

# Who Put the Snap, Crackle and Pop Back into Redistricting?

Dewey M. Clayton  
*University of Louisville*

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*Congressional redistricting is a process that usually occurs once each decade along with the decennial census and reapportionment. However, after the 2002 elections the Republicans in Texas gained control of both houses of the state legislature. They decided to revisit the issue of congressional redistricting. This process has led to both partisan and racial gerrymandering by the state legislature in Texas. The Supreme Court upheld states' redrawing of district boundaries as often as they desire, based on partisanship.*

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**T**o determine each state's population and the number of representatives it may send to the U.S. House of Representatives, Congress is required by the Constitution to conduct a national census every ten years with the first census being held in 1790. After each decennial national census, the Congress reapportions the number of representatives among each state using a complex formula and the new population figures. The Census Bureau furnishes the results of the reapportionment process to each state by April of the following year. If a state gained or lost seats during the reapportionment process, it must redraw its congressional districts so that all of its new districts are roughly equal in population. Moreover, states are required to redistrict after every census and reapportionment, typically prior to the second congressional elections of that decade. In 40 states, the legislature or governor is in charge of the redistricting process. In other states, special commissioners control the drawing of Congressional maps, but the legislature has the final say (Jost 2004, 225).

The redistricting of Texas following the 2000 census is illustrative of the often contentious nature of redistricting, the political manipulation of the process, and the setting of new precedents that break the decennial rhythm of the redistricting process. This article examines how redistricting undertaken more than once a decade enables one political party to carry out this task under partisan conditions which led to both partisan and racial gerrymanders in Texas.

By utilizing Texas as a case study, I will employ systemic evidence to examine the congressional redistricting process in Texas that led up to the 2004 congressional elections. I will argue that contemporary empirical evidence clearly shows that minorities (African Americans and Hispanics) were stooges in a political game of racial

gerrymandering by the Republican-controlled legislature in an effort to accomplish their partisan gerrymandering and regain control of the Texas congressional delegation.

### **Redistricting Literature**

Politicians see the process of legislative redistricting in states as very important because of its potential for instigating widespread political change (Cain 1985). Partisan redistricting has the potential to create a political advantage for the party in control of the process. In the political science literature, however, the effect of legislative redistricting is much more nuanced and often ambiguous.

Following the landmark *Baker v. Carr* Supreme Court decision in 1962 that ushered in the “reapportionment revolution,” some scholars have found that redistricting eliminated a Republican and rural bias in the U.S. House of Representatives through reapportionment and application of the one-person one-vote principle (Gelman and King 1994; Cox and Katz 2002). But since the elimination of malapportionment, the effects of redistricting are less clear, and some studies (Glazer, Grofman, and Robbins 1987; Campagna and Grofman 1990) have found no appreciable partisan gains due to redistricting. Butler and Cain (1992) have shown that net partisan gains at the national level are unlikely. Partisan gerrymanders require a partisan control of the process, but state governments are frequently split between party control of the governorship and control of the legislature. Moreover, party gains in one state may be offset by opposing party gains in another. Cox and Katz demonstrate that there must be a significant nationwide partisan shift in control of state legislatures and control of the courts, as was the case in the major nationwide success of Democrats in the 1960s, to offset these national stabilizing effects.

Some of the difficulty in observing partisan effects in redistricting comes from the principal actors in the process who sometimes have contradictory goals. McDonald shows that the principal actors in redistricting are political parties who seek a partisan advantage, incumbents who seek less competitive districts and reelection, and minority groups who seek to increase and protect their representation. Because of the variable goals of the actors involved in redistricting, a number of studies (Cain 1985; Carson and Crespin 2004; McDonald 2004) have focused on partisan versus bipartisan control of the redistricting process. McDonald shows that partisan control of redistricting reliably produces a partisan gerrymander while a bipartisan process results in an incumbency protection plan. No matter what type of plan, partisan or bipartisan, there have been differences between the intended outcome and the results on Election Day and over time (Born 1985; Butler and Cain 1992).

According to the literature, one explanation for the incumbency advantage and the decline of competition in U.S. House races centers on redistricting (Born 1985; Squire 1995; Desposato and Petrocik 2003; Mann and Cain 2005; Cain, MacDonald, and McDonald 2005). Cain et al. show that the number of competitive districts has decreased as the number of states adopting bipartisan gerrymanders has increased. The redistricting process affects candidates’ strategic entry and exit decisions, which are based on their perceived ability to win races following redistricting (Cox and Katz 2002; Maisel, Maestas, and Stone 2005; Carson, Engstrom, and Roberts 2006). Desposato and Petrocik show that the ability of incumbents to win after redistricting is closely tied to the underlying partisanship of their new districts, as well as such factors as election saliency, challenger quality, and political tides. Dissenting from these views, Abramowitz,

Alexander, and Gunning (2006) locate the source of growing uncompetitiveness in U.S. House races in the creation of majority-minority districts, increasing polarization and self-segregation among voters, and the financial advantage of incumbency. Breaking from the negative view of the overall effects of redistricting, Gelman and King (1994) show that while an electoral system with a redistricting process favors the party in control of the process, redistricting generally creates a more responsive and less biased system than one without redistricting, even in the cases of partisan gerrymandering.

A troubling change from some scholars is the mid-decennial redistricting in Texas and Colorado (Cox, 2004; Mann and Cain 2005). Mid-decade redistricting is seen as leading to minority vote dilution (Persily 2005) and as a gerrymandering strategy (Cox 2004; Mann and Cain 2005). Cox argues that the abandonment of the decennial redistricting cycle will facilitate redistricting under partisan conditions, which could create more partisan gerrymanders, and that there should be a temporal limitation on the redistricting cycle.

The Supreme Court ruled partisan gerrymanders justiciable in *Davis v. Bandemer* (1986), but the high standards set by the court are seen as ineffectual (Mann 2005; Persily 2005; Backstrom, Krislov, and Robins 2006). Partisan gerrymandering was revisited in *Vieth v. Jubelirer* (2004) and had little effect on the ruling in *Davis v. Bandemer* (Mann 2005). Hasen (2004) argues that reform of partisan gerrymanders is unlikely to come from the courts until there is a social consensus. However, Issacharoff (2002) posits that the courts could rule to lessen the effects of incumbency protection.

## **The Case of Texas**

In Texas, the redistricting process is conducted by the state legislature. Going into the 1990s' round of redistricting, the Democrats controlled both houses of the state legislature and, therefore, were in control of the redistricting process. Texas gained three seats based on the 1990 Census. The Democrats, who controlled the redistricting process at that time, chose to make them all majority-minority districts and Democratic-leaning. The legislature drew a congressional map for the 1992 election that gave the Democrats a decided advantage in districts for the remainder of the decade. In the 2000 congressional elections, out of 30 congressional districts, Democrats held onto 17 seats and Republicans, 13 seats. Republicans argued at that time that a majority of congressional votes were being cast for Republicans whereas the majority of Congressional seats were still being held by Democrats.

Following the 2000 census, Texas gained two congressional districts, so it was required to redraw its congressional district boundaries. However, the composition of the Texas legislature had changed by 2000 so that Democrats controlled the House of Representatives and Republicans controlled the Senate. Because of the deadlock that resulted, responsibility for redrawing Texas' congressional maps for the 2002 elections went to a panel of three federal judges. On November 14, 2001, the three-judge panel drew up a congressional districting plan. Even though the court-ordered plan gave Republicans the two new districts, it protected incumbents, and Republicans remained unhappy. Under this plan, Texas elected 17 Democrats and 15 Republicans in the 2002 elections although one Democrat later became a Republican.

Prior to the 2002 elections, however, Republicans in Texas had been working behind the scenes to change the state's political landscape. According to political scientist Keith Gaddie, "Entering the 2002 election cycle, then U.S. House of

Representatives majority whip Tom Delay (R-Sugarland) conceived a plan with his principal political advisor, Jim Ellis, to set up political action committees inside the state of Texas for the purpose of winning control of the state House from the Democrats. . . . The plan worked. Republicans captured 88 of 150 seats in the House and 19 of 31 in the Senate” (Gaddie 2004, 19). Having gained control of both houses of the Texas legislature, Republicans in Texas chose to revisit the issue of congressional redistricting. Normally, redistricting occurs at the beginning of each decade after the census and reapportionment. Although the Constitution mandates a census and reapportionment once every ten years, it is not clear whether congressional redistricting is limited to only once each decade.

According to congressional scholar Kenneth Jost, “The unusual maneuver prompted Democrats—and many political observers—to say that redistricting is, or should be, allowed only once every ten years” (Jost 2004, 225). With 32 congressional seats at stake, Republicans not only in Texas but across the country saw this as a grand opportunity to blunt any hopes that the Democratic Party had on regaining a majority in the U.S. House of Representative for a long time to come. The Republicans’ stated reason for a second round of redistricting in Texas prior to the 2004 elections was because the legislature “had deadlocked on redistricting in 2001” (225). Others remained skeptical. For example, Paul Herrnson, director of the Center for American Politics and Citizenship, responded to the argument that the Constitution is unclear on redistricting more than once in a decade by stating, “That is the written law and a norm practiced for a very long time” (227). Moreover, Herrnson acknowledges that legislators occasionally redraw maps mid-decade after a court strikes down lawmakers’ first attempt (227). However, asserts Herrnson, “What’s taken place in . . . Texas goes beyond that. . . . Basically, it’s a power grab” (227–228). Redistricting expert Bernard Grofman agrees. “No one in his right mind believes there’s a good reason to do mid-decade redistricting except for political gain” (226).

### **Shootout in the Lone Star State**

On April 23, 2003, Texas State Attorney General Gregg Abbott issued an opinion that the state legislature was not required to do congressional redistricting but could if it wanted (Legislative Reference Library of Texas 2004). The next day the U.S. House Majority Leader, Rep. Tom DeLay (TX-22), traveled to Austin to urge Governor Rick Perry, Lt. Governor David Dewhurst, and House Speaker Tom Craddick to pass a redistricting bill.

The Texas legislature convened its regular session on April 30, 2003. The House redistricting committee held hearings that resulted in a proposed map that would eliminate eight Democratic incumbent congresspersons. The Democrats were determined to thwart this strategy. Fifty-five Democrats staged a quorum-breaking walkout on May 12 in an effort to stop the Republican plan to draw a new map. May 15 was the last day that House bills could be referred to the Senate. So, in accordance with House rules, Speaker Craddick ordered the arrest of the fleeing Democrats. The Texas Rangers, state troopers, and the federal Department of Homeland Security (at the request of Craddick and DeLay) all became part of a manhunt (Gaddie 2004, 21). Nevertheless, the rogue Democrats did not return to Texas until May 16—one day after the filing bill deadline. The Texas legislature, therefore, adjourned its regular session on June 2 without passage of a redistricting bill. Not to be outfoxed, Republican Governor Rick Perry called for a

special session of the legislature to convene on June 30 for the sole purpose of redrawing Texas' congressional maps.

Keith Gaddie quipped, "The state senate anticipated the session by opening hearings across the state on new congressional maps" (Gaddie 2004, 20). The hearings continued after the session opened. Senate Democrats secured the requisite votes to block the redistricting legislation. Under the legislative rules, eleven senators can prevent a bill from being debated (in this case, one Republican senator joined ten Democrats) to block the legislation. In a move to counter the renegade senators, on July 28, Republican Lieutenant Governor David Dewhurst was quoted by the *Star Telegram*, 12, October 2003 as saying that "he was suspending use of the two-thirds rule" that requires supermajority support before bills are considered in the chamber. Consequently, 11 Senate Democrats fled that day to Albuquerque, New Mexico, to break the Senate quorum once again. The special session ended without passing a redistricting bill, and Governor Perry called a second special session. The runaway Democrats (the "Texas 11") continued their holdout throughout the second special session, and on August 26 that session ended without the Republicans creating a new congressional map. The Democrats' boycott had made it procedurally impossible for the Senate to convene in session.

By this time, Texas' political shenanigans had reached the national stage. Democrats around the country started holding fund-raisers to support the fugitives' effort. The Republicans began plotting strategy to thwart the Democrats. Suddenly, after holding out for six weeks, the Democrats' impasse came to an end. State Senator John Whitmore (D-Houston) returned to Texas and announced that he would debate the redistricting map with the Republicans. Noted Gaddie, "Whitmore was evidently pressured to switch because Republicans had preserved his senate seat in the 2001 remap as a political favor, and his marker was called" (Gaddie 2004, 20). Four days later, the other senators returned to Texas. Governor Perry called for a third special session of the state legislature to convene on September 15.

By then, much of the high drama had ended. The Texas legislature, with Republican majorities in both houses, set about the task of resolving its major redistricting issues. Those issues were: "(1) satisfying the Voting Rights Act; (2) satisfying the political agenda of Tom DeLay, which included the ouster of Martin Frost, Lloyd Doggett, and numerous other Democrats; and (3) satisfying the political goal of speaker Tom Craddick from Midland" (Gaddie 2004, 20-21).

### ***Georgia v. Ashcroft* (2003) and the Voting Rights Act of 1965**

To further complicate matters, the U.S. Supreme Court ruled in *Georgia v. Ashcroft* (2003) in the midst of the Texas controversy. The court opined that "states can reduce the number of blacks in majority-minority districts if they offset the reduced voting strength with gains in minority groups' political influence elsewhere" (Jost 2004, 228). The ruling, noted Gaddie, "further muddied the waters as Texas legislators further wrangled with the possible retrogression effects of the effort to change the maps" (Gaddie 2004, 20). Texas had gained three seats as a result of the 1990 reapportionment, and all three seats were designated majority-minority districts when the legislature redrew its map: two majority black districts and one majority Hispanic district (Clayton 2000). Retrogression occurs if there are fewer districts in which minorities have a realistic chance to elect candidates of their choice in a new plan than existed under the

old plan (assuming that the minority population has not decreased) (Handley 1991). Furthermore, Section 2 of the Voting Rights Act, which applies to all states, requires plaintiffs in a redistricting challenge to prove only that a redistricting plan has the effect of diluting minority voting strength. “It was precisely for those reasons that some political observers noted that Texas Republicans will probably make only minimal changes to their congressional districts currently occupied by blacks and Hispanics in an effort to comply with the Voting Rights Act” (Giroux 2004, 1).

### **Legislators Agree on a New Map—At Last**

When the legislators began redrawing their political map during the third legislative session, it appeared that racial gerrymandering would be as important an issue as partisan gerrymandering. One of the plans under consideration (called 8–3) increased the number of majority-Hispanic districts from 7 to 8 and the number of African American districts from 2 to 3 (see Figure 1). This map also displaced six rival Democrats and four urban Democrats by putting them “into new districts against each other or against Republican incumbents or stripped of large segments of their old constituencies” (Jost 2004, 223). The Texas attorney general’s lawyers informed the Republican lawmakers that this districting plan would satisfy the Voting Rights Act requirements of the Department of Justice.

Ironically, the major quagmire in the mapmaking session arose between House Speaker Craddick (R-Midland), and Senator Robert Duncan (R-Lubbock), over how to draw districts in West Texas. Republican infighting threatened to doom the bill. However, Tom DeLay (R-Sugarland) returned to the state capitol in Austin and spent three days in shuttle diplomacy between House and Senate Republicans to break the impasse. The House and Senate passed the new districting map known as HB-3 and sent it to Governor Perry for his signature. The Republicans were hopeful that they would replace a 17–15 Democratic majority in the state’s congressional delegation with a 22–10 Republican majority. Houston attorney Ann Taylor observed, “We increased the number of Republican–opportunity districts to reflect the voting trend in the state of Texas” (Jost 2004, 223). According to Taylor, “We undid a Democratic gerrymander instead of creating a Republican gerrymander. We brought balance back to the districts because of the partisan shift in the way Texas voters vote” (233). In fact, after the 2002 congressional elections in Texas, Republicans (continuing a trend that began in the 1990s) received a majority of the votes (54.9 percent) but only 15 out of 32 of the seats (Gaddie 2004, 21).

After six months, two out-of-state boycotts, and three special sessions, the Texas legislature completed its mid-cycle congressional redistricting. On October 13, 2003, Governor Perry signed the redistricting bill into law.

### **Legal Challenges**

The first legal challenge to the Texas map was in reference to the mid-decade redistricting process: the second time in the decade that Texas had redrawn its congressional districts. Democrats asked the court to announce a “once-per-decade” requirement and to strike down the new Republican plan (Jost 2004, 226). A federal district court dismissed the complaint. The federal panel stated, “Neither the Texas constitution nor the U.S. Constitution explicitly bars redrawing lines more than once per decade” (Giroux 2004, 94). The second legal challenge involved a Section 2 challenge of

the Voting Rights Act of 1965. The Court announced during this challenge that “it would not hear issues of retrogression, as they pertained to Section 5 and were not a concern of the court” (Gaddie 2004, 22).

This considerably altered the plaintiffs’ strategy. Numerous plaintiffs were involved in challenging the new Texas maps, including the Texas Democratic Party, the state’s congressional Democrats, the National Association for the Advancement of Colored People, Congresswomen Shelia Jackson Lee and Eddie Bernice Johnson (African Americans representing Texas districts), the League of United Latin American Citizens, and Walter Sessions, who offered his name to the case (*Sessions v. Perry*, 2003). Experts in voting rights issues testified at the trial. Gaddie noted (230) that the Democratic strategy consisted of three parts: (1) have the Justice Department deny preclearance of the map under Section 5, (2) prove that the new map was an illegal partisan gerrymander, or (3) prove that the new map was an illegal racial gerrymander.

### Relevant Case Law

Supreme Court decisions have created a legal environment that requires legislatures to perform a balancing act in the creation of majority-minority districts. In *Thornburg v. Gingles* (1986), the Supreme Court decided that majority-minority districts should be created if the minority population is large, compact, and politically cohesive. After *Thornburg*, many lawmakers believed they were required to create majority-minority districts to avoid minority vote dilution (Clayton 2000, 95).

The landscape of race-conscious redistricting would change with a number of Supreme Court decisions in the 1990s. *Shaw v. Reno* (1993) changed the logic of creating majority-minority districts, ruling that they may be unconstitutional unless there is a compelling state interest, such as avoiding vote dilution, and placed the burden on states to defend race-conscious plans (Clayton, 2000, p. 109). The *Miller v. Johnson* (1995) decision held that it was unconstitutional to use race as a predominant factor in redistricting decisions but that majority-minority districts may still be permissible if there is a governmental interest, although it provided no criteria for determining interest (Clayton 2000, 126). In *Bush v. Vera* (1996), the Supreme Court struck down three majority-minority districts in Texas because they relied too heavily on race and veered too far from the traditional principle of compactness in their creation (127).

The State of Texas submitted the newly drawn plan to the Department of Justice (DOJ) seeking administrative preclearance. The decision by the DOJ was not free from controversy. There was speculation that professional staff members were poised to challenge the Texas map and deny Section 5 preclearance, but that they were overruled by political appointees in the DOJ (Gaddie 2004, 23). On December 19, 2004, the Justice Department approved the Texas map. In a letter to state government officials cited in the *Houston Chronicle* 19 December 2003, the DOJ stated, “The attorney general does not interpose any objection’ to the new congressional district boundaries set by the Legislature in October” (Henry 2003).

Additionally, the federal district court failed to find a violation of Section 2 of the Voting Rights Act, which prohibits the dilution of minority voting strength. The court concluded after expert testimony from both sides that “the new minority districts were a product of partisan motives rather than racial motives” (Gaddie 2004, 23). The Texas trial court dismissed the partisan gerrymander claim as well. Gaddie noted that “any appeal [on the partisan gerrymander issue]...was subsequently moot because of a

June 2004 U.S. Supreme Court ruling in a Pennsylvania case, *Veith v. Jubelirer*, in which the high Court ruled that partisan gerrymanders are political questions and are to be handled by the political branches and not the judiciary” (23). Pennsylvania Democrats had argued in that case that the Republican-drawn congressional map for the 2002 elections was unconstitutional because it was drawn as a partisan gerrymander—created solely on political grounds. The Supreme Court concluded that political gerrymandering claims are nonjusticiable because no judicially discernible and manageable standards for adjudicating such claims exist (Gaddie 2004, 23). This decision appeared to overturn a 1986 decision, *Davis v. Bandemer*, in which the Supreme Court held that political gerrymandering claims may be justiciable but could not agree upon a standard for assessing political gerrymandering claims.

The presiding Texas district court judge, seemingly troubled by the behavior of the Texas Republicans, noted in the majority opinion of the court: “We decide only the legality of Plan 1374C [the Republican Plan], not its wisdom” (*Sessions v. Perry*, 2003). The Democrats were now running out of options. The federal district court had dismissed all of their claims, and the Justice Department had granted administrative preclearance to the Republicans’ redistricting plan. Democrats in Texas made a final appeal to the U.S. Supreme Court to issue a stay prohibiting use of the new map for the November 2004 congressional elections. But on January 16, 2004, the Supreme Court refused to block the new map for the November 2004 elections.

However, in a surprise move in October, the Supreme Court vacated the January 2004 ruling of the federal panel and ordered it to reconsider the lawsuit (*Jackson v. Perry*, 2003) filed by the Democrats in Texas against the Republican partisan gerrymander. The Associated Press reported, 18 October 2004 a Supreme Court statement that the Texas map should be reexamined in light of the *Veith v. Jubelirer* (2004) decision, which “left a narrow opening for challenges claiming partisan politics overly influenced election maps”.

### **Pander, Slander, Gerrymander**

The states entered the 1990s round of redistricting faced with meeting the Justice Department’s edict to maximize the creation of majority-minority districts. Consequently, an increased number of African Americans and Hispanics were elected to Congress in 1992 (Lublin 1997; Grofman 1998; Clayton 2000). The Supreme Court struck down many of these districts in the 1990s on the grounds they violated the “equal protection clause” of the Fourteenth Amendment for white voters. Additionally, the Court said that race could not be used as the “predominant” factor in drawing congressional districts. The issue for the next decade’s round of redistricting is not the Voting Rights Act, but whether partisan gerrymandering by state legislatures has run amok. In fact, state legislators have as their main objective partisan political gains. Lawyers for the state of Texas argued successfully that the systematic dilution of minority voting strength is not illegal if its aim is partisan advantage rather than racial discrimination.

The congressional redistricting game only requires two pawns: one of the two major political parties and minorities. During the 1990s round of redistricting, majority districts were created throughout the South by white, Democratic-controlled legislatures seeking to protect white Democratic incumbents and satisfy the Voting Rights Act. As I have shown, in Texas a Republican-controlled legislature redrew its congressional

boundaries for a second time in a decade in order to maximize its Republican congressional delegation and satisfy the Voting Rights Act. This time, Democrats and--once again--minorities are the pawns in Republican efforts to increase their representation.

### **The Republican Strategy**

In the 2004 congressional elections, Republicans had a very ambitious strategy: to reshape the 16–16 balance in their congressional delegation by capturing as many as six additional seats and changing the balance to 22–10. U.S. House Majority Leader Tom DeLay was the driving force behind much of this strategy. Republicans nationally knew that the Democrats were trying to regain majority status in the House of Representatives. Republicans knew that if they could increase their numbers and reduce the Democrats in Texas, it would make it that much more difficult for the Democrats to regain majority status in the House of Representatives.

The strategy of the Republicans in redrawing their congressional map was to target ten incumbent Democrats (see Table 1). The majority of the targeted districts were dismantled and redrawn with a Republican majority. Five of the targeted incumbents lost one to another Democrat in the primary; one defected to the Republican Party; and one did not run for reelection. Of these who were targeted, none was Hispanic or African American. This strategy became known as the “unholy alliance” between black Democrats and Republicans (Toobin 2003).

Going into the 1990s round of redistricting, the Republican Party had been extremely successful at the presidential level, having won all but one election between 1968 and 1988. However, it had been the minority party in the U.S. House of Representatives since 1954. To change this, Republicans crafted a scheme whereby minorities would become their political bedfellows. Both stood to gain increased representation from this partnership. Congressman Bobby Scott, (D-VA), an African American first elected in 1992, said the following about white Democrats when they were in power in the South in the 1970s and 1980s after passage of the Voting Rights Act of 1965:

And, when these white Democrats started redistricting, they wanted to keep African American percentages at around thirty-five or forty percent. That was enough for the white Democrats to keep winning in these districts, but not enough to elect any black Democrats (Toobin 2003).

These so-called influence districts gave African Americans only a voice in who won. Scott noted the Republicans “came to us and said, We want these districts to be sixty percent black . . . and blacks liked that, because it meant we elected some of our own for the first time. That’s where the ‘unholy alliance’ came in (Toobin 2003).

This strategy has been referred to as the pizza pie versus doughnut theory. Blacks and Hispanics are largely concentrated in the central cities. If the inner city and surrounding suburbs are districted into pizza-like slices, Democrats have a core base in each district, but minority candidates may fail to gain election. However, if the central city areas are turned into separate districts like the center of a doughnut, the suburban vote ringing the city is made stronger. The Republicans knew that by “packing”

minorities into central-city districts, and because the minority vote is overwhelmingly Democratic, the remaining districts would be more white and Republican-leaning (Clayton, 2000). Regrettably, notes Toobin, “The unholy alliance has had the additional side effect, especially in the South, of making the Democrats the party of blacks and the Republicans the party of whites—which presents daunting long-term political problems for the Democratic Party” (Toobin 2003).

### **Veg-O-Matic: It Slices, It Dices**

In an article on the new Republican map, known by staff members of the Texas Legislative Council as Plan 01374C, the Associated Press reported, 18 October 2004 that the map was designed to target ten Democratic incumbents by drastically reducing their chances for reelection by placing them in districts with another incumbent, increasing the number of Republican voters in the district, or giving them large numbers of new, unfamiliar constituents. Toobin has referred to these techniques as “packing, cracking, and kidnapping” (2003). Of these ten targeted incumbents, six ran in new districts, one chose not to seek reelection, and three others ran in essentially their old districts (see Table 1).

### **Minority Representation**

Of the eleven majority-minority districts (34.3 percent of the total) three had competitive primaries (9, 25, and 28) and eight remained safe, noncompetitive districts (30, 18, 15, 20, 27, 16, and 23). Although most of the non-competitive districts saw some downward shift in the percentage of their minority composition, these districts retained a significant majority in their minority populations. Henry Bonilla (TX-23) had the biggest shift in his district; the Hispanic population decreased from 66.8 percent to 55.1 percent and the white population increased from 29.8 percent to 41 percent, resulting in the narrowest minority to white ratio of all of the districts. Of the eight noncompetitive majority-minority districts, only two were held by African Americans: Shelia Jackson Lee (TX-18; the Houston central city) and Eddie Bernice Johnson (TX-30; the Dallas area), a former chairperson of the Congressional Black Caucus. Their districts alone saw a slight increase in the percentage of their minority population. Both Lee and Johnson had first been elected in 1992 when the U.S. Justice Department required Texas to create three majority-minority districts (see Table 2).

Heading into the initial round of redistricting in the twenty-first century, the Texas map had nine majority-minority districts (seven Hispanic and two African American). That map had produced six Hispanic members (five of whom were Democrats), two African American Democrats, and one white Democrat who represented a Hispanic district. (The black population in Texas is 11 percent and the Hispanic population is 34 percent.) No majority-minority seats were drawn by the three-judge panel for the 2002 elections. Therefore, the black and Hispanic populations who were more than two-fifths of the state population were only slightly more than one-fourth of the states’ congressional seats.

The Republicans asserted that their new map added two new minority seats to the eight existing seats: one African American district and one Hispanic district (Cohen 2003). Moreover, the Republicans argued that their plan would actually increase the opportunity for minorities to elect candidates of their choice.

## Election Results

The Republican strategy spearheaded by Tom DeLay was a great success. Republicans captured 21 of the states' 32 congressional seats, an increase of five seats, or 66 percent of the total in a state where President Bush captured 61 percent of the total vote. Republicans felt that the results vindicated their creative map-making, given that the state had become increasingly Republican in the previous decade.

On November 2, 2004, four white Democratic representatives lost their bid for reelection: Max Sandlin, Nick Lampson, Charles Stenholm, and Martin Frost. One other, Chris Bell, lost in the primary to an African American, Al Green. Green was the only new minority candidate to win, thereby increasing the number of African Americans to three and the number of minorities to nine. Although the Republicans claimed their plan created two new majority-minority districts (District 9 and District 25), only District 9 elected a new minority candidate in the 2004 elections. District 25 was drawn with a Hispanic majority, but the Hispanic candidate was defeated in the primary by a displaced Democratic incumbent.

## What Lies Ahead

Some scholars assert that redistricting is changing the landscape of American politics. Jeffrey Toobin argues that the "framers of the Constitution created the House of Representatives to be the one branch of government most responsive to changes in the public mood." Furthermore, Toobin notes, "Gerrymandered districts mean that most of the four-hundred and thirty-five members of Congress never face seriously contested general elections" (2003, 2).

Partisan gerrymandering undertaken to protect entrenched incumbents has now come under attack not only by scholars and political observers, but by citizens' groups, state legislators, and even governors. Adam Nagourney reported on 7, February 2005 in *The New York Times*:

Largely uncoordinated campaigns stretching from California to Massachusetts are pushing to end, or at least minimize, a time-honored staple of American politics: lawmakers drawing Congressional and legislative district maps in geographically convoluted ways to ensure the election of an incumbent or the dominance of a party.

Much of the increased attention to redistricting is due in part to Texas' highly controversial mid-cycle redistricting map, redrawn for the second time in a decade in anticipation of the 2004 congressional elections. Obstacles to redistricting reform, however, remain large. Legislators rarely give up power that has protected their political careers.

The Supreme Court remanded the Democratic challenge to these districts (*Sessions v. Perry*, 2004) to the three-judge panel for reconsideration. Once again, the district court found the map acceptable and stated that redistricting for purely partisan reasons was not unconstitutional. Nevertheless, the political landscape in Texas will change. In 2006, the U.S. Supreme Court heard oral arguments in four consolidated cases involving the districting plan (*League of United Latin American Citizens v. Perry*, 2006). The case, argued before the high court by both sides in March 2006, was decided on June 28, 2006. The high court ruled against claims of statewide gerrymandering, but

ruled that district 23 violated the Voting Right Act and had to be redrawn, though the majority of the plan could remain as is, and the case was remanded. The court also upheld the mid-cycle redistricting of Texas. The Texas case has important implications for redistricting throughout the United States. With the upholding of mid-cycle redistricting, states may conceivably redraw district boundaries as often as they desire, based on partisanship. Moreover, congressional seats will no longer be determined by voters, but by legislators who draw districts lines.

### Note

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**Dewey M. Clayton** is an associate professor of political science at the University of Louisville in Louisville, KY. Dr. Clayton researches congressional redistricting, African American politics, and civil rights and the law.

### References

- Abramowitz, Alan, Brad Alexander, and Matthew Gunning. 2006. Incumbency, Redistricting, and the Decline of Competition in U.S. House Elections. *Journal of Politics* 68:75–88.
- Backstrom, Charles, Samuel Kislov, and Leonard Robins. 2006.. Desperately Seeking Standards: The Court’s Frustrating Attempts to Limit Political Gerrymandering. *PS: Political Science & Politics* 39:409–415.
- Born, Richard. 1985. Partisan Intentions and Election Day Realities in the Congressional Redistricting Process. *American Political Science Review* 79:305–319.
- Butler, David, and Bruce Cain. 1992. *Congressional Redistricting: Comparative and Theoretical Perspectives*. New York: Macmillan.
- Cain, Bruce. 1985. Assessing the Partisan Effects of Redistricting. *American Political Science Review* 79:320–333.
- \_\_\_\_\_, Karin MacDonald, and Michael McDonald. 2005. From Equality to Fairness: The Path of Political Reform since Baker v. Carr. In *Party Lines: Competition, Partisanship, and Congressional Redistricting*, eds. T. Mann and B. Cain, 6–30. Washington, DC: Brookings Institution Press.
- Campagna, Janet, and Bernard Grofman. 1990. Party Control and Partisan Bias in 1980s Congressional Redistricting. *Journal of Politics* 52:1242–1257.
- Carson, Jamie, and Michael Crespin. 2004. The Effect of State Redistricting Methods on Electoral Competition in United States House of Representatives Races. *State Politics and Policy Quarterly* 4:455–469.
- Carson, Jamie, Erik Engstrom, and Jason Roberts. 2006. Redistricting, Candidate Entry, and the Politics of Nineteenth-Century U.S. House Elections. *American Journal of Political Science* 50:283–293.
- Clayton, Dewey. 2000. *African Americans and the Politics of Congressional Redistricting*. New York: Garland.
- Cohen, Richard. 2003, Oct. 23. Texas Officials File New Congressional Map with DOJ. *Congress Daily*, 12.
- Cox, Adam. 2004. Partisan Fairness and Redistricting Politics. *New York University Law Review* 79: 751–802.

- Cox, Gary, and Jonathan Katz. 2002. *Elbridge Gerry's Salamander: The Electoral Consequences of the Reapportionment Revolution*. Cambridge: Cambridge University Press.
- Desposato, Scott W., and John R. Petrocik. 2003. The Variable Incumbency Advantage: New Voters, Redistricting, and the Personal Vote. *American Journal of Political Science* 47:18-32.
- Gaddie, Ronald K. 2004. The Texas Redistricting, Measure for Measure. *Extensions*, 19-24.
- Gelman, Andrew, and Gary King. 1994. Enhancing Democracy Through Legislative Redistricting. *American Political Science Review* 88:541-559.
- Giroux, Gregory L. (2004, January 10). Democrats Turn to High Court As Texas Redistricting Saga Looks Like Big Win for GOP. *CQ.com*, p. 94.
- Glazer, Amihai, Bernard Grofman, and Marc Robbins. 1987. Partisan and Incumbency Effects of 1970s Congressional Redistricting. *American Journal of Political Science* 31:680-707.
- Grofman, Bernard (ed.), 1998. *Race and Redistricting in the 1990s*. New York: Agathon Press.
- Handley, Lisa. 1991. The Quest for Minority Voting Rights: The Evolution of a Vote Dilution Standard and Its Impact on Minority Representation. Ph.D. diss., George Washington University.
- Hasen, Richard. 2004. Looking for Standards (in All the Wrong Places): Partisan Gerrymandering Claims after Vieth. *Loyola-LA Legal Studies Research Paper No. 04-12*.
- Henry, John. 2003. Justice Gives Preliminary OK to Redrawn Map. *Houston Chronicle*. December 19. Accessed February 16, 2004 from: <http://www.chron.com/cs/CDA/ssistory.mnl/special/03/legislature/230720>.
- Issacharoff, Samuel. 2002. Gerrymandering and Political Cartels. *Harvard Law Review* 116:593-648.
- Jost, Kenneth. 2004, March 12. Redistricting Disputes. *TheCQResearcher.com*, vol. 14: 221-235.
- Legislative Reference Library of Texas. 2004, April 4. *2003-2004 Texas Redistricting Chronology*. Retrieved November 20, 2004 from the World Wide Web; Web: <http://www.lrl.state.tx.us/citizenresources/redist2003chron.cfm>
- Lublin, D. 1997. *The Paradox of Representation*. Princeton, NJ: Princeton University Press.
- Maisel, L. Sandy, Cherie Maestas, and Walter Stone. 2005. The Impact of Redistricting on Candidate Emergence. In *Party Lines: Competition, Partisanship, and Congressional Redistricting*, eds. T. Mann and B. Cain, 31-50. Washington, DC: Brookings Institution Press.
- Mann, Thomas. 2005. Redistricting Reform: What Is Desirable? Possible? In *Party Lines: Competition, Partisanship, and Congressional Redistricting*, eds. T. Mann and B. Cain, 92-114. Washington, DC: Brookings Institution Press.
- McDonald, Michael. 2004. A Comparative Analysis of Redistricting Institutions in the United States, 2001-02. *State Politics and Policy Quarterly* 4:371-395.
- Persily, Nathaniel. 2005. Forty Years in the Political Thicket: Judicial Review of the Redistricting Process since Reynolds v. Sims. In *Party Lines: Competition,*

*Partisanship, and Congressional Redistricting*, eds. T. Mann and B. Cain, 67-91.

Squire, Peverill. 1995. The Partisan Consequences of Congressional Redistricting. *American Politics Research* 23:229-240.

Toobin, Jeffrey. 2003. The Great Election Grab. *The New Yorker*, December 8.

**Court Cases**

*Baker v. Carr*, 369 U.S. 186 (1962).

*Bush v. Vera*, 517 U.S. 952 (1996).

*Davis v. Bandemer*, 478 U.S. 109 (1986).

*Georgia v. Ashcroft*, 123 S.Ct. 2498 (2003).

*Jackson v. Perry*, Civil Action No. 03C-356 (E.D. Tx., Marshall Division, 2003).

*League of United Latin American Citizens v. Perry*, 126 S. Ct. 2594 (2006).

*Miller v. Johnson*, 515 U.S. 900 (1996).

*Sessions v. Perry*, Civil Action No. 2:03-CV-00354 (E.D. Tx., Marshall Division, 2003).

*Shaw v. Reno*, 113 S. Ct. 2816 (1993).

*Vieth v. Jubelirer*, 2004 W L 894316 (U.S. Pa 2004).

*Thornburg v. Gingles*, 478 U.S. 30 (1986).

**Table 1. New Map Threatens White Incumbent Texas Democrats**

Incumbent Democrat	New Political Situation
Martin Frost	Old Dallas-Fort Worth district carved up; lost reelection in the 32nd Congressional District. Newly drawn district would represent a 63% Republican vote.
Charles W. Stenholm	Senior Agriculture Committee member lost two-thirds of his old Central/West Texas district; running against freshman Republican in 69% GOP district; Lost reelection in the 19th Congressional District.
Ralph M. Hall	Longtime conservative switched to GOP after more Republicans were added to East Texas district.
Chet Edwards	Lost major parts of his Central Texas district; new district is 64% GOP; Won reelection in the 17th Congressional District.
Gene Green	White representing Hispanic-majority House district; new district more Hispanic; kept Democratic constituency intact under the plan. Won the 17th Congressional District seat by 94% vote.
Lloyd Doggett	Liberal representative from Austin; sought reelection in the 25 <sup>th</sup> district; old district suffered a major Republican constituency shift under in plan. Won 25th Congressional District seat.
Max Sandlin	East Texas district is 63% Republican, with 40% of previous constituency; lost reelection in the 1st Congressional District.

<b>Incumbent Democrat</b>	<b>New Political Situation</b>
Jim Turner	Old district virtually eliminated (2-CD). Now the 6th Congressional District with a 64% Republican vote. Did not seek reelection in 2004. Now the 6th-CD
Nick Lampson	Lost major parts of his Houston suburban district; New district would have been majority black population. Ran for reelection in the 2nd Congressional District and lost.
Chris Bell	White freshman elected from mixed Houston district redrawn into majority-black district; Bell lost bid for renomination against Al Green in the primary election in the 9th-CD.

**Table 2. 2002 Majority-Minority Districts That Remained Noncompetitive for the 2004 Election**

<b>INCUMBENT CONGRESSPERSON</b>	<b>Plan</b>	<b>DISTRICT</b>	<b>%W</b>	<b>%B</b>	<b>%H</b>	<b>%DEM</b>	<b>%REP</b>
	2002	23	29.8	1.8	66.8	52.5	47.5
BONILLA	2004	23	41	2	55.1	43.2	56.8
	2002	15	19.2	1.6	78.3	61.7	38.3
HINOJOSA, R.	2004	15	27.2	3.1	69	55.7	44.3
	2002	20	23.7	6.2	68.2	61.5	38.5
GONZALEZ	2004	20	23.4	7.5	67.1	62.3	37.7
	2002	18	21.2	43	32.6	75.5	24.8
JACKSON LEE	2004	18	19.7	41	35.6	74	26
	2002	30	24.7	41.4	31.1	72.9	27.1
JOHNSON, E.	2004	30	21.9	42.3	34.2	77.3	22.7
	2002	27	24.6	2.6	71.6	56.7	43.3
ORITZ	2004	27	27.6	2.9	68.1	55.6	44.4
	2002	16	17.4	3.6	77.7	64.4	35.6
REYES	2004	16	17.4	3.6	77.7	64.4	35.6
	2002	28	21.2	8.2	69.6	64.8	35.2
RODRIGUEZ	2004	28	27.9	6.6	64.5	58.9	41.1

Source: U.S. Census Bureau

B=Black; H=Hispanic; W=White; Dem=Democrats; Rep=Republicans

Figure 1.

### Comparison of Texas' Majority-Minority Congressional Districts

