

2011

Texas Redistricting: Rules of Engagement in a Nutshell



Just Democracy!



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FEDERAL REDISTRICTING RULES AND TEXAS REDISTRICTING LAWS IN A NUTSHELL

INTRODUCTION

This publication is intended to distill complex redistricting laws for community advocates, including lawyers. It combines federal and state redistricting laws with state regulations, rules, and other redistricting materials to provide a comprehensive interpretation of the laws and practices that impact redistricting. While this publication does not cover every provision of federal and state redistricting laws, it highlights those provisions which we believe have most impacted communities of color.

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DISCLAIMER

This guide was prepared for informational purposes only. It is not legal advice and is not intended to create an attorney-client relationship. Any decision to obtain legal advice or an attorney should not be based solely on information contained in this guide.

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FEDERAL REDISTRICTING RULES

What is redistricting?

Redistricting is the process of redrawing boundaries that divide voters into election districts.¹ Federal law requires each state to redistrict once every 10 years if the population in the districts has become unequal.² Historically, however, redistricting has also been used for improper purposes. Frequently, it has been used as a means by which the political establishment can preserve power, and has also restricted the ability of communities of color to gain power, by drawing the districts in such a way as to make it difficult for these communities to elect representatives of their choice. The inability of communities of color to elect representatives of choice may result in poor schools, inadequate housing and limited or inadequate community services if the elected representatives do not fairly and adequately represent the communities' interests.

What is gerrymandering?

The term “gerrymander” has been defined as the practice of dividing a geographical area into electoral districts with an unusual size or shape, to give one political party or group of individuals an unfair advantage by diluting the opposition's voting strength.³ It is important for community groups to understand that an unusual size or shape will not invalidate a district automatically, but may be suspicious to a court and may cause the district to be heavily analyzed by a court.⁴

How is the U.S. Census data related to redistricting?

The U.S. Census is a count of the population in the United States required by the U.S. Constitution.⁵ The number of individuals living in each state determines the number of representatives that each state is entitled to for the next 10 years.⁶ The census data also includes information for population, race categories and Hispanic categories, as well as the ages of the population, i.e., voting age population (VAP) and the citizen voting age population (CVAP).⁷ Other kinds of data, such as occupied and vacant housing data, education levels, and languages spoken, are provided by the Census Bureau and can also be used to determine where lines should be drawn during redistricting.⁸

When is the census data available to the states?

The first census data released is the national and state population count, and this was required to be delivered by the U.S. Census to the President by December 31, 2010.⁹ For those states that chose to participate in defining local level data, such as voting districts and precincts, this data will be reported by the Census Bureau to the governors of those states by April 1, 2011.¹⁰

When does redistricting occur?

Redistricting occurs once the census data is released to the states. Federal law requires each state to redistrict once every 10 years if the population in the districts becomes unequal.¹¹ Federal law permits the states to determine when this redistricting will occur.¹² Each state develops its own timeline and procedure for beginning and completing redistricting.

Is redistricting the same as reapportionment?

No. The terms “redistricting” and “reapportionment” are often used interchangeably, but the practical application of each is different. Redistricting is the actual redrawing of district boundaries. Reapportionment is the process used to figure out how many congressional representatives should come from each state, depending on the population.¹³

What is the meaning of “one person, one vote” in redistricting?

The Supreme Court of the United States has consistently ruled that one person’s vote must be worth as much as another’s vote.¹⁴ This guarantees that each vote has equal power and does not violate the Equal Protection Clause of the U.S. Constitution.¹⁵ What this means in practice is that each congressional district drawn must have approximately equal number of voters in each.

VOTING RIGHTS ACT OF 1965

Which sections of the Voting Rights Act of 1965 must be taken into consideration when drawing districts?

The Voting Rights Act of 1965 prohibits discrimination based upon race, color, and spoken language.¹⁶ Sections 2 and 5 of the Act are often used to provide important protections to minority voters during redistricting.¹⁷ Section 2 of the Act prohibits drawing districts that minimize opportunities for minority voters to elect representatives of their choice – this is referred to as minority-vote dilution.¹⁸ A minority voter is defined as a member of a protected class, i.e., member of a race, color or language minority group as defined in the Voting Rights Act.¹⁹

Section 5 covers several selected states and localities with a history of rampant voting discrimination.²⁰ Section 5 requires covered states and localities to obtain “preclearance” from the Attorney General of the United States or the U.S. District Court for the District of Columbia before they can make any changes to their voting practices. The Attorney General and the District Court will only preclear those changes that do not have a discriminatory or a “retrogressive” effect on minority voters, meaning that the changes will not leave these voters worse off than before the districts were redrawn.²¹

How does Section 2 of the Voting Rights Act assist communities of color during the redistricting process?

Section 2 applies to all states, and provides protection to minority voters to prevent actions, in the redistricting process or otherwise, that will minimize the effectiveness of the minority community vote. This means that if districts are drawn that dilute the voting strength of minority voters, these actions may violate Section 2 of the Act, especially if a majority-minority district (where the minority voting age population is more than 50 percent of the district’s voting age population) could have been drawn but was not.

In order to violate Section 2, the minority community must prove: 1) they make up a sufficiently large, geographically compact community to constitute a majority in a single-member district; 2) the minority community is politically cohesive; and 3) they are usually unable to elect representatives of their choice due to the white majority voting together as a bloc, to defeat the minority voters’ candidate.²² This could result in a court requiring the district lines to be redrawn.²³

Why is Section 5 of the Voting Rights Act an important consideration during redistricting?

Section 5 covers limited states and localities and prevents states from adopting election systems that could have a discriminatory or retrogressive effect on minority voters. This means that before states or localities covered under Section 5 can adopt *any* changes to their voting systems, including new district lines, the changes must be submitted to the Department of Justice or the U.S. District Court for the District of Columbia for preclearance to affirm or

establish that the change does not make minority voters in the covered area worse off (“have a retrogressive effect”). If a covered jurisdiction wants to opt-out of this preclearance requirement, the state is required to file a lawsuit for consideration in the U.S. District Court for District of Columbia.²⁴

What formula was used to identify states and/or counties (political subdivisions) that are covered under Section 5?

When the Voting Rights Act of 1965 was initially adopted, Section 5 was a temporary provision.²⁵ Congress established two elements for identifying those states and/or counties (political subdivisions) that should be covered under Section 5.

The first element was whether there was a “test or device” in place on November 1, 1964, in a state or county that restricted opportunities for citizens to register and vote in the state, such as poll taxes or a literacy test.²⁶ The second element was whether 50 percent or less of the voting age population was registered to vote by November 1, 1964.

Section 5 was renewed in 1970, 1975, 1982, and 2006. In 1970 and 1975, additional formulas were adopted. In 1970, Congress established November 1968 as the date for determining whether a state or political subdivision had discriminatory registration or illegal voting “test[s] or devices.”

In 1975, a third formula was introduced.²⁷ Section 5 was expanded to address discrimination against language-minority groups²⁸ and broadened the definition of “test and devices.” This amendment added a requirement that covered entities provide bilingual voting materials if more than five percent of the citizen voting age population spoke a language other than English.²⁹ Although Congress extended Section 5 for 25 years in 1982 and 2006, no new coverage formulas were adopted at either of those times. Instead, Congress modified the procedures for states or political subdivisions to “bail out” or terminate Section 5 coverage.³⁰

What is Section 203 of the Voting Rights Act, and does it apply to all states?

Section 203 of the Voting Rights Act of 1965 prohibits discrimination against language minorities, i.e., American Indian, Asian American, Alaskan Native, or of Spanish heritage. In 1975, Congress found that limited English proficiency excluded certain language minorities from participating in the election process, and it extended the protections of the Voting Rights Act to cover these individuals. Section 203 applies in those jurisdictions where the language minority citizen voting age population reaches more than five percent of the voting age population, or 10,000 persons in states or political subdivisions. In those jurisdictions, ballots, voting notices, forms, assistance and other materials must be bilingual.³¹

What are majority-minority districts?

A majority-minority district is a district where the minority voting age population is more than 50 percent of the district’s voting age population.³²

If minority voters are less than a 50 percent majority in a district, may a district be drawn to include other voters who might cross over racial lines and support the minority voters' candidate of choice?

Yes. However, Section 2 does not *require* crossover districts, and redistricting bodies will not violate Section 2 if a crossover district could have been drawn but is not.³³

Is the minority voting-age population important when drawing districts?

Yes. The minority voting-age population is an important consideration when drawing districts, in order to prevent violations of Sections 2 and 5 of the Voting Rights Act. Since Section 2 prohibits diluting the minority vote, it is important to know the minority voting-age population in order to ensure that the redrawn district does not minimize the voting strength of the minority such that it constitutes vote dilution.³⁴

The retrogression standard in Section 5 requires that changes to voting systems not leave minority voters worse off than prior to the change; the minority voting-age population data is important to prove that a change complies with or violates Section 5.³⁵ Also, since a majority-minority district must have greater than 50 percent minority voting-age population before a Section 2 violation can be claimed, it is important to have the voting-age population data available when drawing districts.³⁶

Should states use citizen population or total population data when drawing districts?

Although some states, including Texas, are free to use only the citizen population when drawing districts,³⁷ it is not advised and could be found to violate the Equal Protection Clause of the U. S. Constitution because the Equal Protection Clause provides equal protection to all persons, including non-citizens.³⁸ Utilizing just citizen population may also be unconstitutional because one district's votes may weigh more heavily than another district's where a district has a greater population of non-citizens.³⁹ It is advisable to use the total population when drawing districts. Redistricting is not only to protect citizens' ability to elect representatives of choice; redistricting is also to provide "equal representation for equal numbers of people."⁴⁰ The Supreme Court has consistently held that total population is a reasonable apportionment base.⁴¹

What are influence districts, and do creating influence districts provide Section 2 protection?

Influence districts are districts where minority voters comprise a significant percentage of the voting-age population such that they may influence the result of the election, but are fewer than the number of voters needed elect a candidate of their choice. While minority voters may not be the majority they may heavily influence the outcome because of shared interests or voting patterns. Community groups should be aware that there is no magic number for determining

what constitutes a “significant” percentage of the voting age population. Rather, this number will vary depending on different factors, including the number of registered voters who actually vote in an election.

Creating an influence district will not protect the redistricting governing body from Section 2 liability, and a group cannot prove a violation of Section 2 because of the failure to create an influence district.⁴² Although studies have shown that influence districts are a powerful way to increase minority voting strength,⁴³ drawing influence districts is no substitute for drawing effective minority-majority or coalitional districts where minorities have a greater ability to elect candidates of choice.

What are coalition districts, and do these districts provide greater opportunities for minority voters to elect representatives of choice?

Coalition districts are comprised of at least two minority groups that form a coalition to make up a majority of a district and that vote cohesively to elect the candidate of the coalition’s choice. Creating minority coalition districts may provide greater opportunities for minority voters to elect representatives of choice. A coalition district comprised of two groups of over 50 percent majority-minority voters, that live in a geographically compact district, and that vote together for the same candidate, but are unable to elect candidates of their choice due to bloc voting by majority voters, could possibly raise a Section 2 minority vote dilution claim if the two minority groups would constitute a majority in a district but that district was not drawn.⁴⁴

What are crossover districts, and do creating crossover districts provide Section 2 protection?

Crossover districts are districts where the minority voting age population make up less than a majority of the voting-age population in a district, but is large enough to elect that population’s representative of choice with the help of a small number of majority voters who cross over to support the minority voters’ representative of choice.⁴⁵ Under these circumstances, crossover districts do not receive Section 2 protections, meaning there are no requirements to draw these districts.⁴⁶ The Supreme Court has not decided whether crossover districts that contain two minority groups that make up a majority district are covered under Section 2.

What types of information or data can be used for redistricting?

The U.S. Census provides a Summary File of redistricting data to each state of the state’s entire population, as well as data on the voting age population (18 years and older) and citizenship data. This data will be available to the public by April 2011. This file also includes a racial breakdown of all persons for the total population and the population of persons 18 and over. The Summary File also includes geographic data that includes voting precincts, which can also be helpful when drawing districts.⁴⁷ The information contained in the Summary File is helpful in determining where lines should be drawn to protect minority communities that may share common interests.

Does the Texas Constitution provide guidance regarding redistricting?

TEXAS REDISTRICTING RULES

Yes. Article III of the Texas Constitution discusses the Texas Legislature – the State Senate (31 members) and House of Representative (150 member) – generally and sets forth the districting rules for the both legislative houses.⁴⁸

Specifically, Section 25 of Article III sets forth the rules for the State Senate and mandates dividing the state into contiguous Senatorial Districts, each allowed to elect one Senator to the Texas Senate.⁴⁹

Section 26 of Article III sets forth the rules for the House of Representatives.⁵⁰ This provision requires that districts be equal in population and follow county boundaries, as much as possible. If a single county has enough people to create a district, it becomes its own district, entitled to elect one member to the Texas House of Representatives. If a county has too many people, the “surplus” population will be joined with a contiguous county to create a single district. And, if a county does not have enough people, it will be joined with another contiguous county to create a single district.

Section 28 of Article III sets forth the timing and procedures for districting.⁵¹ It makes clear that the Texas Legislature is responsible for creating congressional districts during its first regular session after the publication of the U.S. Census. If the Legislature fails to create the plan during that session, the Legislative Redistricting Board of Texas – composed of the Lieutenant Governor, the Speaker of the State House of Representatives, the Attorney General, the Comptroller of Public Accounts, and the Commissioner of the General Land Office – is required to do so. The Board must assemble within 90 days after the final adjournment of the Legislature’s first regular session after publication and must create a plan within 60 days of when it first assembles. The Board’s plan must be signed by three or more of members of the Board (a majority) to have the force of law. The Supreme Court of Texas has the power to compel the Board to perform its duties, if the Board fails to act in accordance with the rules.

Is the Texas Legislature required to follow the “one person, one vote” principle?

Yes. As noted above, the U.S. Supreme Court has consistently held that the U.S. Constitution mandates that one person’s vote in a congressional district must have equal worth to another’s vote.⁵² This principle applies to state legislatures, as well.⁵³

While mathematical precision in population size should be required among districts to fulfill this requirement, courts have allowed “minor deviations” in size provided that that deviation is under 10 percent.⁵⁴ “A plan with larger disparities in population... creates a prima facie case of discrimination and therefore must be justified by the State.”⁵⁵

The “one person, one vote” rule applies to county commissioner precincts in Texas, as well, requiring that the precincts be of equal population.⁵⁶

There are no court cases addressing the issue of whether justice of the peace precincts in Texas

must be of equal population,⁵⁷ although authority exists to support the conclusion that such precincts are governed by the “one person, one vote” principle.⁵⁸ It is therefore advisable to adhere to this principle when establishing justice of the peace precincts.

Under Texas statutory law, school board trustee districts must be “compact and contiguous and must be as nearly as practicable of equal population.”⁵⁹ Thus, division of districts is required, “not later than the 90th day before the date of the first regular school board election at which trustees may officially recognize and act on the last preceding federal census,” where that census “indicates that the population of the most populous district exceeds the population of the least populous district by more than 10 percent.”⁶⁰

What is the governmental body responsible for the redistricting of the Texas Legislature?

As noted above, the Texas Legislature is responsible for “apportioning the districts of its members,” and must do so during its first regular session after the publication of the U.S. Census.⁶¹ For the 2010 census, that session is the one that began on January 11, 2011, and is scheduled to end on May 30, 2011.⁶² If the Legislature fails to approve a plan by that time, the Legislative Redistricting Board of Texas must complete the redistricting process.⁶³

How often is the Texas Legislature required to redistrict?

Under the Texas Constitution, the Texas Legislature must reapportion state legislative districts every 10 years, in accordance with the U.S. Census.⁶⁴

What traditional redistricting principles does Texas require?

In redistricting, Texas must abide by all applicable federal and state laws, including the U.S. Constitution, the Texas Constitution, and the federal Voting Rights Act of 1965.⁶⁵ As a general matter, districts of the same type must be equal (or nearly equal) in population, and the Legislature cannot create districts for the purpose of denying or abridging the right to vote based on race, color, or language group.⁶⁶

As noted above,

- State Senatorial districts must be contiguous, but there is no requirement that they be compact.⁶⁷
- House of Representatives districts must be established as follows:
 - If a county has enough people for exactly one House district, then a district must be formed within that county;
 - If it does not, but has enough people for two or more whole districts, those districts must be formed within that county, without the districts extending into another county;
 - If a county has more than enough people to form a district, then the extra

population must be joined in another district encompassing a contiguous county or contiguous counties; and

- If a county does not have enough people to form a district, then the county must be kept whole and joined with one or more contiguous counties to form a district.⁶⁸

County commission districts must be contiguous.⁶⁹

Districts for municipal elected offices and school board trustee districts must be compact, contiguous, and “as nearly as practicable of equal population.”⁷⁰

What is a single-member district election system? Are there single-member districts in Texas?

The single-member district is the most common electoral system in the United States.⁷¹ In single-member district election systems, a state, county, city, or other political subdivision is divided into distinct, geographically-defined areas (districts).⁷² Voters elect one representative to represent each of those districts; voters within that district can only vote for the representative of the district in which they reside.⁷³

In Texas, the State Senate⁷⁴ and all county commissioners⁷⁵ are elected using single-member district election systems. School boards may choose to have their members elected using single-member districts.⁷⁶

Texas law leaves to the Texas Legislature the discretion to create single-member or multi-member House districts, based on population,⁷⁷ although multi-member districts with a significant African-American or Latino population are likely to be “problematic” under the U.S. Constitution and/or the Voting Rights Act.⁷⁸

What is an at-large election system?

An at-large election system is an electoral system in which one or more legislative representatives are elected to represent the entirety of a state, county, city, or other political subdivision.⁷⁹ Under this system, all candidates may run against each other, with the highest vote-getters winning the election, or candidates may run for individual, designated seats.⁸⁰

At-large voting systems can be and are sometimes used in city elections in Texas.⁸¹ The Austin City Council, for example, is elected using an at-large voting system.⁸²

TEXAS “LOCAL” REDISTRICTING RULES

What is the county government structure in Texas?

Each Texas county is divided into precincts based on the population of the county:

- A county with a population of 50,000 people or more may have between four and eight precincts;
- A county with a population between 18,000 and 50,000 people may have between two and eight precincts;
- A county with a population of less than 18,000 must be designated as a single precinct, unless the Commissioners Court determines that the county needs more than one precinct, in which case the county shall be divided into not more than four precincts;
- Chambers County and Randall County may be divided into two to six precincts, regardless of their populations, “for the convenience of the people”; and
- Any county that was divided into four or more precincts as of November 2, 1999, will continue to be divided into not less than four precincts, regardless of current census data.⁸³

As a general matter, each precinct elects one justice of the peace and one constable; however, a precinct with a city of 18,000 or more, in a county with a population of less than 150,000, must have two justices of the peace, and a precinct in a county with a population of 150,000 or more may have more than one justice of the peace.⁸⁴ Most counties also elect county clerks,⁸⁵ county and district attorneys,⁸⁶ and sheriffs.⁸⁷

What body is responsible for reapportioning counties in Texas?

The Commissioners Court – comprised of the County Commissioners and the County Judge – determines the number of precincts and their boundary lines, subject to the provisions of the Texas Constitution.⁸⁸

Who is responsible for redistricting Texas’s municipal boundaries?

Texas municipalities may adopt any form of government they choose and may create and implement governing bodies, in accordance with each of their charters.⁸⁹

Are there specific requirements for drawing Texas school districts?

Yes. Under Texas statutory law, “a new district may not be created with an area of less than nine square miles or fewer than 8,000 students in average daily attendance, and a district may not be reduced to an area of less than nine square miles or fewer than 8,000 students in average daily attendance.”⁹⁰ Districts may be changed or created through consolidation, annexation, or detachment, initiated by an election on a proposition or by an order or ordinance in response to a citizen petition.⁹¹

As noted above, school board trustee districts must be compact, contiguous, and “as nearly as practicable of equal population.”⁹² School boards have the discretion to have their members elected using single-member districts or at-large districts (up to a certain number of members),⁹³ and, thus, community groups desirous of single-member districts (rather than at-large districts) have used the Voting Rights Act to press for the creation of such districts.⁹⁴

Can Texas officeholders choose not to redistrict if there is a population change?

No, at least with respect to the Texas State Legislature. The Supreme Court has all but required states to redistrict after the decennial census if there is a population change.⁹⁵ And, the Texas Constitution requires the Legislature (or the Legislative Redistricting Board, if the Legislature fails to act) to produce a redistricting plan after the decennial census is published.⁹⁶

As a general matter, a municipality with a population of 1.5 million people based on the most recent census data must have one mayor, 16 members from single-member districts, and six members at large, and must achieve this representation, if it does not already exist, “before the next January 1 that occurs at least one year after the date the official census data for the municipality is made public by the United States Bureau of the Census.”⁹⁷

Neither the Texas Constitution nor statutory law requires redistricting of counties⁹⁸ or school districts by a date certain after the publication of the census data,⁹⁹ although the statutory provisions governing the Texas Board of Education appear to assume such redistricting upon the publication of census data.¹⁰⁰

Can grassroots groups or individuals participate in redistricting?

Yes. Bills to enact redistricting plans follow the same procedures for proposal and ratification as other legislation, and legislators, oftentimes, introduce their own redistricting bills. The sub-committees with redistricting jurisdiction generally hold public hearings around the State in the months before it begins its redistricting work with the census data.¹⁰¹ Public hearings are also held while redistricting bills are being considered during the legislative session.¹⁰² Thus, grassroots group and individuals can participate in the legislative process by proposing their own plans to legislators (or to the Legislative Redistricting Board, where the Legislature does not act) and/or by testifying for or against a proposed plan or proposed plans.

In addition, because Texas is a covered jurisdiction under Section 5 of the Voting Rights Act, grassroots groups and individuals may participate in the “preclearance” process by responding to Section 5 submissions.

Finally, grassroots groups and individuals with sufficient legal interests in a district may challenge a district or districts through legal action.

Are there rules governing grassroots groups or individuals drawing and presenting proposed redistricting plans to the redistricting body?

The presentation of plans to legislative committees follows the rules in place for other legislative action, through the committee process.¹⁰³ There is nothing in the Texas Constitution that requires the Legislative Redistricting Board to allow for public comment or consideration of redistricting proposals created by grassroots groups or individuals.¹⁰⁴

Who should grassroots groups or individuals contact to provide testimony on submitted redistricting plans?

Grassroots groups and individuals interested in participating in the redistricting process should seek opportunities to speak at public hearings held by the Texas Legislature in the months leading up to, as well as the months during, the legislative session that will determine the new districts.¹⁰⁵ The hearing schedule for the Texas Senate Select Committee on Redistricting can be found at <http://www.senate.state.tx.us/75r/senate/commit/c625/c625.htm>, or one can call the Senate Committee Clerk at (512) 463-8802.¹⁰⁶ The hearing schedule for the Texas House Committee on Redistricting can be found at <http://www.house.state.tx.us/schedules/committee-schedules/>.¹⁰⁷ Interested groups may also call the Redistricting Support Services hotline at (512) 463-6622.

What types of data should grassroots groups or individuals have available when drawing Texas districts?

Grassroots groups and individuals interested in participating in the redistricting process are encouraged to provide information regarding local preferences, communities of interest, local voting patterns, and any other issues that the Legislature may consider when redrawing district lines.¹⁰⁸ Interested groups may use Texas's District Viewer to review current redistricting proposals and may view Texas census data through the Texas Redistricting website at <http://www.tlc.state.tx.us/redist/redist.htm>.¹⁰⁹

Are non-citizens included when districts are drawn in Texas?

Yes. Non-citizens, both documented and not, are counted for purposes of state and congressional redistricting.¹¹⁰ The federal census, from which the population figures used for redistricting are taken, is “intended to count every person residing in the United States, including aliens, whether documented or not.”¹¹¹

However, a group of U.S. citizens residing in Irving, Texas, commenced litigation, in the U.S. District Court in Dallas, against the City of Irving, challenging the adoption of a redistricting plan that relies on total population data, rather than the total population of voting-age citizens, and alleging that it results in unequal voting weights across districts.¹¹²

How many congressional districts are in Texas?

There are currently 32 congressional districts in Texas.¹¹³ In 2013, Texas will add four more congressional districts, for a total of 36, as a result of a population growth of 20.6 percent according to the 2010 census.¹¹⁴ These four additional congressional districts will result in Texas having four additional seats in the U.S. House of Representatives in 2013, the voting for which will take place in the elections of 2012.¹¹⁵

How many state legislative districts are in Texas?

As mandated by the Texas Constitution, there are 181 state legislative districts in Texas: 150 House districts and 31 Senate districts.¹¹⁶

How many U.S. congressional districts and Texas legislative districts are represented by African-American or Latino representatives?

As of the 112th U.S. Congress, elected in November 2010, Texas has six Latino U.S. Representatives.¹¹⁷ The Texas Legislature has seven Latino State Senators¹¹⁸ and 28 Latino State Representatives.¹¹⁹ As to African-Americans, there are three African-Americans representing Texas in the U.S. House of Representatives.¹²⁰ The Texas Legislature has two African-American State Senators¹²¹ and six African-American State Representatives.¹²² Texas also has two Asian-American State Representatives.¹²³

What is the deadline for the Texas Legislature to submit a redistricting plan?

As noted above, the Texas Constitution requires the Texas State Legislature to reapportion the State into senatorial and representative districts “at its first regular session after the publication of each United States decennial census.”¹²⁴ If the Legislature fails to create a redistricting plan, the Texas Legislative Redistricting Board must convene within 90 days of the Legislature’s adjournment and create a redistricting plan within 60 days of the Board’s first meeting.¹²⁵ The Texas Supreme Court has jurisdiction to compel the Texas Legislative Redistricting Board to fulfill its mandate, if the Board fails to act as required.¹²⁶

What happens if the redistricting body fails to present a redistricting plan by the State’s deadlines?

As noted above, if the State Legislature fails to redistrict by the end of its first regular session after census publication, the Texas Legislative Redistricting Board steps in. And, if the Legislative Redistricting Board fails to act, the Texas Supreme Court is authorized to compel the Board to act.

While there are no formal deadlines, under federal or Texas law, for the redistricting of U.S. congressional districts following publication of the federal census, the Voting Rights Act imposes a practical deadline for covered jurisdictions, such as Texas.¹²⁷ If the State fails to receive its

“preclearance” before the end of the candidate registration period for the first congressional primary election following census publication, legal action will likely be brought in federal court to enforce Section 2c of Title 2 of the United States Code. That law requires each state to have the same number of districts as apportioned representatives and allows the election of representatives only from duly established districts.¹²⁸

Which governing body reviews the redistricting plan adopted by the Texas Legislature?

There is no formal review of a redistricting plan approved by the Texas State Legislature, other than the preclearance review under Section 5 of the Voting Rights Act.¹²⁹ However, if the plan is vetoed by the Governor (and the veto is not overridden) or if the plan is invalidated by a court challenge, redistricting becomes the responsibility of the Legislative Redistricting Board.¹³⁰

Which counties in Texas are covered jurisdictions under Section 5 of the Voting Rights Act?

All counties in Texas are covered jurisdictions under Section 5 of the Voting Rights Act of 1965, because, as of 2011, the entire state of Texas is covered by the Act.¹³¹

When will the first statewide election be held after the redistricting deadline in Texas?

The first statewide election to be held in Texas after the redistricting deadline has passed will be the 2012 primary elections, scheduled for March 6, 2012.¹³²

ENDNOTES

- 1 <http://projects.washingtonpost.com/politicsglossary/Congressional/redistricting/>.
- 2 *See Gray v. Sanders*, 372 U.S. 368, 379-80 (1963) (stating that the Equal Protection Clause of the Constitution requires that all who participate in an election must have equal weight given to their vote once the geographical unit from which a representative has been chosen is designated); *see also Wesberry v. Sanders*, 376 U.S. 1 (1964) (determining that an apportionment of congressional seats that contracts the weight of some votes while expanding the weight of other votes is “unconstitutional.”).
- 3 *See Vieth v. Jubelirer*, 541 U.S. 267 (2004); *cf. Hunt v. Cromartie*, 526 U.S. 541 (1999).
- 4 *Hunt v. Cromartie*, 526 U.S. 541 (1999).
- 5 13 U.S.C. § 141.
- 6 2 U.S.C. § 2a(a).
- 7 *See* <http://www.census.gov/population/www/cen2010/glance/index.html>.
- 8 *See id.*
- 9 13 U.S.C. § 141.
- 10 *Id.*
- 11 *See Gray v. Sanders*, 372 U.S. 368, 379-80 (1963) (stating that the Equal Protection Clause of the Constitution requires that all who participate in an election must have equal weight given to their vote once the geographical unit from which a representative has been chosen is designated); *see also Wesberry v. Sanders*, 376 U.S. 1(1964) (determining that an apportionment of congressional seats that contracts the weight of some votes while expanding the weight of other votes is “unconstitutional.”).
- 12 *Id.*
- 13 U.S. Const. art. I, § 2, cl. 1.
- 14 *Id.*; *see also Reynolds v. Sims*, 377 U.S. 533, 563(1964) (stating that giving more weight to citizens’ votes based on where they reside is not justifiable).
- 15 U.S. Const. amend. XIV, § 1.
- 16 42 U.S.C. § 1973.
- 17 *Id.*
- 18 42 U.S.C. § 1973b.
- 19 42 U.S.C. § 1973 *et seq.*
- 20 42 U.S.C. § 1973c.
- 21 *Id.*
- 22 *See Thornburg v. Gingles*, 478 U.S. 30, 50 (1986).
- 23 *See Thornburg*, 478 U.S. 30 at 47 (establishing three necessary preconditions for establishing a minority vote dilution claim – that: 1) the minority group is large and geographically compact (regular in shape) to constitute a majority, in a single-member district; 2) the minority group usually votes together to elect representative(s) of their choice; and 3) the white majority usually vote together to defeat the minority voters’ candidates(s) of choice).
- 24 42 U.S.C. § 1973c (reauthorized Fannie Lou Hamer, Rosa Parks and Coretta Scott King (2006)).
- 25 42 U.S.C. § 1973c.
- 26 *Id.*
- 27 *Id.*
- 28 42 U.S.C. § 1973aa-1a.
- 29 *Id.*
- 30 42 U.S.C. § 1973c.

- 31 *Id.*; Counties in Texas have been covered under Section 203 of the Voting Rights Act of 1965 for the following groups: 1) Hispanic; 2) American Indian (Pueblo & Other Tribe Specified); and 3) Vietnamese. See http://www.justice.gov/crt/voting/sec_203/203_notice.pdf.
- 32 *Bartlett v. Strickland*, 129 S. Ct. 1231 (2009).
- 33 *Id.*
- 34 42 U.S.C. § 1973c.
- 35 *Id.* at (c).
- 36 See *Bartlett*, 129 S. Ct. at 1246.
- 37 *Chen v. City of Houston*, 206 F.3d 502 (2000), *cert. denied*, 532 U.S. 1046 (2000); *cf. Teuber v. State of Texas*, Case 4:11-cv-00059 (2011), filed on February 10, 2011, plaintiffs are alleging that the counting of undocumented immigrants in political districts illegally and unfairly affects voters in districts with smaller numbers of non-citizens. The plaintiffs are requesting that Texas count citizens only for the purpose of drawing new boundaries.
- 38 U.S. Const. amend. XIV, § 1.
- 39 *Garza v. County of LA*, 918 F. 2d 763, 773-776 (9th Cir. 1991); *but see Chen v. City of Houston*, 206 F.3d 502, 523 (2000), *cert. denied*, 532 U.S. 1046 (5th Cir. 2000) (explaining that the decision of which population to use is left to the political process).
- 40 *Kirkpatrick v. Preisler*, 394 U.S. 526, 531 (1969).
- 41 *Daly v. Hunt*, 93 F.3d 1212, 1228 (4th Cir. 1996).
- 42 *Lulac v. Perry*, 548 U.S. 399, 446 (2006).
- 43 *Georgia v. Ashcroft*, 539 U.S. 461, 482 (2003).
- 44 See *Bridgeport Coalition for Fair Representation v. City of Bridgeport*, 26 F.3d 271 (2d. Cir. 1994) (establishing that combining minority groups to form majority-minority districts is a valid means of complying with Section 2 if the combined groups are shown to be politically cohesive); see also *Campos v. Baytown*, 840 F.2d 943 (1988) *cert. denied*, 492 U.S. 905 (1989) (noting that “if together [blacks and Hispanics] constitute a majority in a single-member district, they cross the *Gingles* threshold as potentially disadvantaged voters”). These cases preceded *Bartlett v. Strickland*. Here the minority voters did not meet the threshold of greater than 50 percent as outlined to be required in *Bartlett*. Under the facts of both cases, post-*Bartlett*, it is unlikely that plaintiffs would have prevailed. Although, it is likely that the identical circumstances with a majority-minority population greater than 50 percent, plaintiffs would meet the *Gingles* factors and claim and Section 2 violation.
- 45 *Bartlett*, 129 S. Ct. at 1236.
- 46 *Id.*
- 47 13 U.S.C. § 141, *amended by* PL 97-171 enacted in 1975 (directing the Census Bureau to provide the 50 redistricting data needed for use in drawing districts.).
- 48 Tex. Const. art. III (West 2011); Tex. Const. art. III, § 1 (West 2011) (“The Senate shall consist of thirty-one members. The House of Representatives shall consist of 150 members.”).
- 49 *Id.* at art. III, § 25.
- 50 *Id.* at art. III, § 26.
- 51 *Id.* at art. III, § 28.
- 52 *Wesberry*, 376 U.S. at 7-9.
- 53 *Reynolds v. Sims*, 377 U.S. 533, 577 (1964); *Avery v. Midland County, Texas*, 390 U.S. 474, 479-81 (1968) (holding that the equal population principle applies to units of local government with general governmental powers).
- 54 *Brown v. Thomson*, 462 U.S. 835, 842 (1983).
- 55 *Id.* at 842-83.
- 56 David Brooks, 35 *Tex. Prac., County And Special District Law* § 11.3 (2d ed.) (citing *Avery v. Midland County, Tex.*, 390 U.S. 474, 484-85 (1968)).

- 57 In *Romero v. Coldwell*, 455 F.2d 1163 (5th Cir. 1972), the Fifth Circuit noted that this is an open question under Texas law and declined to rule on it with respect to elected justices of the peace in El Paso County, Texas.
- 58 David Brooks, 35 *Tex. Prac., County And Special District Law* § 11.3 (2d ed.). See also *Hinton v. Threet*, 280 F. Supp. 831 (M.D. Tenn. 1968) (holding that apportionment of civil districts in county which resulted in number of registered voters per justice of the peace ranging from 49 to 2,483 was invidiously discriminatory under one-man one-vote principle and equal protection clause).
- 59 Tex. Educ. Code Ann. § 11.052 (Vernon 2011).
- 60 *Id.*
- 61 Tex. Const. art. III, § 28 (West 2011).
- 62 Tex. Const. art. III, § 28 (West 2011). The Texas Supreme Court has interpreted this provision to mean that reapportionment must occur during the regular session in which census publication occurs, even if only a few days remain in the session. See *Mauzy v. Legislative Redistricting Bd.*, 471 S.W.2d 570, 573 (Tex. 1971); see also *Texas legislative sessions and years*, Legislative Reference Library of Texas, Texas State Legislature, <http://www.lrl.state.tx.us/sessions/sessionyears.cfm> (last visited Feb. 27, 2011).
- 63 Tex. Const. art. III, § 28 (West 2011).
- 64 *Id.*
- 65 See Texas Legislative Council, *Guide to 2011 Redistricting*, at 5 (2010), available at http://www.tlc.state.tx.us/redist/pdf/Guide_to_2011_Redistricting.pdf.
- 66 *Id.*
- 67 Tex. Const. art. III, § 25 (West 2011). Despite the absence of such a requirement, the Legislature should attempt to create reasonably compact Senate districts because the creation of noncompact districts is often viewed by courts as evidence of an illegitimate purpose. Cf. *Karcher v. Daggett*, 462 U.S. 725, 755 (1983) (Stevens, J., concurring) (“One need not use Justice Stewart’s classic definition of obscenity -- ‘I know it when I see it’ -- as an ultimate standard for judging the constitutionality of a gerrymander to recognize that dramatically irregular shapes may have sufficient probative force to call for an explanation” (footnotes omitted)).
- 68 Tex. Const. art. III, § 26 (West 2011).
- 69 David Brooks, 35 *Tex. Prac., County And Special District Law* § 11.3 (2d ed.) (citing *Gumfory v. Hansford County Commissioners Court*, 561 S.W.2d 28 (Tex.Civ.App.— Amarillo 1977, writ ref’d n.r.e.)).
- 70 Tex. Loc. Gov’t Code Ann. § 26.044(e) (Vernon 2011) (municipalities); Tex. Educ. Code Ann. § 11.052(f) (Vernon 2011) (school board trustee districts).
- 71 See *Single Member Districts*, FairVote, <http://archive.fairvote.org/?page=765> (last visited Feb. 27, 2011).
- 72 *Id.*
- 73 *Id.*
- 74 Tex. Const. art. III, § 25 (West 2011).
- 75 Tex. Const. art. V, § 18(b) (West 2011).
- 76 Tex. Educ. Code Ann. § 11.052(a) (Vernon 2011).
- 77 Tex. Const. art. III, § 26 (West 2011).
- 78 Tex. Legislative Council, *State and Federal Law Governing Redistricting in Texas*, ch. 7, pt. VB (2001), available at <http://www.tlc.state.tx.us/pubspol/redlaw01/redlaw01.pdf> (last visited Feb. 27, 2011).
- 79 *At Large Election Systems*, FairVote, <http://archive.fairvote.org/?page=766> (last visited Feb. 24, 2011).
- 80 *Id.*
- 81 Tex. Loc. Gov’t Code Ann. § 26.021 (Vernon 2011) (Home rule municipalities “may adopt and operate under any form of government, including the aldermanic or commission form.”); see also Tex. Loc. Gov’t Code Ann. § 26.044(a)-(b) (Vernon 2011) (The “governing body of a municipality with a population of 1.5 million or more must consist of one mayor elected at large, 16 members elected from single-member districts, and six members elected at large,” but “may adopt a different composition or organization of its governing body in a manner provided by its charter on or after January 1, 1992.”).
- 82 City of Austin – City Council, <http://www.ci.austin.tx.us/council/> (last visited Feb. 25, 2011).

- 83 Tex. Const. art. V, § 18 (West 2011).
 84 *Id.*
 85 Tex. Const. art. V, § 20 (West 2011).
 86 Tex. Const. art. V, § 21 (West 2011).
 87 Tex. Const. art. V, § 23 (West 2011).
 88 Tex. Const. art. V, § 18. (West 2011).
 89 Tex. Loc. Gov’t Code Ann. § 26.021; *see also* Tex. Loc. Gov’t Code Ann. § 26.044(a)-(b) (Vernon 2011).
 90 Tex. Educ. Code Ann. § 13.102 (Vernon 2011).
 91 Tex. Educ. Code Ann. tit. 2, ch. 13 (Vernon 2011).
 92 Tex. Educ. Code Ann. § 11.052(f) (Vernon 2011).
 93 Tex. Educ. Code Ann. § 11.052 (Vernon 2011).
 94 Steve Bickerstaff, *Voting Rights Challenges to School Boards in Texas: What Next?*, 49 Baylor L. Rev. 1017, 1027 (1997).
 95 *See Reynolds v. Sims*, 377 U.S. 533, 583-84 (1964) (“While we do not intend to indicate that decennial reapportionment is a constitutional requisite, compliance with such an approach would clearly meet the minimal requirements for maintaining a reasonably current scheme of legislative representation.”).
 96 Tex. Const. art. III, § 28.
 97 Tex. Loc. Gov’t Code Ann. § 26.044(g) (Vernon 2011).
 98 *See, e.g.*, Tex. Const. art V, § 18(a) (West 2011) (counties shall be divided “from time to time, for the convenience of the people”).
 99 Tex. Educ. Code Ann. § 11.052 (Vernon 2011).
 100 Tex. Educ. Code Ann. § 7.104 (Vernon 2011).
 101 Tex. Legislative Council, *Guide to 2011 Redistricting 9-10* (2011), *available at* http://www.tlc.state.tx.us/redist/pdf/Guide_to_2011_Redistricting.pdf (last visited Feb. 28, 2011).
 102 *Id.* at 9.
 103 *Id.* at 9-10.
 104 *See generally* Tex. Const. art. III, § 28 (West 2011).
 105 *Public Hearings*, Texas Legislative Council, http://www.tlc.state.tx.us/redist/process_hearings.html (last visited Feb. 27, 2011).
 106 *Senate Select Committee on Redistricting*, The Senate of Texas, <http://www.senate.state.tx.us/75r/senate/commit/c625/c625.htm> (last visited Feb. 9, 2011).
 107 *Committee Schedules*, Texas House of Representatives, <http://www.house.state.tx.us/committees/committee/?committee=080&session=81> (last visited Feb. 27, 2011).
 108 *Id.* at 9.
 109 *Texas Redistricting*, Tex. Legislative Council, <http://www.tlc.state.tx.us/redist/redist.htm> (last visited Feb. 9, 2011).
 110 *See* Tex. Legislative Council, *State and Federal Law Governing Redistricting in Texas* ch. 1, pt. IIA (2001), *available at* <http://www.tlc.state.tx.us/pubspol/redlaw01/redlaw01.pdf> (last visited Feb. 27, 2011).
 111 *Id.*
 112 *See* Complaint, *Lepak v. City of Irving*, 3:10-cv-00277-P (N.D. Tex. Sept. 27, 2010), *available at* <http://www.projectonfairrepresentation.org/wp-content/uploads/2006/11/Lepak-v-City-of-Irving-Complaint.pdf>.
 113 *Texas’s Representatives - Congressional District Maps*, GovTrack, <http://www.govtrack.us/congress/findyour-reps.xpd?state=TX> (last visited Feb. 27, 2011).
 114 *2010 Census Data*, U.S. Census Bureau, <http://2010.census.gov/2010census/data/> (last visited Feb. 27, 2011).
 115 Matt Stiles, *For Texas, a Larger Footprint in Congress*, Tex. Trib., Dec. 27, 2010, *available at* <http://www.texastribune.org/texas-counties-and-demographics/census/for-texas-a-larger-footprint-in-congress/> (last visited Feb. 27, 2011).
 116 Tex. Const. art. III, § 1 (West 2011) (“The Senate shall consist of thirty-one members. The House of Representatives shall consist of 150 members.”); *see also* *Current Members of the Texas Senate*, Tex. State Senate, *available at* <http://www.senate.state.tx.us/75r/Senate/members.htm#members> (last visited Feb 27, 2011); *About Us*, Tex. House of Representatives, *available at* <http://www.house.state.tx.us/about-us/> (last visited Feb.27, 2011).

- 117 *Members*, Cong. Hispanic Caucus, available at <http://chc.gonzalez.house.gov/about/members.shtml> (last visited Feb. 27, 2011) (listing Texans Henry Cuellar, Charles Gonzalez, Ruben Hinojosa, and Silvestre Reyes); Elisa Santana, *Latinos Making Own History in Congress*, Medill on the Hill, available at <http://medillonthehill.net/2011/01/latinos-making-own-history-in-new-congress/> (listing Texans Francisco Canseco and Bill Flores).
- 118 *Senate Members Complete List*, Tex. State Senate, available at <http://www.senate.state.tx.us/75r/senate/senmem.htm> (last visited Feb. 27, 2011); see also *Elected Officials Directory*, Tex. Trib., available at <http://www.texastribune.org/directory/> (last visited Feb. 27, 2011) (setting forth the ethnicities of senators where known).
- 119 *Members*, Tex. House of Representatives, available at <http://www.house.state.tx.us/members/> (last visited Feb. 27, 2011).
- 120 *Swearing-In of the Congressional Black Caucus of the 112th Congress*, The Hill, available at washingtonscene.thehill.com/.../7699-swearing-in-of-the-congressional-black-caucus-of-the-112th-congress (last visited Feb. 28, 2011).
- 121 *Senate Members Complete List*, Tex. State Senate, available at <http://www.senate.state.tx.us/75r/senate/senmem.htm> (last visited Feb. 27, 2011); see also *Elected Officials Directory*, Tex. Trib., available at <http://www.texastribune.org/directory/> (last visited Feb. 27, 2011) (setting forth the ethnicities of senators where known).
- 122 *About Us*, Tex. House of Representatives, available at <http://www.house.state.tx.us/about-us/> (last visited Feb. 27, 2011).
- 123 *About Us*, Tex. House of Representatives, available at <http://www.house.state.tx.us/about-us/> (last visited Feb. 27, 2011).
- 124 Tex. Const. art. III, § 28 (West 2011); see also *Mauzy v. Legislative Redistricting Bd.*, 471 S.W.2d 570, 573 (Tex. 1971).
- 125 Tex. Const. art. III, § 28 (West 2011).
- 126 *Id.*
- 127 Tex. Legislative Council, *State and Federal Law Governing Redistricting in Texas*, ch. 1, pt. IB (2001), available at <http://www.tlc.state.tx.us/pubspol/redlaw01/redlaw01.pdf>.
- 128 2 U.S.C. § 2c.
- 129 See Tex. Legislative Council, *Guide to 2011 Redistricting*, at 9, available at http://www.tlc.state.tx.us/redist/pdf/Guide_to_2011_Redistricting.pdf (last visited Feb. 27, 2011).
- 130 *Id.* at 10.
- 131 Dep't of Justice, Civil Rights Div., *Section 5 Covered Jurisdictions*, available at http://www.justice.gov/crt/about/vot/sec_5/covered.php (last visited Mar. 1, 2011) (listing Texas under "States Covered as a Whole").
- 132 See Tex. Legislative Council, *Guide to 2011 Redistricting*, at 13, available at http://www.tlc.state.tx.us/redist/pdf/Guide_to_2011_Redistricting.pdf (last visited Feb. 27, 2011).