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## **“PERRYMANDERING”: A NEW REDISTRICTING PLAN IN TEXAS IMPACTS THE LATINO VOTE**

*by* NORMA E. LOZA

**M**uch like the enfranchisement struggles of African-Americans in the South during the Jim Crow era, Latinos today are the new targets of electoral shenanigans. With a growing Hispanic population, the Hispanic vote is increasingly becoming a powerful voting bloc for some politicians and a danger for others.<sup>1</sup> With that in mind and a new election nearing, redistricting is being used to disadvantage Latino voters.<sup>2</sup>

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Recently, the U.S. Department of Justice (“DOJ”) objected to a Texas redistricting plan based on the 2010 census.<sup>3</sup> The DOJ concluded that the plan – signed and endorsed by Republican Gov. Rick Perry – purposefully discriminates against Hispanic minorities by diluting their votes.<sup>4</sup>

The U.S. Constitution requires that representatives be apportioned among the states according to population to ensure proportionate representation.<sup>5</sup> As Prof. Justin Levitt, an expert on redistricting at Loyola Law School in Los Angeles, explains it, “Redistricting is the infrastructure of democracy [because] it determines which people choose which representatives and therefore which interests are represented.”<sup>6</sup>

Many federal, state and local legislators are elected from districts.<sup>7</sup> Originally in the colonial era, districts were defined by borders of towns or counties.<sup>8</sup> As time passed, towns and counties grew at different rates, creating a need for periodical redistricting outside these lines to ensure that one person’s vote did not count more than another’s.<sup>9</sup>

Redistricting plans are usually created by state legislatures, which allows the party in power great control over congressional lines in their own state.<sup>10</sup> Thus, according to Prof. Levitt, “There’s a tremendous incentive for them to draw the lines primarily for personal benefit.”<sup>11</sup> Unfortunately, this can sometimes “lead to lines that impact others, including, but certainly not exclusively, Latinos.”<sup>12</sup>

Although periodic redistricting was designed to equalize voting power, it has also proved to be a useful tool to disenfranchise certain voters. As the U.S. Supreme Court affirmed, redistricting may be particularly harmful when it results in gerrymandering, or the manipulation of voting district lines to give a disproportionate advantage to the incumbent political party.<sup>13</sup> This political tactic is “an abuse of power that, at its core, evinces a fundamental distrust of voters, serving the self-interest of the political parties at the expense of the public good.”<sup>14</sup>

Gerrymandering helped Texas Republicans as they were determined to remain in power after taking control of the Texas Legislature in 2003.<sup>15</sup> For example, after a demographic shift left Republican Henry Bonilla with a Democratic-leaning majority Latino district, he was in danger of losing his seat in Congress.<sup>16</sup> The Legislature, however, was able to protect Bonilla’s seat by redraw-

ing the lines so that 100,000 Latinos were moved from that district, dismantling the Latino majority of the voting population.<sup>17</sup>

The same tactics seem to be in play for the 2012 elections as the Republican-controlled Texas Legislature again works to win Republican congressional and state assembly seats.<sup>18</sup> The stakes are even higher this time, as Texas was awarded four more seats in the U.S. House of Representatives due to a population growth of over 4.2 million.<sup>19</sup> Notably, Hispanics accounted for 65 percent of that growth.<sup>20</sup>

In the 2004 presidential election, 50 percent of Hispanic voters in Texas voted for Democratic nominee John Kerry, but in the 2008 elections, 63 percent voted for now-President Barack Obama.<sup>21</sup> This suggests an increase in Democratic support within the Latino community that could be detrimental to Republican chances in Texas.<sup>22</sup>

Responding to this demographic shift, Tea Party activists sought to invalidate the 2010 census results for Texas.<sup>23</sup> In *Teuber v. Texas*, filed in June 2011, Tea Party activists argued that census figures were inaccurate and should not be used to redistrict Texas as required by law, because the census counted illegal immigrants.<sup>24</sup>

The plaintiffs in *Teuber* sought to decrease the official Hispanic tally by the number of illegal immigrants reportedly living in Texas.<sup>25</sup> They contended that, because illegal immigrants cannot vote, the votes of individuals in districts with a high number of illegal immigrants would be disproportionately powerful.<sup>26</sup>

However, the Tea Party activists voluntarily dropped their suit when the court granted a request by the Texas Latino Redistricting Task Force to join as a defendant.<sup>27</sup> The group is a coalition of influential Hispanic organizations committed to ensuring that redistricting plans in Texas do not hurt the Latino vote.<sup>28</sup>

Using the 2010 census numbers, the Texas Legislature remapped congressional districts, which originally resulted in 25 Republican-leaning seats and 10 Democratic-leaning seats.<sup>29</sup> The plan – nicknamed “Perrymandering” after Gov. Perry endorsed it – has created no small amount of controversy.<sup>30</sup> Under the plan, Hispanics would lose two opportunity districts in the Texas Legislature,

and Hispanic “opportunity districts [in Congress] would fall from 22 percent to 19 percent of the congressional delegation.”<sup>31</sup>

Due to various instances of past electoral discrimination, Texas is required to submit its redistricting plans to the DOJ or the D.C. District Court for preauthorization.<sup>32</sup> The plan is then approved if it “is not intended to dilute minority votes and . . . does not cause retrogression in minority political opportunity.”<sup>33</sup>

Although Texas decided to submit its redistricting plan to the D.C. District Court, the DOJ made its own investigation, which it filed in court.<sup>34</sup> On Sept. 21, 2011, the Civil Rights Division of the DOJ concluded that the plan violated Section 5 of the Voting Rights Act<sup>35</sup> because it would “diminish the ability of citizens of the United States, on account of race, color or membership in a language minority group, to elect their preferred candidates.”<sup>36</sup>

The DOJ argued that the Texas Legislature had discriminated mainly by splitting the Hispanic vote among different counties, targeting politically organized Hispanic communities.<sup>37</sup>

On Nov. 8, the D.C. District Court concluded, “The state of Texas used an improper standard or methodology to determine which districts afford minority voters the ability to elect their preferred candidates of choice.”<sup>38</sup> The court then referred the matter to a panel of federal judges and commissioned the panel to redraw the maps in a non-discriminatory way.<sup>39</sup>

After the panel convened and redrew the maps, the district lines seemed to have switched to favor Hispanic candidates.<sup>40</sup> As a result, the State of Texas filed a writ of certiorari to the U.S. Supreme Court to have the original maps reinstated.<sup>41</sup> The Supreme Court granted the writ and will hear the case in January 2012.<sup>42</sup>

The impact of the final decision cannot be understated—for Hispanics, for other minorities, for Texans in general, and for any political party in any state, whether in or out of power. In the end, the districts – however they are drawn – will represent more than just the people living in them. They will likely represent the vote that tips the balance in the future.

## NOTES

- 1 Javier Ortiz, *Candidates need to engage Latinos & talk jobs*, UNIVISION, Oct. 14, 2011, available at <http://univisionnews.tumblr.com/post/11452565681/opinion-candidates-need-to-engage-latinos-talk-jobs>.
- 2 *Redistricting: MALDEF Intervenes in DC Court To Protect Texas Latino Voting Strength*, MALDEF: MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND (Aug. 23, 2011), [http://www.maldef.org/news/releases/redistricting\\_dc\\_tx\\_voting/](http://www.maldef.org/news/releases/redistricting_dc_tx_voting/).
- 3 Ryan J. Reilly, *DOJ: Rick Perry's Texas Redistricting Plan Purposefully Discriminated Against Minorities*, TALKING POINTS MEMO (Sept. 23, 2011), [http://tpmmuckraker.talkingpointsmemo.com/2011/09/doj\\_rick\\_perrys\\_texas\\_redistricting\\_plan\\_purposefully\\_discriminated\\_against\\_minorities.php](http://tpmmuckraker.talkingpointsmemo.com/2011/09/doj_rick_perrys_texas_redistricting_plan_purposefully_discriminated_against_minorities.php).
- 4 *Id.*
- 5 U.S. Const. art. I § 2, cl. 3.
- 6 Email interview with Justin Levitt, Associate Professor of Law, Loyola Law School Los Angeles (Oct. 27, 2011).
- 7 Justin Levitt, *What is redistricting?* ALL ABOUT REDISTRICTING, <http://redistricting.lls.edu/what.php> (last visited Oct. 20, 2010).
- 8 *Id.*
- 9 *Id.*
- 10 In 37 states, legislatures have primary control of creating redistricting plans. Seven states use "politician commissions," where elected officials may serve as members. Six states use independent commissions, in which elected officials generally do not participate. Justin Levitt, *Who draws the lines?* ALL ABOUT REDISTRICTING, <http://redistricting.lls.edu/who.php> (last visited Oct. 20, 2010).
- 11 Levitt, *supra* note 6.
- 12 *Id.*
- 13 Laughlin McDonald, *The Looming 2010 Census: A Proposed Judicially Manageable Standard and Other Reform Options for Partisan Gerrymandering*, 46 HARV. J. LEGIS. 243, 245 (2009).
- 14 *Id.* at 244 (quoting *LULAC v. Perry*, 548 U.S. 399, 456 (2006)).
- 15 Justin Levitt, *Why does it matter?* ALL ABOUT REDISTRICTING, <http://redistricting.lls.edu/why.php> (last visited Oct. 20, 2010).
- 16 *The Impact of Redistricting in your community: A Guide to Redistricting*, MALDEF: MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND, <http://www.maldef.org/assets/pdf/Redistricting.pdf>.
- 17 Levitt, *supra* note 15.
- 18 *MALDEF and Latino Coalition Suit Charges Texas Maps Violate the Voting Rights Act*, MALDEF: MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND (June 17, 2011), [http://maldef.org/news/releases/latino\\_coalition\\_suit/](http://maldef.org/news/releases/latino_coalition_suit/).
- 19 Rick Jervis, *Hispanics guide huge growth in Texas*, USA TODAY, Feb. 23, 2011, available at [http://www.usatoday.com/news/nation/census/2011-02-17-texas-census\\_N.htm](http://www.usatoday.com/news/nation/census/2011-02-17-texas-census_N.htm).
- 20 *Id.*
- 21 *Report on The Hispanic Vote in the 2008 Election*, PEW HISPANIC CTR., Nov. 5, 2008, available at <http://pewhispanic.org/files/reports/98.pdf>.
- 22 *Id.*
- 23 Compl. at 12, *Teuber v. Texas*, No. 4: 2011-cv-0059, filed Feb. 10, 2011 (E.D. Tex. 2011).
- 24 *Id.*
- 25 *Id.* at 7.

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26 *Id.*

27 *Texas Redistricting: Anti-immigrant Lawsuit Dropped after MALDEF Joins Case*, MALDEF: MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND (July 28, 2011), available at [http://maldef.org/news/releases/tx\\_lawsuit\\_dropped/](http://maldef.org/news/releases/tx_lawsuit_dropped/).

28 *Id.*

29 Ryan J. Reilly, *What DOJ Tossing Texas' Redistricting Plan Means for Rick Perry*, TALKING POINTS MEMO (Sept. 20, 2011), [http://tpmmuckraker.talkingpointsmemo.com/2011/09/feds\\_v\\_rick\\_perry\\_what\\_dojs\\_dismissal\\_of\\_texas\\_red.php](http://tpmmuckraker.talkingpointsmemo.com/2011/09/feds_v_rick_perry_what_dojs_dismissal_of_texas_red.php).

30 David Wasserman, *'Perrymander': Redistricting Map that Rick Perry Signed has Texas Hispanics Up in Arms*, NAT'L J., Aug. 22, 2011, available at <http://nationaljournal.com/politics/perry-mander-redistricting-map-that-rick-perry-signed-has-texas-hispanics-up-in-arms-20110819>.

31 *Redistricting*, *supra* note 2.

32 Under Section 5, only certain states are required to submit redistricting plans for preclearance. This includes states that used tests "to screen would-be voters, and where fewer than half of the eligible voters either registered or voted in 1964, 1968, or 1972." States can rid themselves of this requirement after taking steps to improve minority voting opportunities for ten years. Texas has not done so. Justin Levitt, *Where are the lines drawn?* ALL ABOUT REDISTRICTING, <http://redistricting.ils.edu/where.php> (last visited Oct. 20, 2010).

33 *Id.*

34 Br. in Opp'n of Summ. J., *Texas v. United States of America*, No. 1:11-cv-1303, filed Oct. 25, 2011 (D.D.C. 2011).

35 42 U.S.C. §1973

36 Reilly, *supra* note 3.

37 Br. in Opp'n of Summ. J., *supra* note 34, at 37-38.

38 Tom Shoenberg, *Texas Used 'Improper Standard' for Voter Maps, Court Rules*, BLOOMBERG BUSINESSWEEK, Nov. 10, 2011, available at <http://www.businessweek.com/news/2011-11-10/texas-used-improper-standard-for-voter-maps-court-rules.html>.

39 *Id.*

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41 *Id.*

42 *Id.*