

5 Trends Shaping Redistricting

New dynamics are transforming the once-a-decade exercise of drawing political boundaries.

BY MORGAN CULLEN AND
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In just a few weeks, candidates across the country will be elected to newly redrawn state legislative and congressional districts. Over the past two years, state legislatures have painstakingly redrawn district boundaries to reflect the population shifts identified in the 2010 Census.

It's not an easy task, but extremely important. How lines are drawn shape a state's partisan landscape for years. If maps are drawn improperly, the process can mire a state in legal challenges, fuel public cynicism toward government and add to partisan acrimony.

Many traditional geographic, legal and political constraints govern how states go about redrawing districts. But there are some new factors transforming the process. Here are five that had a significant impact on the latest redistricting cycle.

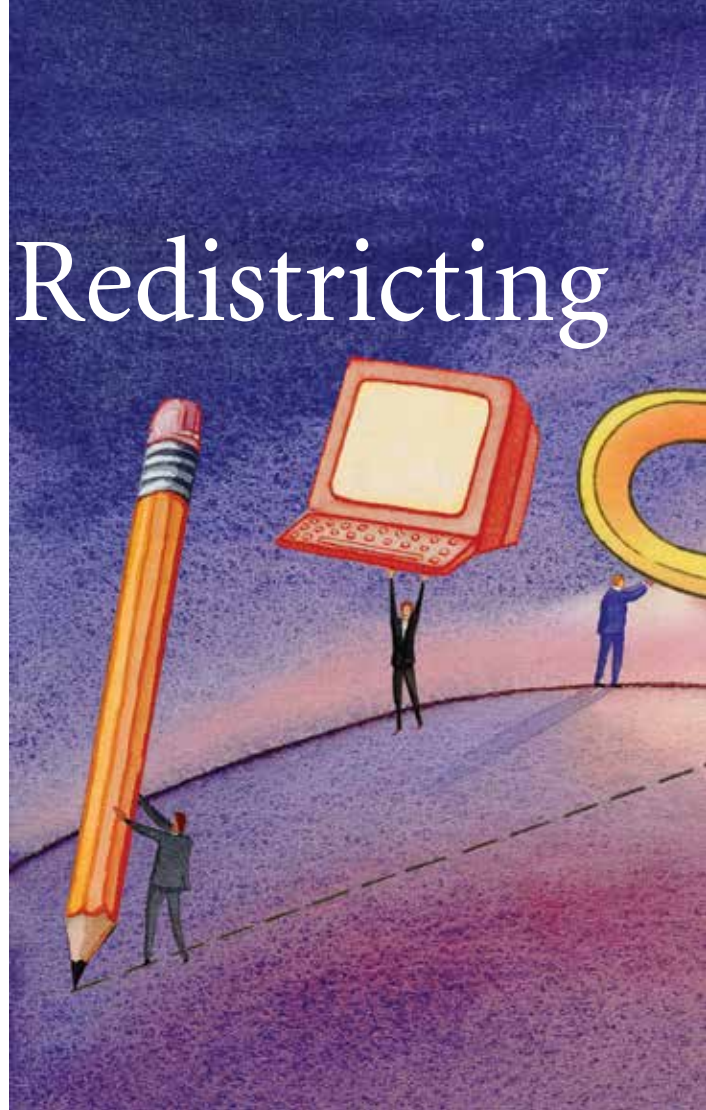
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SHIFTING SOUTH BY SOUTHWEST

What the decennial Census discovers about population changes is the basis for how maps are redrawn. It came as no surprise to most Americans when the 2010 Census revealed the U.S. population continues to migrate south and west. Between 2000 and 2010 the nation's population as a whole grew at a slower rate than in previous decades, averaging just 9.7 percent. But not everywhere. Nevada's population grew a whopping 35.2 percent in those 10 years. And Texas gained 4.3 million people, more than the total population of half the states.

This demographic shift had a huge impact on congressional reapportionment: Southern and Western states picked up 10 new congressional seats from states in the Northeast and Midwest.

Another notable trend from the last Census was the large growth in minority populations. Every major ethnic or racial minority group gained in proportion to the total U.S. population, and as a whole grew 29 percent. The Hispanic population grew four times faster (43 percent) than the population as a whole, mostly in the South and West, and now comprises 16 percent of



the total population. Nearly half of the population in the West (47 percent) is now from a minority group.

The Census also revealed that Texas now has a "majority-minority" population, and joins California, Hawaii, New Mexico and Washington, D.C., in having non-Hispanic whites make up less than 50 percent of all residents, according to the Census Bureau.

This shift had a big effect on how congressional and state legislative maps were drawn in many states. Several states added new majority-minority statehouse and congressional districts to ensure fair representation of minority groups.

For example, with more than 80 percent of the population growth in Texas attributed to Latinos, a court-drawn interim plan added 13 new majority-minority districts to the House, for a total of 64 out of 150 seats. It also added two new majority-minority congressional districts—one Latino and the other a combined Latino/African-American.

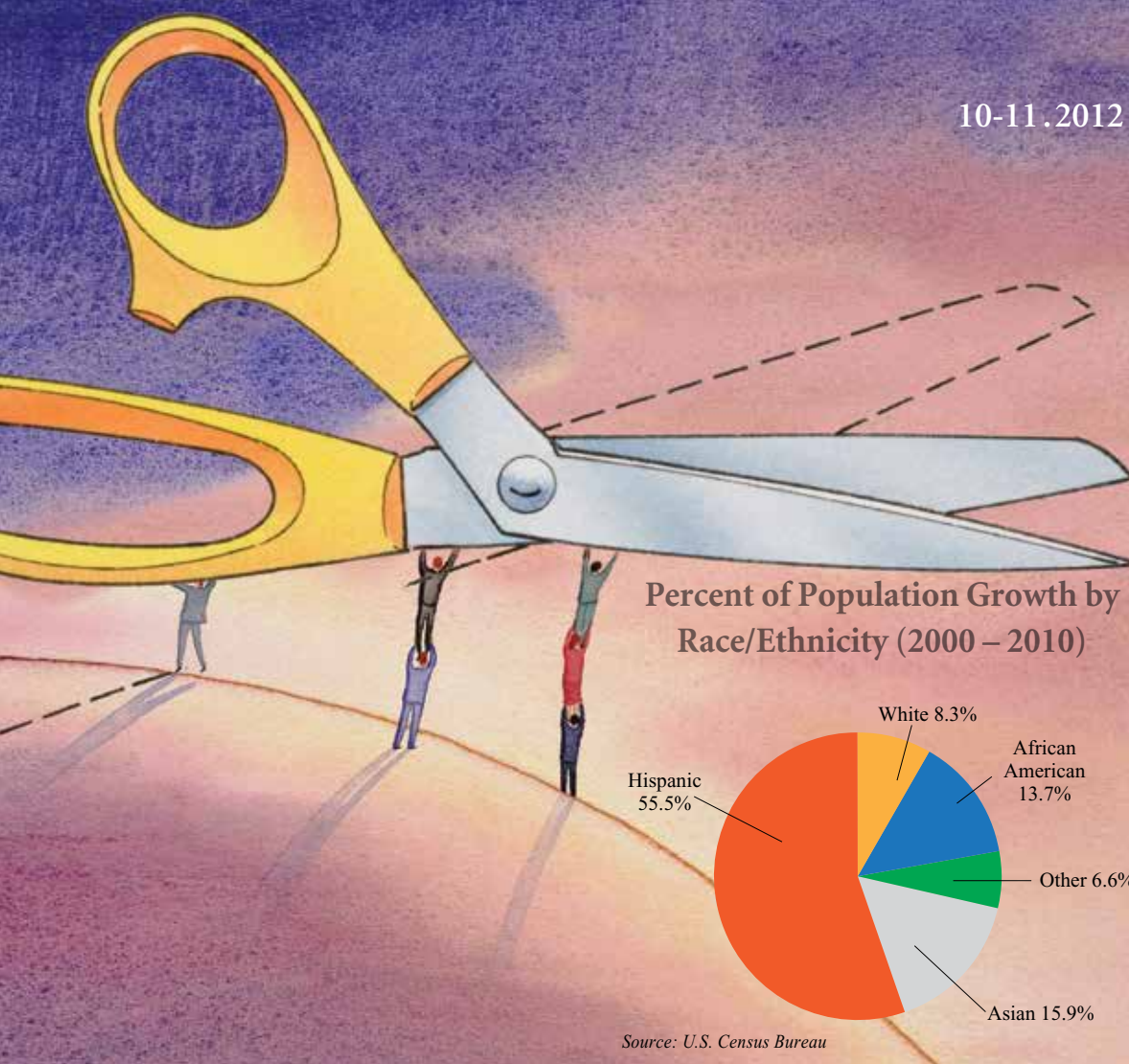
"Over my 20 years plus in the Legislature, I have seen the Hispanic population in Texas surge at a rapid pace," says Senator Leticia Van De Putte (D) of San Antonio. "It is time for our representatives in state government to truly reflect the makeup of our state."



Senator
Leticia
Van de Putte (D)
Texas

That's often easier said than done. The Texas Legislature finished drawing new congressional and state legislative lines in early 2011. But this August, a

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U.S. District Court found that both the congressional and legislative plans violated the Voting Rights Act of 1965, depriving minorities of adequate representation. The Texas attorney general wasted no time in saying the state would continue elections based on the interim plan and would appeal the case to the U.S. Supreme Court.

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TAPPING INTO HIGH-TECH TOOLS

Ten years is a long time in the world of technology. Rapidly changing redistricting software, databases and computer systems challenge legislatures—and their budgets—to keep up-to-date. But legislatures have little choice not to, considering the growing needs and expectations of lawmakers, staff and the general public, as well as the many benefits new high-tech tools offer.

The Internet took communication and collaboration this cycle to a whole new level. Legislators made proposals, received feedback and offered alternative plans electronically. New features and data were distributed to those redrawing boundaries in real time, greatly increasing uniformity and accuracy. New Web appli-

cations allowed the public to examine proposed plans and follow the process.

Florida citizens were among those able to track and react to the process through a Web application. “With the tools we had at our disposal, redistricting in 2010 certainly offered broader access and transparency for anyone who wanted to be involved in the process,” says John Guthrie, a software engineer with the Florida Senate. “With the combination of our online mapping software and our public hearings, the public played a major role in all levels of Florida redistricting,” he says.

The Brookings Institution, the American Enterprise Institute and Azavea offered redistricting software that allowed users to draw their own plans and compare them to maps produced by legislatures.

Michael McDonald, a professor at George Mason University, and Micah Altman, a research librarian at MIT, played a key role in designing the new software. “Providing this software to the general public really pulled back the curtain on the redistricting process in a way that had never been done before,” says McDonald. Citizens obtained the same demographic and political data as legislatures through a database created by the Harvard Precinct Election Archive.

Another new tool, created by Nate Persily of Colum-

Redistricting By the Numbers

9 and parts of 7

States required to get federal approval for redrawn maps

185

Court cases filed challenging redrawn district boundaries since 2010

3 to 18

The range of members on redistricting commissions in the 13 states that use them

1

State legislative districts added nationwide during redistricting

7,383

Total state legislative seats after redistricting

7,838

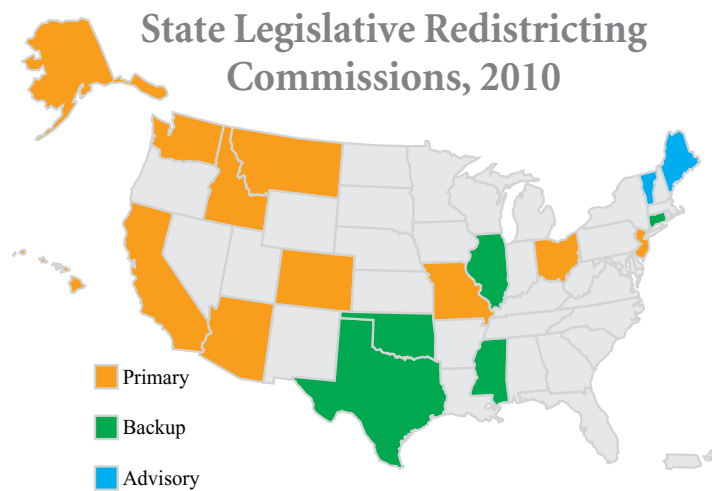
Total state legislative seats in 1963

8

States that gained congressional seats after reapportionment

10

States that lost congressional seats



Note: In addition, commissions for congressional redistricting are used in 14 states: Arizona, California, Delaware, Idaho, Indiana, Iowa, Maine, Massachusetts, Montana, New Jersey, New York, Rhode Island, Vermont and Washington.

bia Law School, offered nonpartisan congressional redistricting plans for all 50 states. The maps were produced by his law students using Caliper Corporation's Maptitude software, and were available through their website, DrawCongress.org. The students' maps received a lot of news coverage, and during a hearing on Connecticut's new maps were referred to by the state supreme court as fine examples of what "good" government plans should look like.

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A BOOST FOR CITIZEN COMMISSIONS

Every state is constitutionally required to undergo redistricting, but they aren't required to do it in the same way. In 37 states, the authority lies with the legislature. In the rest, the job now goes to a board or commission. Independent commissions, used in Alaska, Arizona, Idaho, Washington and most recently California, prohibit government officials from participating in order to insulate the process from partisan politics.

California citizens approved ballot initiatives in 2008 and 2010 directing the Legislature to transfer responsibility for redistricting to an independent, nonpartisan commission of 14 members to be appointed by the state auditor from a pool of qualified applicants.

The move was significant, affecting a large number of congressional and legislative districts. It took the commission's five Democrats, five Republicans and four unaffiliated citizens eight months to redraw the lines. They attended 23 public hearings and received more than 30,000 public comments. "Many people thought it would be impossible for us to pass a final plan with a supermajority," says Maria Blanco, a commission member from Los Angeles. "But everyone who sat on the commission, regard-

less of their political persuasion, wanted to reach consensus and draw a plan that truly reflected the diverse geography and demographic makeup of our state."

They finished the maps in August 2011, but the state Republican Party challenged the state Senate map as unfairly favoring Democrats. Tony Quinn, a former legislative staffer turned political commentator, was a vocal opponent of what he called a "clearly partisan plan" drawn by the commission. He argued that it will "obviously give the Democrats a two-thirds majority in the state Senate." The GOP filed a lawsuit and gathered enough signatures for a ballot measure to overturn the commission's map. They withdrew their support for the ballot measure after losing the court battle, although it remains on the ballot.

Plans drawn by commissions in Arizona and Colorado faced intense partisan opposition as well. Washington's four-member commission, made up of two Republicans and two Democrats, however, met with success. The group's unanimously approved maps faced little opposition from either party.

States have adopted commissions to insulate the redistricting process from politics. But the process is never entirely immune from it, and commissions don't necessarily produce better plans, according to research conducted by Seth Maskett, a professor of political science at the University of Denver.

"From my own research, commissions don't seem to draw any more balanced districts or competitive elections than partisan legislatures do. Redistricting mostly tinkers around the edges of the huge historic trend toward greater polarization."

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TACKLING THE PRECLEARANCE TEST

Since 1965, Section 5 of the Voting Rights Act has required federal approval—preclearance—of any changes to voting laws or procedures in nine states and portions of seven others that have had a history of discrimination. Thousands of local jurisdictions with elected governing bodies fall under Section 5's provisions, from the local school board to the state legislature.

States have the option of requesting preclearance from the U.S. District Court for the District of Columbia or the U.S. Department of Justice, which is cheaper and simpler. Redistricting always brings an onslaught of preclearance requests, and states or jurisdictions usually opt for approval from the Department of Justice. But during this cycle, "an unprecedented trend occurred," according to Justin Levitt with Loyola Law School. States filed for preclearance through both avenues, or with the court exclusively, at a much higher rate.

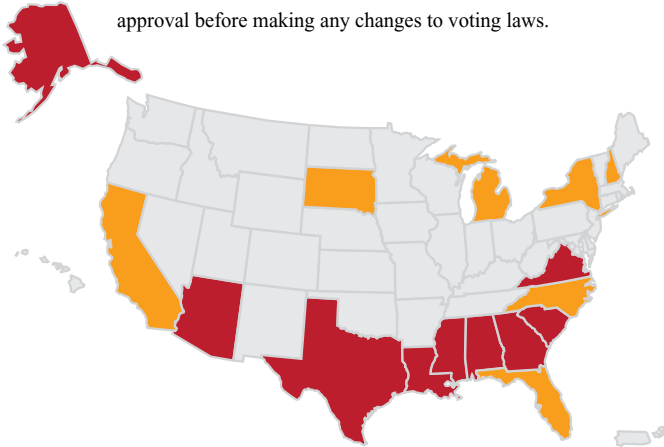
One legal development may explain the noticeable change. The 2009 U.S. Supreme Court decision in *Northwest Austin Municipal Utility District No. 1 v. Holder* cast some doubt on the continuing need for preclearance and whether the Voting Rights Act's requirements were still applicable to the same group of states identified decades ago. The court decision suggested that



Senator
Kell Seliger (R)
Texas

Section 5 of the Voting Rights Act of 1965

Nine states and sections of seven others must receive federal approval before making any changes to voting laws.



■ Entire state is under the requirement.

■ Only portions of the state are under the requirement.

Source: U.S. Department of Justice, 2012

questioning the continuation of preclearance was a legitimate pursuit.

“Section 5 is no longer corrective—it is now punitive,” says Texas Senator Kel Seliger (R). He argues preclearance is no longer needed because “there will always be recourse through the court system.”

Texas, along with Alabama, Florida and Georgia have disputed the continuing need for preclearance in their filings with the court. And while Florida and Georgia received preclearance of their redrawn districts, the rejection of Texas’ plans puts the state on the fast track to challenge the constitutionality of Section 5 before the U.S. Supreme Court.

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PUTTING PRISONERS IN THEIR PLACE

More and more jurisdictions are deciding to count prisoners at their “home” addresses instead of their prison locations. Maryland was the first to reallocate prisoners during this round of redistricting. California, Delaware and New York quickly followed suit, passing similar laws. This practice counters what critics claim is “prison gerrymandering”—the distorted political representation that results in areas with large prison populations.

In New York, for example, critics claimed the upstate region had an inflated representation in the Legislature because of the more than 58,000 inmates located in the area. Reallocating the prisoners in the most recent population count resulted in a loss of a state Senate district in that region.

The Impact on Elections

With the election just a month away, speculation over which party will have the upper hand is at a fever pitch. Many candidates face the uncertainty of running in new and untested districts; 428 congressional districts in 43 states (seven states have only one representative) and nearly all state legislative districts have been redrawn.

Because of the Republican landslide in the 2010 elections, the GOP had a clear political advantage over the redistricting process. Republicans unilaterally controlled redistricting for 210 congressional seats (in 18 states) and 2,498 state legislative seats (in 21 states).

Democrats unilaterally controlled the process for 44 congressional seats (in six states) and 885 state legislative seats (in eight states).

Since 2010, 193 court cases have been filed, and 68 are still active. This is far more than the 149 cases (40 states) filed in the 2000s and the 150 cases (41 states) filed in the 1990s, according to data compiled by NCSL. Courts have redrawn plans in Colorado, Connecticut, Kansas, Minnesota, Mississippi, New Mexico, Nevada, New York, Texas and Wisconsin.

Those against reallocation argue towns that have prisons incur costs and have unique concerns from housing inmates nearby, justifying the increase in political representation.

Adjusting the prisoner data is no small feat. Searching records and interviewing prisoners to obtain their last home addresses—if they had one—can be time-consuming and expensive.

Delaware, after passing a reallocation law for the 2010 redistricting cycle, found the costs to be too high. Lawmakers decided to postpone the practice until 2020.

Maryland faced a different challenge. The state successfully reallocated its state prisoners to their home addresses, but the federal government, citing privacy concerns, refused to provide home addresses for the federal prisoners.

Despite these obstacles, lawmakers in Connecticut, Illinois and Massachusetts are considering similar laws, according to the Massachusetts-based Prison Policy Initiative. They are supported by recent court actions. A U.S. District Court upheld Maryland’s prisoner reallocation law in December of 2011, and the U.S. Supreme Court endorsed the practice by denying an appeal, earlier this year.

With this redistricting season mostly behind us (except where plans are still in courts) lawmakers can take a little breather, but not for long. The next round will be here before we know it, and one thing we can be sure of: 2020 will bring its own set of legal developments, innovations, technology and population shifts to the drawing table.