



Texas Focus

LEAGUE OF WOMEN VOTERS OF TEXAS

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REAPPORTIONMENT AND REDISTRICTING IN TEXAS

The Overriding Issue of the 67th Texas Legislature

CONSTITUTIONAL REQUIREMENTS

The Texas Constitution requires that the Texas Legislature shall apportion itself into senatorial and representative districts after each United States decennial census. It also requires that each senator shall be elected from a single member district, and that each district shall be made up of contiguous territory.

One provision of the Texas Constitution stating that no county shall have more than one senator and another limiting urban counties to one house seat per 100,000 persons, have been found to be unconstitutional under the U.S. Constitution.

The Fourteenth Amendment to the U.S. Constitution apparently requires that all inhabitants be counted in congressional redistricting, but there appears to be no federal mandate in this regard as to redistricting of the state legislatures. Both the 1965 and 1971 redistricting plans of Texas were based on total census population even though the Texas Constitution provides that apportionment must be based on the number of qualified electors rather than on population.

The governor of Texas and others do not believe that aliens should be counted in redistricting. In Hawaii and Vermont, legislative districts are drawn according to numbers of registered voters, and in California some members of the legislature are trying to amend the state constitution to exclude aliens from the representation base for legislative reapportionment.

The Constitution of the United States provides that after each decennial census the number of the U.S. representatives be reapportioned on the basis of each state's share of the total population of the United States, with each state having at least one representative.

In 1910, Congress fixed the number of members of the U.S. House of Representatives at 435, so that as the population of the United States grows and shifts, the number of constituents of each representative grows and the number of the members of each Congress from each state

changes. The population of Texas has increased considerably since 1970 and Texas is expected to gain two additional seats in Congress in the 1982 elections.

DRAWING THE DISTRICTS

After the number of U.S. representatives is apportioned to each state, all the state legislatures are responsible for drawing the lines for their Congressional districts.

The U.S. Constitution, as interpreted by the Supreme Court, requires that districts must be of as nearly equal population as is practicable and that the apportionment plan must not operate to minimize or cancel out the voting strength of racial or political elements of the voting population. These standards apply to redistricting of both congressional districts and state legislative districts. Congressional district plans are subject to very rigid numerical standards.

The U.S. Supreme Court has directly disapproved congressional plans that deviated by as little as 4% from the ideal population distribution numbers. Deviations of less than 0.5% are generally acceptable. Less rigid numerical standards are set for state legislative districts. Minor deviations from an absolute numerical equality of representation may be permitted when caused by factors incident to the effectuation of legitimate state interests such as: preservation of political subdivisions (particularly counties); recognition of geographical and/or historical boundaries; minimization of contests between incumbents; recognition of clearly identifiable economic, community, or regional interests; or anticipation of projected population changes. The extent to which deviation from absolute population equality may be justified varies according to the nature of the state interest — its strength, authenticity, verifiability, and importance to the reapportionment. In no case will a total maximum deviation of more than 16.5% be permitted.

GERRYMANDERING

Drawing districts in a way that achieves political goals is usually referred to as "gerrymandering." Whether gerry-

mandering is good or evil depends upon what goals are being achieved. In recent years courts have begun to require a certain type of gerrymandering to be used to protect the voting rights of minority group members.

Sometimes district lines have been drawn with the intention, or at least with the effect, of denying representation of minority voters. All drawing of political districts will have political effects, whether the districts have simple shapes, or complex salamander-like shapes. Therefore, any analysis of gerrymandering must consider whether it is used to discriminate against a particular group, or whether it is used to give each group a fair chance in the political process.

LEGISLATIVE RULES

Redistricting bills are subject to the same rules as all other bills. The deadline for filing bills will be March 13, 1981. As complete census data is not scheduled to arrive until April 1, 1981, "dummy bills" may be introduced, based on unofficial census results, to be amended later. Traditionally, the House passes the House redistricting bill which the Senate passes without amendment, and the reverse procedure is followed for the Senate redistricting bill. Each house passes a congressional redistricting bill or one house amends the other's bill and any differences are adjusted in conference.

If a legislative redistricting plan is vetoed by the governor or if the legislature does not pass a redistricting plan, the Legislative Redistricting Board (LRB — composed of the Lieutenant Governor, the Speaker of the House, the Attorney General, the Comptroller of Public Accounts, and the Commissioner of the General Land Office) must meet within 90 days and apportion the state into the necessary districts.

If a congressional redistricting bill is vetoed, the governor would have to call a special session of the legislature so that a new plan might be drawn up, as the authority of the LRB does not extend to congressional redistricting.

THE VOTING RIGHTS ACT OF 1965

Under the Voting Rights Act of 1965, a change in a voting practice may not be utilized in an election until declared to have neither the purpose nor the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority. Reapportionment is a voting change that requires such a declaration. Because Texas comes under the Voting Rights Act, no redistricting law may go into effect until the U.S. Attorney General or the U.S. District Court for the District of Columbia has declared that such plan is not in violation of the Act. If a redistricting plan is declared invalid by a court or by an objection of the U.S. Attorney General, it may be replaced by a plan of the LRB, by a special session of the legislature, or

by the next regular session of the legislature, depending on the time of the invalidation and on whether it is a legislative, senatorial, or congressional district plan.

SPECIAL CONSIDERATIONS

If the census data does not arrive on time, the whole process may be delayed until 1983. If one or more redistricting plans are completed but are challenged in the courts or by the U.S. Attorney General, the disputes might not be resolved in time for the 1983 elections. Should that happen, the courts might permit elections under the contested plan (as they did in 1974), or they might delay election until an adequate plan is formulated (as they have done in several Texas city elections).

Prolonged litigation affecting the validity of the apportionment is not in the interest of the state or its citizens, so every effort must be made by the legislature to avoid litigation. We must assume that the Texas state legislature will undertake to draw reapportionment plans with districts as nearly equal in population as possible which will not discriminate against racial or language minorities. However, this may not be enough to avoid litigation unless the process itself is demonstrably fair.

Therefore, the legislature must also devise and implement a process for reapportionment which will provide the opportunity for all elements of the population to be heard, for all competing interests to be evaluated and weighed. Such a process would include: careful advance preparation; judicious use of experts and computers; widespread dissemination of information to the public about the laws governing reapportionment, the procedural process, and the social, political, and economic factors involved; and, most important, accessible public hearings with adequate notice. From such a process, with redistricting plans that create districts of equal population that do not deny or abridge the voting rights of minority groups, Texas will have a truly representative government, of the people, by the people, and for the people.

SOURCES

- Texas Constitution*, Art. III, Sections 3, 23, 26, 26a, 28
U.S. Constitution, Art. 1, Sec. 2. Amendment XIV, Sec. 2.
The Voting Rights Act of 1965, 42 U.S.C., Section 1973.
Bickerstaff, Steve. *Reapportionment By State Legislatures: A Guide For The 1980's*, drafted document, January 31, 1980.
House Study Group Special Legislative Report. "Redistricting" Part One No. 37, Part Two No. 49, Part Three No. 58.
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