



**UTAH INDEPENDENT  
REDISTRICTING COMMISSION**



# Racial Minorities, Status of Legal Obligations, and Final Steps

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Commission Meeting of October 4, 2021

Presented By: Jackie Rosen, SJ Quinney College of Law & Matthew M. Cannon

# Roadmap

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- Racial and Language Minorities Discussion
- Status of Commission's Statutory and Legal Obligations
  - Ethical, Compliance, Statutory/Legal
- The Final Push
  - Finalize 12 maps
  - Draft and submit report with maps
  - Present and explain maps

# Racial Gerrymandering and 14th Amendment's Equal Protection Clause

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- 14th Amendment prohibits intentional discrimination on the basis of race, including intentional dilution of racial groups' votes.
- Using race as the “predominant factor” in construction of a district is presumptively unconstitutional (*Shaw v. Reno*).
  - When race is merely one of many considerations, use of race is not sufficient to show racial gerrymandering.

## Racial Gerrymandering, cont.

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- Evidence that race was the predominant factor can include
  - Circumstantial evidence, such as district shape and demographics
  - Direct evidence
- If race was the predominant factor, courts rarely uphold the constitutionality of the district
  - Unless the district was created to comply with the VRA

## Voting Rights Act, § 2

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- Prohibits race-based vote dilution when
  - **Minority group is large and compact enough to form a majority in a district**
  - Political cohesion within the minority group
  - White bloc voting to defeat minority group's preferred candidate

## Voting Rights Act, § 2, cont.

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After the preconditions, courts look to the “totality of circumstances” pointing to history of racial discrimination

- These are derived from the 1982 Senate committee report



# Status of Statutory and Legal Obligations

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- Ethical Requirements under Act
- “Compliance”
- Statutory
- Other Legal

# Ethical Obligations

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- The Commission “may, by a majority vote, adopt a code of ethics.” Utah Code § 20A-20-203.
- Commission has adopted a code of ethics and conduct and has strictly complied with the code.

# Ethical Obligations

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- A member of the commission may not engage in any private communication with any individual other than other members of the commission or commission staff, including consultants retained by the commission, that is material to any redistricting map or element of a map pending before the commission or intended to be proposed for commission consideration, without making the communication, or a detailed and accurate description of the communication including the names of all parties to the communication and the map or element of the map, available to the commission and to the public. Utah Code § 20A-20-301(4).

# Compliance Requirements

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The Commission is required to abide by the following:

- Title 52, Chapter 4, Open and Public Meetings Act;
- Title 63A, Chapter 1, Part 2, (now Utah Code § 67-3-12) Utah Public Finance Website;
- Title 63G, Chapter 2, Government Records Access and Management Act;
- Title 63G, Chapter 6a, Utah Procurement Code; and,
- Title 63J, Chapter 1, Budgetary Procedures Act.

# Procedural Legal Considerations

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- Due Process (notice, an opportunity to be heard, and an impartial decision-maker).
  - See, e.g., *V-1 Oil Co. v. Dep't of Env'tl. Quality*, 939 P.2d 1192, 1197 (Utah 1997).
- Neither Arbitrary nor Capricious.
  - See *Rushton v. Gelco Express*, 732 P.2d 109, 111 (Utah 1986) (Durham, J.).
- Record and Explanation of Decision-Making.
  - See *Vali Convalescent & Care Inst. v. Div. of Health Care Fin.*, 797 P.2d 438, 447 (Utah Ct. App. 1990).
- Notice and Comment.
  - See *Utah Rest. Ass'n v. Salt Lake City-Cty. Bd. of Health*, 771 P.2d 671, 674 (Utah Ct. App. 1989).

# Substantive Legal Considerations

- Utah and United States Constitutions
- State and Federal Law
- Court Cases
- Title 20A, Chapter 20, Utah Independent Redistricting Commission

# Map Criteria

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The commission shall **define and adopt** redistricting standards . . . that require that maps . . . , to the extent practicable, comply with the following, **as defined by the commission:**

# Map Criteria

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- preserving communities of interest;
- following natural, geographic, or man-made features, boundaries, or barriers;
- preserving cores of prior districts;
- minimizing the division of municipalities and counties across multiple districts;
- achieving boundary agreement among different types of districts;
- prohibiting the purposeful or undue favoring or disfavoring of:
  - an incumbent elected official;
  - a candidate or prospective candidate for elected office; or
  - a political party.



# Map Criteria

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- The Commission has defined and adopted threshold criteria and redistricting standards.

# Public Participation: Opportunity to Comment

- Public Hearings: At Public Hearings, the public must be provided “a reasonable opportunity to submit written and oral comments to the Commission and to propose redistricting maps.” Utah Code § 20A-20-301.
- Website: The Commission “shall” maintain a website where the public may . . . submit a map to the commission . . . [and] comments on a map presented to, or under consideration by, the Commission.” Utah Code § 20A-20-201.

# Public Participation: Public Hearings

| Statutorily Required Public Hearings:  | Public Hearings Schedule:   |
|--|---|
| <b>Bear River Region</b><br>(Box Elder, Cache, and Rich)                     | <b>October 16, 2021: Cache County (Logan)</b>   |
| <b>Southwest Region</b><br>(Beaver, Garfield, Iron, Kane, and Washington)    | September 17, 2021: Washington County (Washington)<br>September 18, 2021: Iron County (Cedar City)  |
| <b>Mountain Region</b><br>(Summit, Utah, and Wasatch)                        | September 4, 2021: Wasatch County (Heber)<br><b>October 8, 2021: Utah County (Provo)</b><br><b>October 9, 2021: Utah County (Eagle Mountain)</b>  |
| <b>Central Region</b><br>(Juab, Millard, Piute, Sanpete, Sevier, and Wayne)  | September 25, 2021: Sanpete County (Ephraim)  |
| <b>Southeast Region</b><br>(Carbon, Emery, Grand, and San Juan)              | September 3, 2021: San Juan County (Roosevelt)  |
| <b>Uintah Basin Region</b><br>(Daggett, Duchesne, and Uintah)                | September 24, 2021: Duchesne County (Duchesne)  |
| <b>Wasatch Front Region</b><br>(Davis, Morgan, Salt Lake, Tooele, and Weber) | October 1, 2021: Salt Lake County (SLC, Glendale Neighborhood)<br><b>October 9, 2021: Tooele County (Tooele)</b><br><b>October 15, 2021: Davis County (Layton)</b><br><b>October 21, 2021: Salt Lake County (Herriman)</b><br><b>October 23, 2021: Salt Lake County (West Valley)</b> |

# Final Steps

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- Finalize Maps
- Draft and Finalize Written Report
- Present and Explain the Maps

# Maps

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Map Types: The Commission is considering the following “map types”

- A map of all Utah **congressional** districts;
  - A map of all **state Senate** districts;
  - A map of all **state House** of Representatives districts; and
  - A map of all **State School Board** districts.
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- No later than **14 DAYS** after the final public hearing (on or before October 17), the Commission “shall” prepare and recommend three different maps for each map type. Deadline is **Monday, NOVEMBER 1, 2021**.

# Maps

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- Review and refinements by Professor Persily
  - VRA and other legal compliance issues
  - Review and analysis based on adopted criteria and standards

# Written Report

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- The commission shall submit “a detailed written report describing each map’s adherence to the commission’s redistricting standards and requirements.” Utah Code Ann. § 20A-20-303.

# Present and Explain Maps

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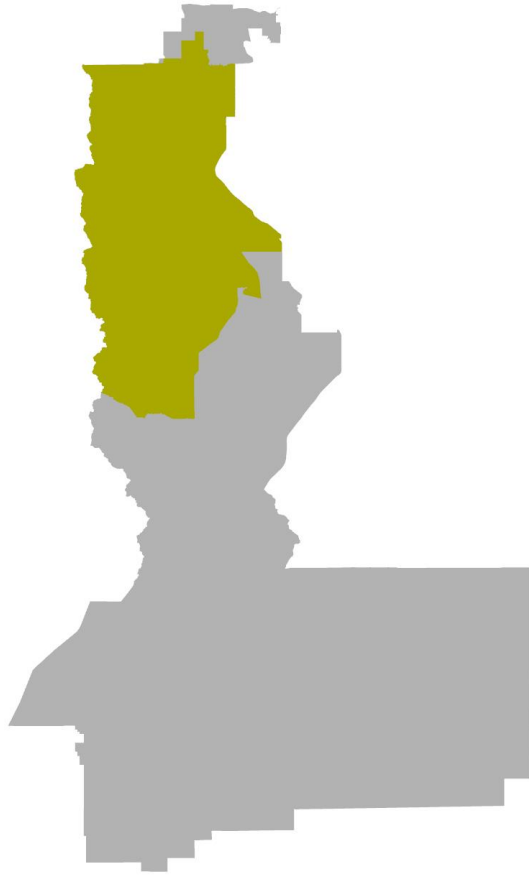
- At the public meeting where the commission submits the maps, the committee is to provide reasonable time for “the commission to present and explain the maps . . . .” Utah Code Ann. § 20A-20-303(3)(b).



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# CORE OF PRIOR DISTRICTS



**62.90%**

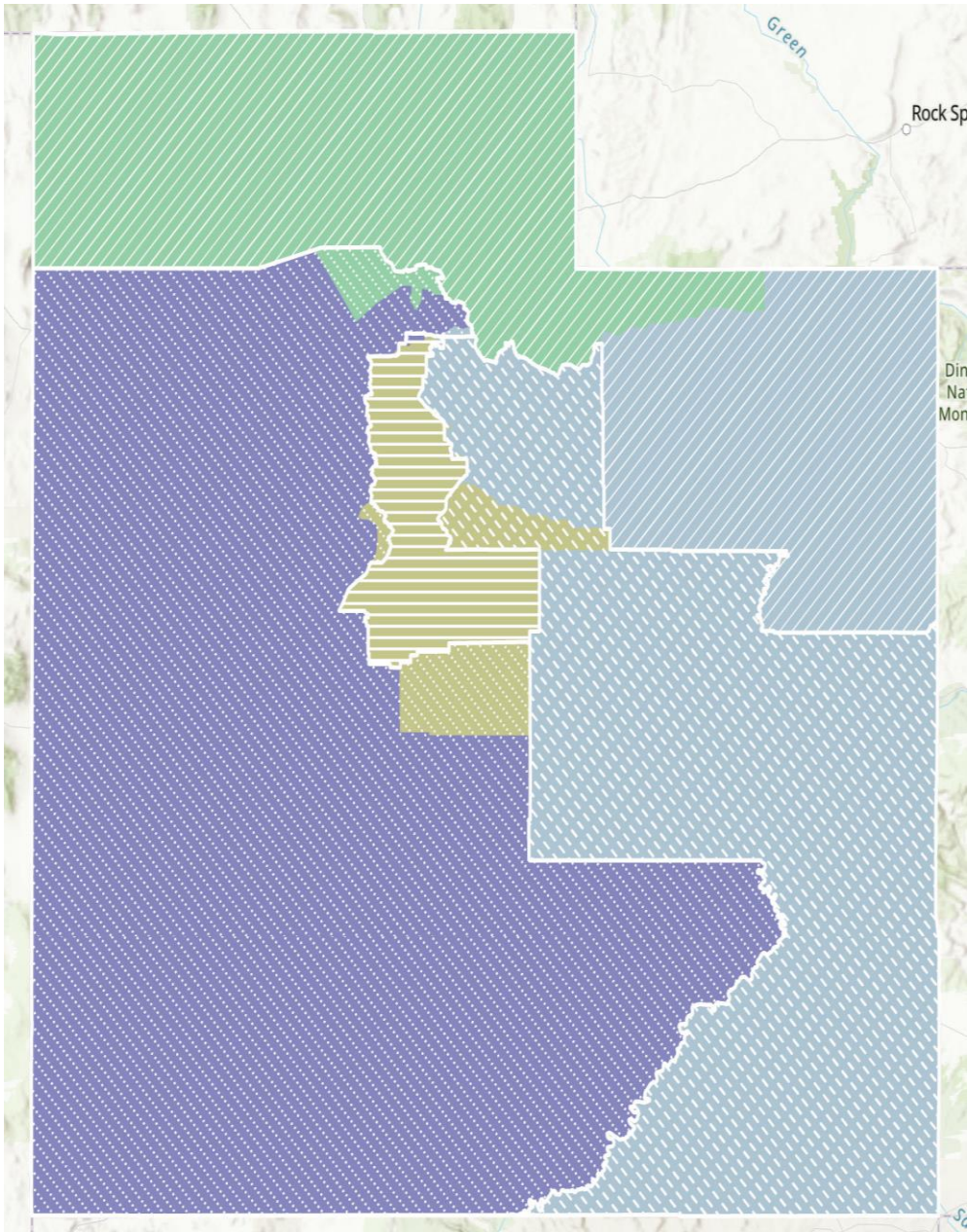
2010 District 4



**67.91%**

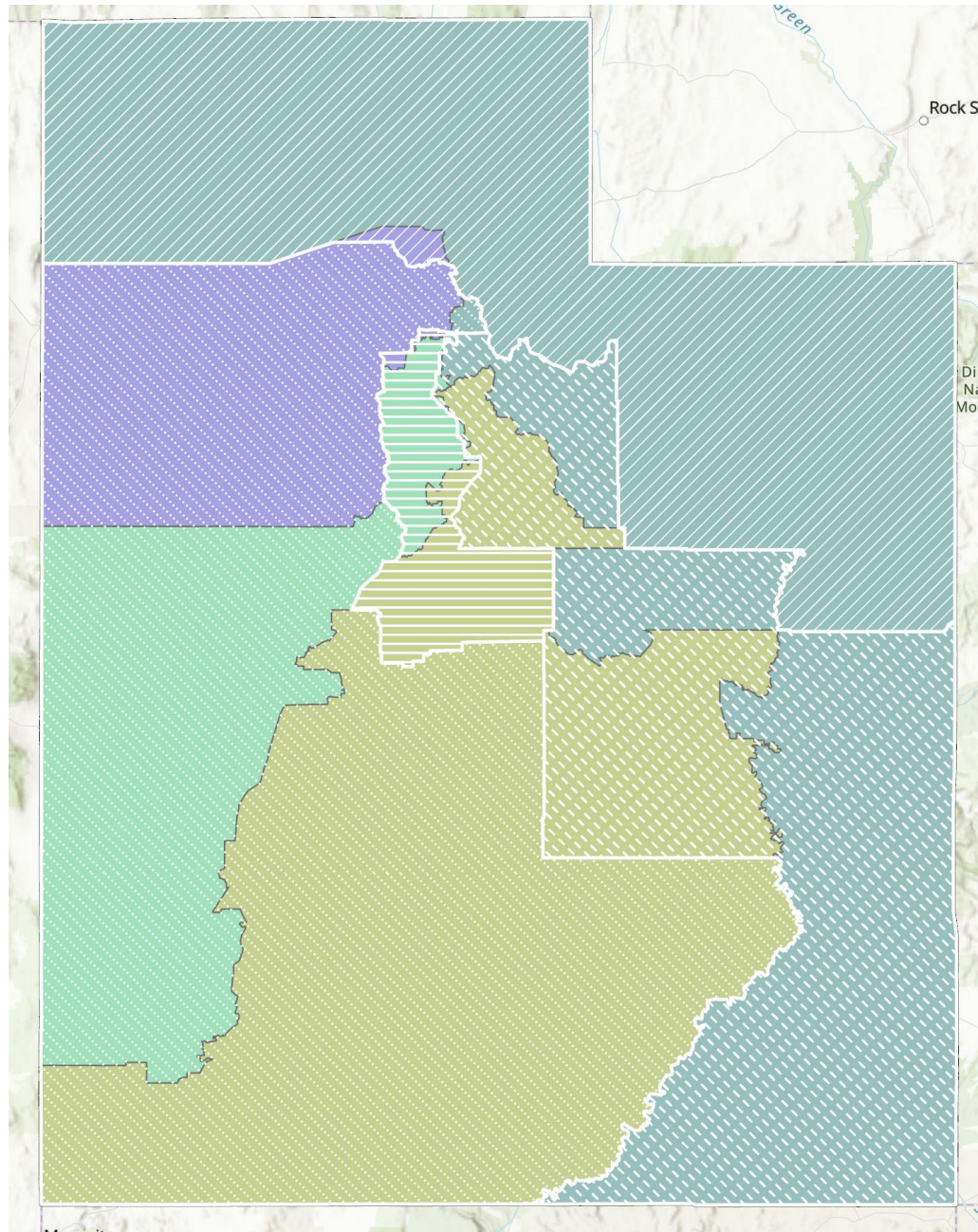
2020 Proposed District 4

# **CONGRESSIONAL MAPS**



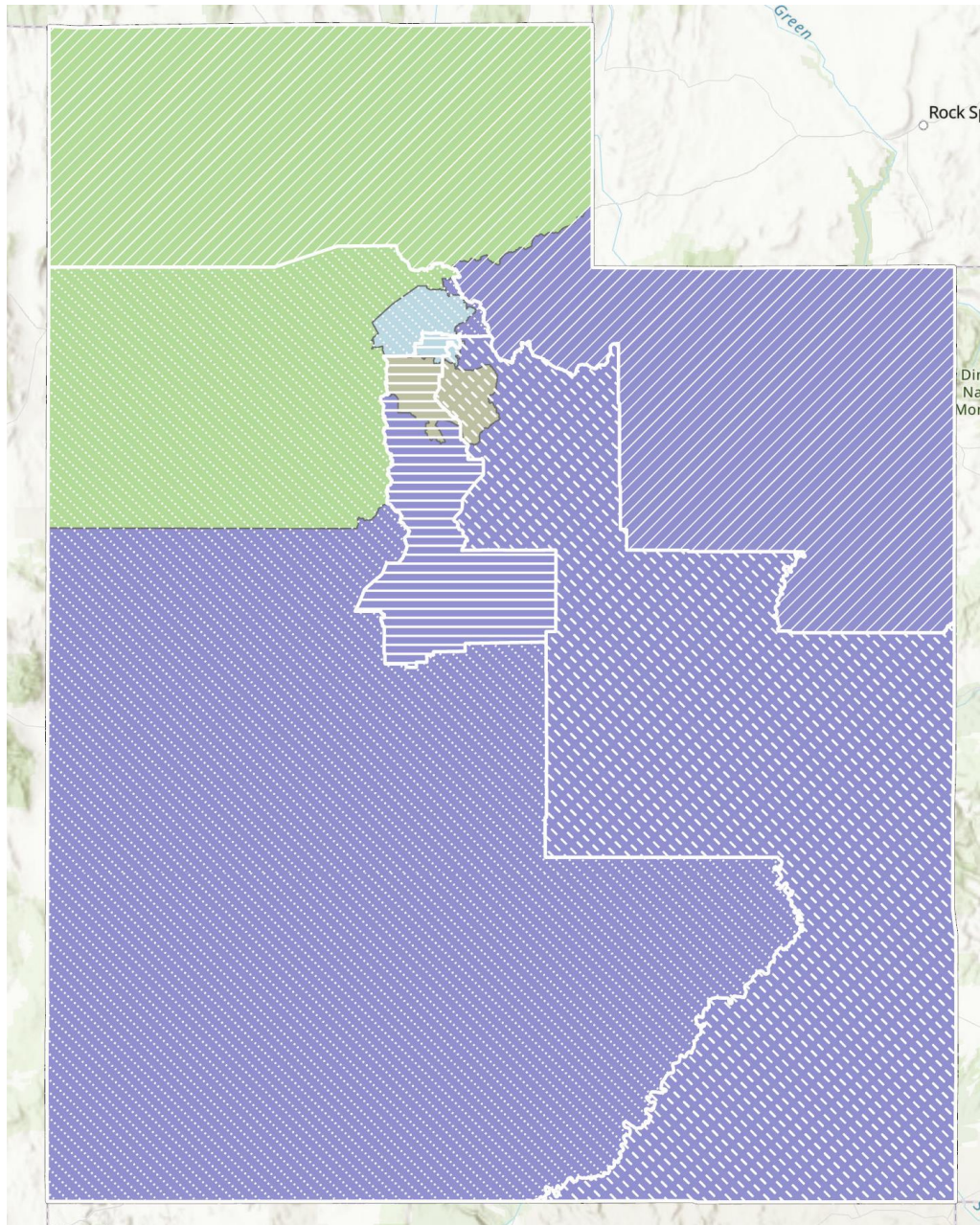
## GREEN CD 1

| 2010 District Assignment        | Population | % of 2010 District | % of Proposed 2020 District |
|---------------------------------|------------|--------------------|-----------------------------|
| <b>2020 Proposed District 1</b> |            |                    |                             |
| 1                               | 743,942    | 92.98%             | 90.96%                      |
| 2                               | 73,959     | 9.23%              | 9.04%                       |
| <b>2020 Proposed District 2</b> |            |                    |                             |
| 2                               | 705,071    | 87.95%             | 86.20%                      |
| 3                               | 41         | <1%                | <1%                         |
| 4                               | 112,793    | 12.77%             | 13.79%                      |
| <b>2020 Proposed District 3</b> |            |                    |                             |
| 1                               | 56,151     | 7.02%              | 6.86%                       |
| 2                               | 70         | <1%                | <1%                         |
| 3                               | 739,777    | 94.03%             | 90.45%                      |
| 4                               | 21,905     | 2.48%              | 2.68%                       |
| <b>2020 Proposed District 4</b> |            |                    |                             |
| 2                               | 22,565     | 2.81%              | 2.76%                       |
| 3                               | 47,063     | 5.98%              | 5.75%                       |
| 4                               | 748,279    | 84.73%             | 91.49%                      |



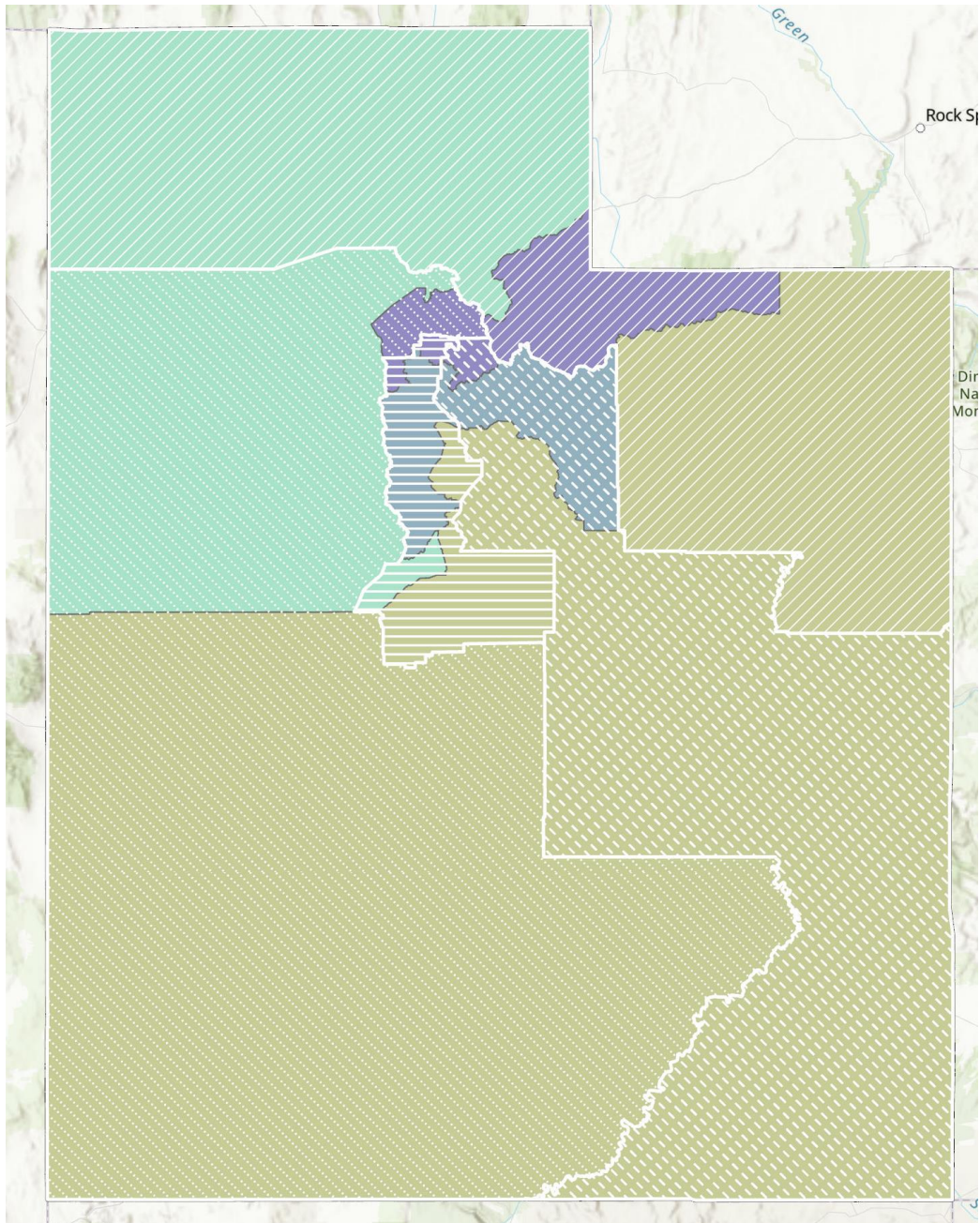
## ORANGE CD 2

| 2010 District Assignment        | Population | % of 2010 District | % of Proposed 2020 District |
|---------------------------------|------------|--------------------|-----------------------------|
| <b>2020 Proposed District 1</b> |            |                    |                             |
| 1                               | 566,356    | 70.79%             | 69.24%                      |
| 2                               | 2,567      | 0.32%              | 0.31%                       |
| 3                               | 205,538    | 26.13%             | 25.13%                      |
| 4                               | 436,187    | 4.92%              | 5.31%                       |
| <b>2020 Proposed District 2</b> |            |                    |                             |
| 1                               | 233,737    | 29.21%             | 28.58%                      |
| 2                               | 486,187    | 60.65%             | 59.44%                      |
| 4                               | 97,981     | 11.09%             | 11.98%                      |
| <b>2020 Proposed District 3</b> |            |                    |                             |
| 2                               | 295,836    | 36.90%             | 36.17%                      |
| 3                               | 479,473    | 60.95%             | 58.62%                      |
| 4                               | 42,595     | 4.82%              | 5.21%                       |
| <b>2020 Proposed District 4</b> |            |                    |                             |
| 2                               | 17,075     | 2.13%              | 2.09%                       |
| 3                               | 101,870    | 12.95%             | 12.46%                      |
| 4                               | 698,956    | 79.14%             | 85.46%                      |



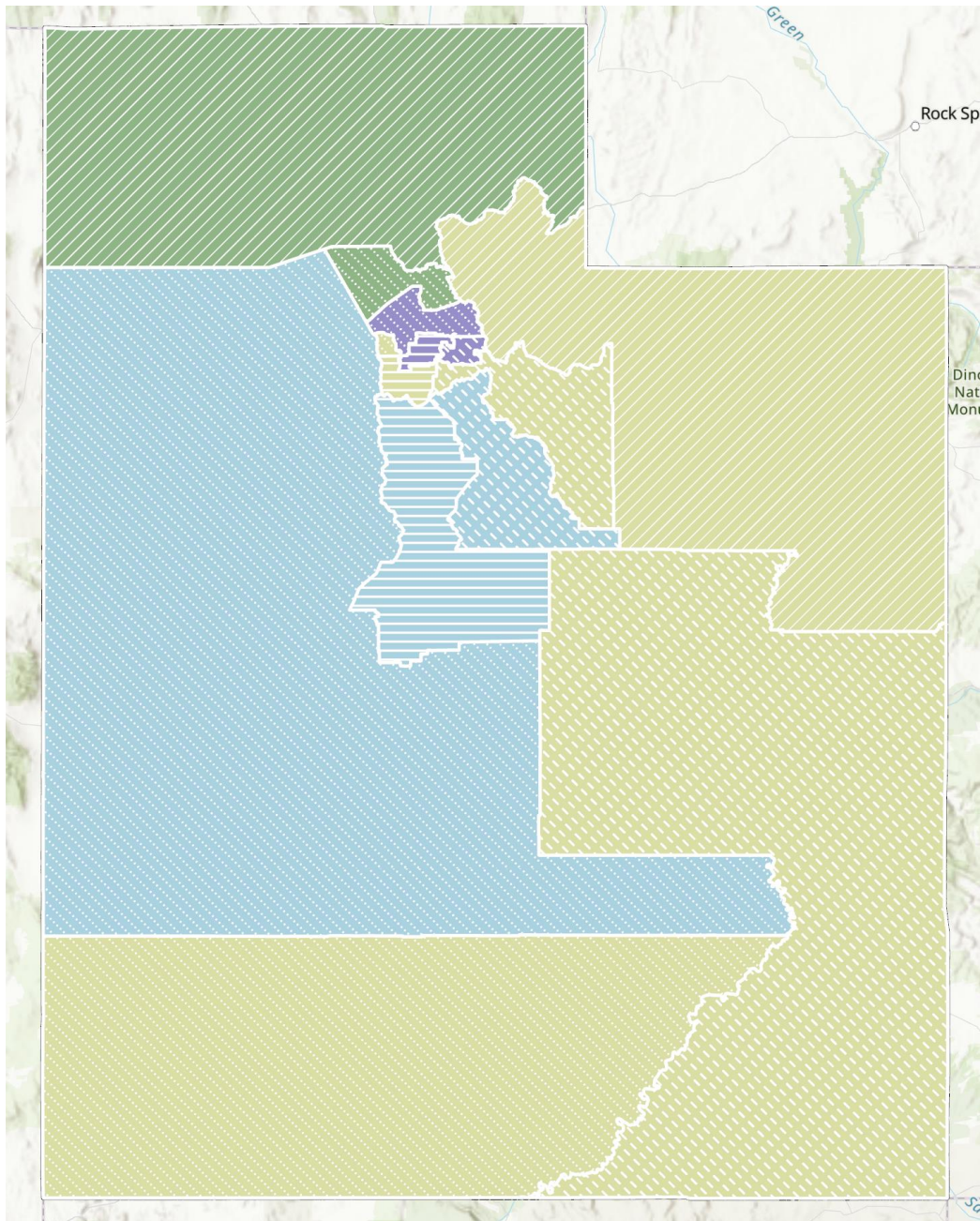
## ORANGE CD 3

| 2010 District Assignment        | Population | % of 2010 District | % of Proposed 2020 District |
|---------------------------------|------------|--------------------|-----------------------------|
| <b>2020 Proposed District 1</b> |            |                    |                             |
| 1                               | 700,459    | 87.55%             | 85.64%                      |
| 2                               | 117,445    | 14.65%             | 14.36%                      |
| <b>2020 Proposed District 2</b> |            |                    |                             |
| 1                               | 99,634     | 12.45%             | 12.18%                      |
| 2                               | 313,600    | 39.12%             | 38.34%                      |
| 3                               | 333,727    | 42.42%             | 40.80%                      |
| 4                               | 70,942     | 8.03%              | 8.67%                       |
| <b>2020 Proposed District 3</b> |            |                    |                             |
| 2                               | 370,620    | 46.23%             | 45.31%                      |
| 3                               | 69,947     | 8.89%              | 8.55%                       |
| 4                               | 377,331    | 42.72%             | 46.13%                      |
| <b>2020 Proposed District 4</b> |            |                    |                             |
| 3                               | 383,207    | 48.71%             | 46.85%                      |
| 4                               | 434,704    | 49.22%             | 53.15%                      |



## PURPLE CD 2

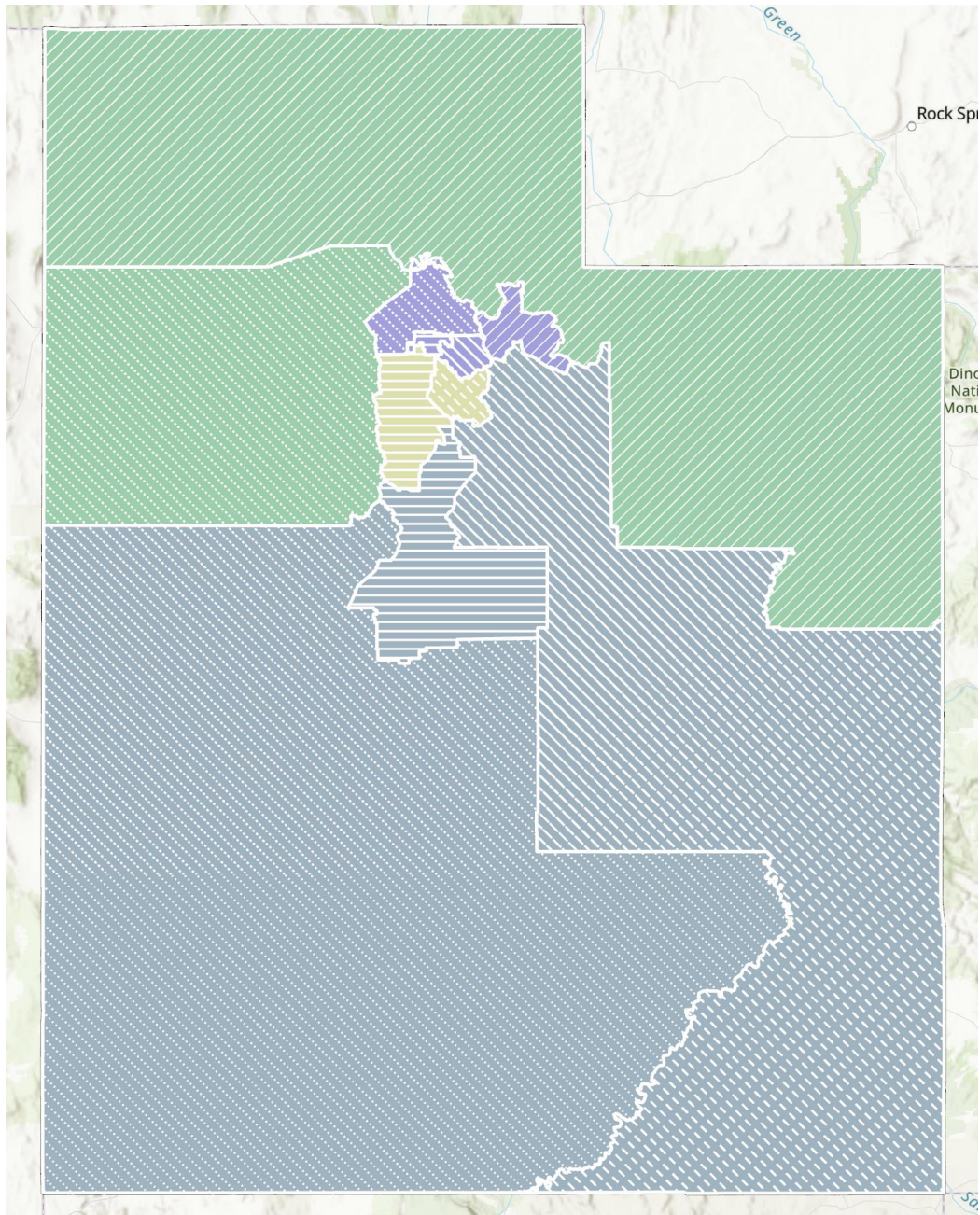
| 2010 District Assignment        | Population | % of 2010 District | % of Proposed 2020 District |
|---------------------------------|------------|--------------------|-----------------------------|
| <b>2020 Proposed District 1</b> |            |                    |                             |
| 1                               | 701,585    | 87.69%             | 85.76%                      |
| 2                               | 116,364    | 14.52%             | 14.22%                      |
| 4                               | 176        | 0.02%              | 0.02%                       |
| <b>2020 Proposed District 2</b> |            |                    |                             |
| 1                               | 42,357     | 5.29%              | 5.18%                       |
| 2                               | 367,906    | 45.89%             | 44.97%                      |
| 3                               | 70,569     | 8.97%              | 8.63%                       |
| 4                               | 337,311    | 38.19%             | 41.23%                      |
| <b>2020 Proposed District 3</b> |            |                    |                             |
| 2                               | 5,424      | 0.68%              | 0.66%                       |
| 3                               | 307,212    | 39.05%             | 37.57%                      |
| 4                               | 505,032    | 57.18%             | 61.76%                      |
| <b>2020 Proposed District 4</b> |            |                    |                             |
| 1                               | 56,151     | 7.02%              | 6.87%                       |
| 2                               | 311,971    | 38.92%             | 38.15%                      |
| 3                               | 409,100    | 52.00%             | 50.03%                      |
| 4                               | 40,458     | 4.58%              | 4.95%                       |



### PURPLE CD 3

| 2010 District Assignment        | Population | % of 2010 District | % of Proposed 2020 District |
|---------------------------------|------------|--------------------|-----------------------------|
| <b>2020 Proposed District 1</b> |            |                    |                             |
| 1                               | 689,290    | 86.15%             | 84.24%                      |
| 2                               | 128,942    | 16.08%             | 15.76%                      |
| <b>2020 Proposed District 2</b> |            |                    |                             |
| 2                               | 287,221    | 35.83%             | 35.11%                      |
| 3                               | 69,054     | 8.78%              | 8.44%                       |
| 4                               | 461,703    | 52.28%             | 56.44%                      |
| <b>2020 Proposed District 3</b> |            |                    |                             |
| 2                               | 125,184    | 16.86%             | 16.53%                      |
| 3                               | 510,757    | 64.92%             | 62.45%                      |
| 4                               | 171,872    | 19.46%             | 21.02%                      |
| <b>2020 Proposed District 4</b> |            |                    |                             |
| 1                               | 110,803    | 13.85%             | 13.55%                      |
| 2                               | 250,318    | 31.23%             | 30.62%                      |
| 3                               | 207,070    | 26.32%             | 25.33%                      |
| 4                               | 249,402    | 28.24%             | 30.50%                      |





## PURPLE CD 4

| 2010 District Assignment        | Population | % of 2010 District | % of Proposed 2020 District |
|---------------------------------|------------|--------------------|-----------------------------|
| <b>2020 Proposed District 1</b> |            |                    |                             |
| 1                               | 745,136    | 93.13%             | 91.10%                      |
| 4                               | 72,703     | 8.23%              | 8.89%                       |
| <b>2020 Proposed District 2</b> |            |                    |                             |
| 1                               | 54,957     | 6.87%              | 6.72%                       |
| 2                               | 416,051    | 51.90%             | 50.87%                      |
| 3                               | 63,396     | 8.06%              | 7.75%                       |
| 4                               | 283,523    | 32.10%             | 34.66%                      |
| <b>2020 Proposed District 3</b> |            |                    |                             |
| 2                               | 312,804    | 39.02%             | 38.25%                      |
| 3                               | 461,136    | 58.62%             | 56.38%                      |
| 4                               | 43,940     | 4.98%              | 5.37%                       |
| <b>2020 Proposed District 4</b> |            |                    |                             |
| 2                               | 107        | 0.01%              | 0.01%                       |
| 3                               | 262,349    | 33.35%             | 32.07%                      |
| 4                               | 555,514    | 62.90%             | 67.91%                      |



Public Comment