party over another, especially a district with a bizarre shape.

## Ideal population

The total state population divided by the number of seats in a legislative body.

## Majority-minority districts

A term used by courts for seats where a racial or language minority constitutes a majority of the population or a majority of the Voting Age Population. A majority-minority district is one in which a single minority group like the Navajo people, comprises at least 50% of the voting age population in a district.

## One person, one vote

Constitutional standard established by the U.S. Supreme Court that all legislative districts should be approximately equal in population.

## Preclearance

The U.S. Department of Justice must preclear voting procedures including redistricting at all government levels and because Arizona is a covered jurisdiction. It must be precleared by either the U.S. “DOJ” or the U.S. District Court for the District of Columbia. In Arizona, to obtain preclearance, Arizona will have to show that the new redistricting map does not lead to “retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise.”

## Retrogression

A change affecting voting is considered to have a discriminatory effect under Section 5 if it will lead to retrogression in the position of members of a racial or language minority group. For example, the change will make members of such a group worse off than they had been before the change.

Using the benchmark, the U.S. DOJ will determine whether the “effective exercise of the electoral franchise” is the same or better with respect to the position of racial minorities. If that position is the same or better, the plan must be precleared. If it is worse, then DOJ will say the plan is retrogressive and will be rejected.

Terminology provided by Sacks Tierney Law, excepting terms indicated with an asterick

# 2000 AZ LEGISLATIVE MAP

