

SUBJECT: Redrawing Texas congressional district boundaries

COMMITTEE: Redistricting — committee substitute recommended

VOTE: 10 ayes — Crabb, Grusendorf, Isett, King, Krusee, Marchant, Morrison, Pitts, Talton, Wilson

4 nays — Villarreal, Flores, McClendon, Raymond

1 absent — Luna

WITNESSES: For — K. Grant Ruckel, Mark Zafereo

Against — Congressman Chet Edwards; Ana Yáñez-Correa, Texas League of United Latin American Citizens; Nina Perales, Mexican American Legal Defense and Educational Fund; Charlotte Flynn, Gray Panthers of Austin; Hannah Riddering, Texas National Organization for Women; Charles Soechting, Texas Democratic Party; H.W. “Sputnik” Strain, Texas Motorcycle Rights Association; Jon Roland, Coalition for Non-Partisan Redistricting, Constitution Society; Peggy Pickle, and for former U.S. Rep. Jake Pickle; Bob Armstrong; Karin Ascot, Austin Regional Group of Sierra Club and for Mary Needham; Melissa F. Eurich, Deep Eddy Design and for Jueri Svjagintsev; Dana Bartholomew, and for Richard Bartholomew; Douglas Foxvog, and for Ann Stark and Liana Foxvog; Sam Kite, and for Ken and Ryan Kite; Philip Lawrence, and for Kristian Aramba and Aradia Lawrence; Roberto Salomon, and for Dora L. Salomon; Sonia Santana, and for Raquel Santana; Lenox Waciuma Wanjohi, and for Barbara Hidalgo-Sotelo; Barbara Hidalgo-Sotelo, and for the Hidalgo family; Bruce M. Willenzik, and for Annie Harding; Marguerite Jones, and for her family; Sonia Arredondo; Mike Conwell; Shudde Fath; Carol Fletcher; Katherine Forde; Melissa Gonzales; Diana Gray; Kathleen S. Green; Karen Hadden; Abby Kaighin; Daniel Llanes; Anne McAfee; Gayle Michalek; Jim Nickerson; Anthony D. Niesz; Cynthia Perez; Chris Quaglino; R. Neville Reynolds; Alfredo Reza Jr.; Paul Robbins; Barbara Rush; Sandra Seekamp; Louise Shelby; Barbara Simpson; Tracie Storie; Kathi Thomas; Betsy Tyson; Paula Wells; Mary Blumberg; Don Craven Jr.; Rev. Dr. Paul F. Perry; Don Cook; Marc L. Kutner

On — Patrick Dixon, Travis County Libertarian Party; Robert Howard, Travis County Libertarian Party, Coalition for Non-Partisan Redistricting; David R. Hanna, Jeff Archer, Texas Legislative Council

**BACKGROUND:** The U.S. Constitution, Art. 1, sec. 2 requires an “actual enumeration” or census every 10 years to apportion the number of representatives each state will receive in the U.S. House of Representatives. The release of population figures from the census also triggers redistricting — or redrawing of political boundaries — of the state’s legislative and State Board of Education (SBOE) districts, as well as of congressional districts. Texas Constitution Art. 3, sec. 28 requires the Legislature to redistrict legislative seats at its first regular session following publication of a United States decennial census. Neither the Constitution nor state statutes include procedures for congressional or SBOE redistricting.

**Redistricting in 2001.** According to the 2000 census, Texas’ population had grown to 20.9 million, and the state was entitled to two additional members of Congress. The Legislature had to adjust congressional district lines to provide for 32, rather than 30, congressional districts.

The 77th Legislature did not enact a redistricting plan of any kind — House, Senate, SBOE, or congressional. On May 8, 2001, the House passed a House redistricting bill, HB 150 by D. Jones, on third reading by a nonrecord vote after having passed the bill by 76-71 on second reading the previous day. On May 9, the Senate Redistricting Committee reported a Senate redistricting bill, SB 499 by Wentworth, by a 7-1 vote. Both HB 150 and SB 499 died when the Senate did not consider either bill.

On May 27, 2001, the House Redistricting Committee voted 9-6 to report favorably HB 722 by D. Jones, a congressional redistricting bill, but the bill died late in the regular session without further consideration. Gov. Perry decided not to call a subsequent special session to consider congressional redistricting, saying it was not likely that the Legislature would reach a consensus on a plan.

Under the Texas Constitution, if the Legislature does not enact a valid House or Senate plan during the regular session, the Legislative Redistricting Board

(LRB), comprising the lieutenant governor, House speaker, attorney general, comptroller, and land commissioner, must draw the lines. Upon adoption by the board and after being filed with the secretary of state, the plan becomes law and is to be used in the next general election. The LRB drew both House and Senate districts in 1971, 1981, and 2001.

No similar mechanism exists for redrawing congressional or SBOE districts should the Legislature fail to adopt a redistricting plan. If the Legislature or the LRB fails to draw new districts following the census, or if the district lines are invalidated for failure to meet one of the many legal requirements discussed below, the task falls to a court.

Under federal law (42 U.S.C., sec. 2284), a three-judge court hears any actions challenging the apportionment of congressional districts or statewide legislative bodies. In *Grove v. Emison*, 507 U.S. 25 (1993), the U.S. Supreme Court said that federal courts should defer to legislative bodies and state courts during redistricting, as long as the state acts in a timely manner.

Multiple lawsuits were filed in state and federal courts against the state, state officials, and political party representatives challenging the constitutionality of existing congressional district boundaries because of the need to add two districts and use 2000 census figures. A Travis County state district court issued a congressional redistricting plan (*Del Rio v. Perry*, No. GN003665 (353rd Dist. Ct., Travis County, Oct. 10, 2001)). On October 19, 2001, the Texas Supreme Court held in *Perry v. Del Rio*, 67 S.W.3d 239, that the district court's congressional plan was unconstitutional because the court had adopted a plan without giving the parties an opportunity for a meaningful hearing.

At this point, the three-judge federal court intervened in congressional redistricting (*Balderas v. Texas*, No. 6:01-CV-158 slip op. (E.D. Tex. Nov. 14, 2002)(per curium), *aff'd mem.* 122 S. Ct. 2583 (2002)). Even though the federal courts "have a limited role in crafting a congressional redistricting plan where the State has failed to implement a plan," the Texas Supreme Court's ruling left the federal courts "with no choice but to proceed without the benefit of a state plan," according to the *Balderas* court. It then drew a new congressional plan "starting with a blank map of Texas" and without having a baseline map approved either by the Legislature or a state court.

According to the court, in drawing a congressional map it was required to use politically neutral districting factors, including compactness, contiguity, and respect for county and municipal boundaries. It began with “the existing Voting-Rights-Act-protected majority-minority districts.” Next, it allocated the two new districts apportioned to Texas under the 2000 census in the areas of greatest population growth — Dallas, Harris, and Williamson counties. It next looked to “general historic locations” of districts in the state, including the Panhandle, the northeast corner of the state, the north central districts of the Red River area, through the metropolitan districts and the central plains. It then drew in the remaining districts, emphasizing compactness and following county and city lines and attempting to avoid splits.

As a check against the outcome of using neutral principles, the court determined if the resulting plan was “avoidably detrimental to Members of Congress of either party holding unique, major leadership posts.” The court also checked its plan against the “test of general partisan outcome” by comparing the number of districts leaning in favor of each party based on prior election results against the percentage breakdown statewide of votes cast for each party in congressional races. It found that the plan was likely to produce a congressional delegation roughly proportional to the party voting breakdown across the state, although it noted that “any plan necessarily begins with a Democratic bias due to the preservation of protected majority-minority districts, all of which contain a high percentage of Democratic voters.” Finally, the court said that since it had determined that creation of additional African-American and Latino minority districts was not required by law, it would not add such districts. The court said that adding new minority districts was a political and policy decision that the Legislature could make if it were drawing the districts, “as long as race was not the predominant reason for doing so.”

On June 17, 2002, the U.S. Supreme Court decided not to consider an appeal challenging the *Balderas* court’s plan, which was used for the 2002 election.

On February 11, 2003, Rep. Joe Crabb, chairman of the House Redistricting Committee, requested an opinion from Attorney General Greg Abbott as to whether the Legislature must adopt a congressional redistricting plan. Attorney General Opinion No. GA-0063, issued on April 23, concluded that “the Legislature has the authority to adopt a redistricting plan for the electoral

period 2003 through 2010, but it cannot be compelled to do so.” The opinion notes that the congressional plan drawn by the *Balderas v. Texas* three-judge court will remain the congressional redistricting plan for Texas until changed by the Legislature.

According to the National Conference of State Legislatures, it is rare for state legislatures to redraw congressional districts unless required because of population changes in the decennial census or legal challenges. One exception is Colorado, where in May of this year the General Assembly redrew the state’s congressional districts. The districts used for the 2002 election had been drawn by a state court when the General Assembly failed to adopt a plan. The new Colorado congressional plan is being challenged in state court by the state attorney general, who alleges that it violates the Colorado Constitution’s requirement that a redistricting plan be adopted only once following each census, and by individual citizens, who allege that the General Assembly violated procedural requirements in enacting the plan.

**Legal requirements for redistricting.** The legal standards for congressional redistricting fall into three general areas:

- state and federal constitutional standards, such as one-person, one-vote and not allowing population deviations among congressional districts;
- application of the federal Voting Rights Act (VRA) requirements for challenging discriminatory plans under sec. 2 and the requirements for advance federal approval (“preclearance”) under sec. 5; and
- U.S. Supreme Court decisions during the 1990s prohibiting “racial gerrymandering,” beginning with *Shaw v. Reno*, 509 U.S. 630 (1993).

Each standard must be considered in conjunction with the other requirements. The interaction can be complex and contradictory, especially in applying VRA protections to avoid diluting minority voting strength and adhering to the *Shaw* standard that race cannot be the predominant factor in redistricting. After the 2000 round of redistricting, the Supreme Court chose not to revisit its 1990s decisions on how to apply VRA and *Shaw* standards simultaneously. However, in considering any redistricting plan, the state must determine how to navigate what the 5th U.S. Circuit Court of Appeals has called the “difficult passage through the Scylla of the Voting Rights Act and the Charybdis of *Shaw*.” (*Chen v. City of Houston*, 206 F.3d 502 (5th Cir. 2000)).

**Federal requirements.** The Legislature will have to consider several aspects of federal law such as the one-person, one vote provisions, population deviation, VRA requirements, and court decisions on racial and political gerrymandering.

***One person-one vote.*** A key requirement for redistricting plans is that districts have approximately equal population, or “one person, one vote.” In 1962, the U.S. Supreme Court reversed its long-standing position that apportionment and redistricting were political issues not appropriate for judicial review. In its landmark decision, *Baker v. Carr*, 369 U.S. 186 (1962), the court held that federal courts could consider challenges to state legislative redistricting plans. In 1963, the court established a requirement for population equality among districts in *Gray v. Sanders*, 372 U.S. 368. The case established the equal-population doctrine of “one person, one vote.”

The U.S. Supreme Court has interpreted the U.S. Constitution as setting a stricter population-equality standard for congressional districts than for legislative districts. The court has held that a state's congressional districts must contain equal populations "as nearly as practicable," (*Westberry v. Sanders*, 376 U.S. 1, 7-8 (1964)), requiring a state to make a good-faith effort to achieve absolute equality. If it can be shown that a state's plan falls short of precise population equality, to the extent that such is practicable, the state must show that the variances — no matter how small — were necessary to achieve some legitimate state objective. The disputed plan could be proved deficient by introduction of an alternative plan with a smaller range of population deviation or introduction of evidence that minor changes would bring the disputed plan closer to equality. In 1983, the Supreme Court in *Karcher v. Daggett*, 462 U.S. 725, reconfirmed its standard that "absolute population equality [is] the paramount objective" in congressional redistricting.

***Population deviation.*** Under the most common method for determining population equality in redistricting plans, courts measure the range by which the districts deviate from absolute numerical equality. To determine the size of a plan's statistically ideal district, the state's population is divided by the number of districts in the redistricting plan. The resulting number equals the population of the “ideal district.” For example, the ideal congressional district

in Texas, with a headcount population of 20,851,820 in the 2000 census, and 32 congressional districts, would have a population of 651,619.

**Voting Rights Act.** A new congressional redistricting plan will be subject to the VRA, which Congress enacted in 1965 to protect the rights of minority voters to participate in the electoral process in southern states. Sec. 5 of the act was broadened to apply to Texas and certain other jurisdictions in 1975. Amendments enacted in 1982 expanded the remedies available to those challenging discriminatory voting practices anywhere in the nation.

Sec. 5 of the VRA (42 U.S.C., sec. 1973c) requires certain states and their political subdivisions with a history of low turnout and discrimination against certain racial and ethnic minorities to submit all proposed policy changes affecting voting and elections to the Voting Rights Section of the Civil Rights Division of the U.S. Department of Justice (DOJ) or to the U.S. District Court for the District of Columbia for “preclearance.” The judicial preclearance process requires the jurisdiction covered by the VRA to file for a declaratory judgment action before a three-judge panel, with DOJ serving as the opposing party. The administrative preclearance process is considered less costly and burdensome, and DOJ reports that more than 99 percent of all preclearance requests follow the administrative procedure.

Once DOJ receives information submitted by the state seeking to demonstrate that an electoral change does not violate sec. 5 of the VRA, it has 60 days to determine whether make an objection. A submitting authority may seek expedited consideration if justified. If DOJ requests any additional information, a new 60-day deadline begins upon receipt of the requested information. DOJ subsequently may request additional information, but any response to such a request does not extend the second 60-day deadline period.

While a DOJ objection under sec. 5 is not appealable, the state still could seek an alternative ruling from a D.C. federal district court panel. No specific deadline applies if the state seeks a declaratory judgment from a D.C. federal court panel.

Under sec. 5, state and local governments bear the burden of proving that any proposed change in voting or elections is neither intended, nor has the effect, of denying or abridging voting rights on account of race, color, or

membership in a language-minority group. No state or local voting or election change may take effect without preclearance. In effect, changes in election practices and procedures in the covered jurisdictions are frozen until preclearance is granted.

***Retgression.*** A proposed plan is retrogressive under the sec. 5 “effect” prong if its net effect would be to reduce minority voters’ “effective exercise of the electoral franchise” (as defined by *Beer v. United States*, 425 U.S. 130 (1976)) when compared to a benchmark plan. Generally, the most recent plan to have received Sec. 5 preclearance (or to have been drawn by a federal court) is the last legally enforceable redistricting plan. For CSHB 3, the *Balderas* plan would be the baseline map for comparison for retrogression.

The effective exercise of the electoral franchise is assessed in redistricting submissions in terms of the opportunity for minority voters to elect candidates of their choice. The presence of racially polarized voting is an important factor considered by DOJ in assessing minority voting strength. DOJ will object to a proposed redistricting plan when it reduces minority voting strength relative to the benchmark plan, if a fairly drawn alternative plan could ameliorate or prevent that retrogression.

In *Reno v. Bossier Parish School Board*, 528 U.S. 320 (2000), the Supreme Court ruled that redistricting plans that are not retrogressive in purpose or effect when compared with the jurisdiction’s benchmark plan must be precleared even if they violate other provisions of the VRA or of the Constitution. However, plans precleared under sec. 5 still can be challenged under sec. 2 of the VRA or on 14th Amendment grounds, even by the DOJ that had granted sec. 5 preclearance. However, the burden of proof shifts from the jurisdiction creating the plan to those challenging the proposed redistricting.

In *Georgia v. Ashcroft* (02-182) decided on June 26, 2003, the Supreme Court established new guidelines for determining retrogression under sec. 5. This case involved a Georgia state Senate redistricting plan in which the percentage of African-Americans in majority-minority districts was reduced or “unpacked” in order to increase the number of “influence” districts in which black voters could exert a significant, if not decisive, influence on the election process. The state sought sec. 5 preclearance in the D.C. District



Court, which agreed with the DOJ's objection that the changes in three districts reduced black voters' ability to elect the candidate of their choice.

The Supreme Court overruled the lower court, holding retrogression should be based on the plan as a whole, allowing the state to show that gains in a statewide plan overall offset the loss in a particular district. A minority group's comparative ability to elect a candidate of its choice is important, but not the only factor to be considered. To maximize a minority group's electoral success, a state may choose to create either a certain number of "safe" districts in which it is highly likely that minority voters will be able to elect the candidate of their choice, or the state may choose to create a greater number of districts in which it is likely, but perhaps not as likely as before, that minority voters will be able to elect their candidates but will be able to influence the result. One factor to be examined in assessing influence districts is the likelihood that candidates elected without decisive minority support would be willing to take the minority's interest into account. Sec. 5 allows states to risk having fewer minority representatives in order to achieve greater overall representation of a minority group by increasing the number of representatives sympathetic to the interests of minority voters. Maintaining or increasing legislative positions of power held by minority voters' representatives of choice and whether representatives who are elected from districts protected under the VRA support the new plan also are factors to be considered in determining retrogression.

***Sec. 2 challenges.*** Sec. 2 of the VRA offers a legal avenue for those who wish to challenge existing voting practices on the grounds that they are discriminatory. Sec. 2 became a major factor in redistricting in 1982, when Congress amended it to make clear that results, not intent, are the primary test in deciding whether discrimination exists, based on the "totality of the circumstances."

In 1986, the U.S. Supreme Court issued its first opinion interpreting the 1982 amendments to Sec. 2. In *Thornburg v. Gingles* (478 U.S. 30), the court, in upholding a sec. 2 claim against multimember legislative districts in North Carolina, established a three-part test that plaintiffs must meet when charging vote dilution. The three standards are:

- the protected group is “sufficiently large and geographically compact to constitute a majority in a single-member district”;
- the group is politically cohesive; and
- the majority votes in a bloc to the extent that the minority’s preferred candidate is defeated in most circumstances.

**Maximizing minority-controlled districts.** The Supreme Court’s analysis in *Johnson v. De Grandy*, 507 U.S. 25 (1993), addressed the key Sec. 2 issue of proportionality or the ratio of minority-controlled districts and the minority’s share of the state’s population. The *De Grandy* plaintiffs objected to a Florida redistricting plan because it was possible to draw additional Hispanic majority districts in Dade County. Even though the Supreme Court seemed to accept the contention that the *Gingles* prerequisites were satisfied, it rejected claims that additional majority-minority districts were required to meet sec. 2 claims. According to the court: “Failure to maximize cannot be the measure of Section 2.” In other words, the court seemed to reject the contention previously raised in sec. 2 challenges, and adopted by DOJ in sec. 5 preclearance reviews in the early 1990s, that if a majority-minority district can be drawn, then it must be drawn, assuming the *Gingles* criteria are met.

**Gerrymandering.** The word “gerrymandering” was coined in 1812, when a Massachusetts redistricting plan designed to benefit the party of Gov. Elbridge Gerry resulted in a district that a political cartoonist drew to resemble a salamander. Traditionally, gerrymandering has been considered a technique to maximize the electoral prospects of one party while reducing that of its rivals. In the 1990s, a series of Supreme Court decisions addressed the question of racial gerrymandering, or drawing lines to benefit or hinder the electoral prospects of minority groups.

**Racial gerrymandering.** In a series of redistricting challenges during the 1990s, the U.S. Supreme Court grappled with guidelines on how to resolve the tension between the race-conscious VRA requirements and the constitutional restraints against race-based official actions under the 14th Amendment. In the original *Shaw v. Reno* opinion — decided 5-4, as most subsequent decisions based on the same reasoning have been — the Supreme Court rejected “redistricting legislation that is alleged to be so bizarre on its face that it is unexplainable on grounds other than race.”

Subsequent Supreme Court decisions in *Miller v. Johnson*, 515 U.S. 900 (1995) and later *Shaw* cases established that the existence of bizarrely shaped districts alone is not sufficient to prevail in a claim of racial gerrymandering. In *Bush v. Vera*, 517 U.S. 952 (1996), a case challenging the Texas congressional redistricting plan, the Supreme Court recognized that the state could consider race as a factor, but the Texas congressional plan was unconstitutional because “race was ‘the predominant factor’ motivating the drawing of district lines and traditional, race neutral districting principles were subordinated to race.”

The plurality opinion in *Bush v. Vera* focused on the use of the REDAPPL program and its then-unprecedented ability to provide racial and socioeconomic data down to the census block level. Before the 1990 redistricting process, racial and socioeconomic information only was available on the basis of the larger census tract unit. REDAPPL displayed updated racial and socioeconomic data down to the census block level whenever new configurations of districts were drawn. The court noted that the program enabled those drawing the districts to make more intricate refinements based on race than on any other demographic information. “In numerous instances, the correlation between race and district boundaries is nearly perfect . . . The borders of Districts 18, 29 and 30 change from block to block, from one side of the street to the other, and traverse streets, bodies of water and commercially developed areas in a seemingly arbitrary fashion until one realizes that those corridors connect minority populations.” The court also found that use of REDAPPL contributed to a redistricting plan that not only neglected traditional districting principles such as compactness and contiguity but also offered a way to ignore traditional political boundaries by splitting voting precincts as well as cities and counties.

The most recent application of the *Shaw* doctrine to a Texas redistricting case came in March 2000, when the 5th U.S. Circuit of Appeals upheld a district court’s summary judgment in favor of the city of Houston after its 1997 city council redistricting plan was challenged as a racial gerrymander impermissible under *Shaw*. In agreeing with the district court’s summary judgment for the city, the appeals court cited the standard set by Justice Sandra Day O’Connor in *Miller v. Johnson* that “To invoke strict scrutiny, a plaintiff must show that the State has relied on race in a substantial disregard of customary and traditional districting practices.” The court recognized that

race was given some consideration in drawing the new city council districts but noted that “the fact that minority-majority districts were intentionally created does not alone suffice in all circumstances to trigger strict scrutiny.” The appeals court also cited a need to grant deference to an elected body in making an essentially political decision in redistricting.

In *Easley v. Cromartie*, 532 U.S. 234 (2001), the Supreme Court, ruling for the fourth time regarding North Carolina congressional districts originally challenged in *Shaw*, upheld the districts on the grounds that political affiliation, rather than race, was the determining factor in drawing the new districts. The majority opinion by Justice Stephen Breyer cited the *Vera* opinion to note that: “If district lines merely correlate with race because they are drawn on the basis of political affiliation, which correlates with race, there is no racial classification to justify.”

***Partisan gerrymandering.*** In *Davis v. Bandemer*, 478 U.S. 109 (1986), the U.S. Supreme Court ruled in a plurality opinion that gerrymandered plans are open to legal challenge even if the disputed districts meet the population-equality test. In *Bandemer*, a group of Indiana Democrats had challenged an Indiana legislative redistricting plan drawn from the 1980 census, saying it intentionally harmed them and violated their right to equal protection under the 14th Amendment.

When the plan was adopted, a Republican majority controlled both houses of the Indiana legislature. In elections held before the case went to trial, Democratic candidates for the House received 51.9 percent of the statewide vote but only 43 out of the 100 seats to be filled. Democratic candidates for the Senate received 53.1 percent of the statewide vote, with 13 of the 25 Democratic candidates being elected. In two counties that were divided into multimember House districts, Democratic candidates drew 46.6 percent of the vote, but only three of the 21 Democratic candidates were elected. Relying primarily on these election results, the trial court invalidated the Indiana redistricting plan and ordered that a new plan be drawn.

The Supreme Court in *Bandemer* established a two-pronged test for invalidating a gerrymandered plan under the equal protection clause:

- a showing of intentional discrimination against an identifiable political group (intent), and
- a showing of consistent discriminatory dilution of that group's voting power (effect) or, in effect, that a group "essentially [has] been shut out of the process."

To prove discriminatory effect, challengers must show (a) an actual or projected history of disproportionate results and (b) that the electoral system is arranged so that it consistently degrades a voter's or a group of voters' influence on the political process as a whole.

While ruling that partisan gerrymandering was subject to constitutional review, the Supreme Court nonetheless determined, on the facts of the case, that the Indiana plan was not unconstitutional and reversed the trial court's invalidation of the plan. The court upheld the trial court's finding of discriminatory intent, recognizing that any redistricting plan drafted by a legislature likely would have intended political consequences, but said the plaintiff Democrats had failed to prove an actual discriminatory effect.

Applying these requirements to the facts of *Bandemer*, the court said there had to be specific supporting evidence of statewide discrimination against Democratic voters, such as a showing that the Democrats could not secure a sufficient vote in future elections to take control of the legislature, given that Indiana did not traditionally vote for the same party in each election; that the reapportionment would consign the Democrats to a minority status throughout the decade; or that they would have no hope of faring better after the 1990 census.

Although partisan gerrymandering has been used in a few challenges, some experts say the *Bandemer* decision created such a high hurdle for invalidating a redistricting plan that it is the most difficult of all redistricting challenges to make. They say evidence of skewed results from several elections would be required before the Supreme Court would invalidate a plan. Challengers have had little success in the lower courts (see *Badham v. Eu*, 694 F.Supp 664 (N.D. Cal. 1988, *summarily aff'd*, 488 U.S. 1024 (1989)); *Fund for Accurate & Informed Representation v. Weprin*, 796 F.Supp. 662 (N.D.N.Y. 1992), *summarily aff'd*, 507 U.S. 956 (1993)). However, on June 27, 2003, the U.S.

Supreme Court agreed to revisit the issue of partisan gerrymandering by deciding to hear a case in which a lower court rejected such claims involving a Pennsylvania congressional redistricting plan (*Vieth v. Jubelirer*, 241 F.Supp.2d 478 (M.D. Pa. 2003)).

The Texas congressional plan adopted by the Legislature in 1991 was challenged on the basis of partisan gerrymandering in favor of Democrats. The three-judge federal court panel reviewing this and other challenges said that the challengers easily met *Bandemer*'s intent element, which is almost presumed in such cases, but not the effect element. The panel said that to prove effect, a partisan group must present evidence of "a group perpetuating its power through gerrymandering in one political structure and that the wronged partisan group cannot over the long haul counteract this tactic through its influence in another relevant structure or structures" (*Terrazas v. Slagle*, 821 F.Supp. 1162 (W.D. Tex. 1993)).

The *Terrazas* panel focused on the ability of the minority party (in this case, Republicans) to influence the outcome of the redistricting process, even if it did not control it. Although in 1991, when the Legislature adopted the congressional plan, the Republican Party did not control either house of the Legislature or the governorship, the panel noted that the party had elected governors in the recent past, it controlled 40 percent of the Texas House, enough to sustain a veto by a Republican governor, and party members chaired several major committees, including Redistricting. Also, there was no showing that the Texas House was so gerrymandered that the party had no chance of ever electing a proportion of the membership equivalent to the proportion of the statewide Republican vote. Examining the state political process as a whole, the panel determined that the plaintiffs had failed to make a case for partisan gerrymandering by showing that they could not at least block a Democratic-backed redistricting plan and thus had no influence on the redistricting process.

**Residency.** The U.S. Constitution requires that a member of Congress be a resident of the state, but not necessarily of the congressional district the person is elected to serve.

**DIGEST:** CSHB 3 would adopt PLAN01268C as proposed by the House Redistricting Committee. Exact data on district population and other demographic information on PLAN01268C and other data are available on <http://redweb01/redist.htm>. It would apply starting with the 2004 election and not affect the membership of the current Congress.

The bill states legislative intent that if any county, tract, block, or other geographic area has erroneously been omitted, a court reviewing the bill should include the appropriate area in accordance with the Legislature's intent. It also would repeal the congressional redistricting plan adopted by the Legislature in 1991.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect November 1, 2003.

**NOTES:** As filed, HB 3 would have placed in statute the current congressional plan adopted by the *Balderas* court. The House Redistricting Committee also considered proposed statewide PLANs 01249C and 01254C by Rep. King and rejected two amendments offered by Rep. Krusee on behalf Rep. Hughes and Rep. Phillips concerning districts in northeast Texas before adopting as a statewide substitute PLAN01268C by Rep. Grusendorf.

The ideal size of a congressional district is 651,619, based on the 2000 census. PLAN01268C would propose that the Third, Fourth, Sixth, Ninth, Tenth, Eleventh, Twelfth, Seventeenth, Nineteenth, Twenty-fifth, Twenty-eighth, and Thirtieth districts have a population of 651,620, and the remainder would have a population of 651,619.

The companion bill, SB 25 by Harris, has been referred to the Senate Jurisprudence Committee.