

# THE NEW ART AND SCIENCE OF TEXAS REDISTRICTING:

## WHAT ABOUT PUBLIC POLICY?

ACCORDING TO THE TEXAS LEGISLATIVE COUNCIL'S technically correct definition, redistricting is "the process of redefining the geographic boundaries of individual election units such as legislative or congressional districts or county election precincts."<sup>1</sup> In reality, redistricting is much more; it is the art and science of balancing political and legal issues. The Voting Rights Act of 1965, as substantially revised in 1982, requires the State of Texas to obtain prior federal approval of redistricting plans and allows members of minority groups to challenge plans.<sup>2</sup> However, the standard that the United States Supreme Court has set for partisan gerrymandering by major political parties is exceedingly difficult to meet.<sup>3</sup>

Therefore, redistricting in Texas always has been, and always will be, political and partisan. The political and partisan question is one of degree. The new art and science of redistricting has changed the equation, and public policy is the big casualty. What is new as far as the art and science of redistricting?

### THE ART AND SCIENCE OF REDISTRICTING

The art of redistricting has revolved around constitutions, statutes, and lawsuits. Federal law requires states to redraw congressional districts after release of the United States census every ten years.<sup>4</sup> The Texas Constitution requires the Texas Legislature to draw new Texas House and Senate districts in the first regular Texas legislative session after the census results.<sup>5</sup> For most of its history, the Texas Legislature has only undertaken redistricting as required after the census or as a result of lawsuits and subsequent court decisions. As we will see, this scenario, and the art of redistricting, changed dramatically when the Texas Legislature redrew congressional districts in 2003.

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For many years the science of redistricting was a traditional exercise involving pencils, papers, and maps. The science of redistricting in Texas began a huge transformation with the introduction of computer technology in the 1991 legislative session.

*THE NEW SCIENCE OF REDISTRICTING:  
1991 DAWN OF REDAPPL*

The computerized application, RedAppl, was in its infancy during 1991 redistricting. New districts were drawn using computerized modeling, but the system was cumbersome and limited.<sup>6</sup> Members of the Legislature went, one by one, to the Texas Legislative Council, where a Legislative Council staff member used one of eight computers to draw district lines according to the legislator's specifications. However, the new computer technology allowed legislators to draw district lines with much greater precision than in prior years.

**THE REALITY OF REDISTRICTING: 1990s**

As a freshman member of the Texas Legislature in 1991, I experienced Texas House, Senate, and U.S. congressional redistricting firsthand. I made my appointments and went to the dark room in the Texas Legislative Council to sit with a staff member and use RedAppl. The experience was not user friendly, but it definitely was far superior to using pencil and paper.

In 1991, from a public policy standpoint, I and most other legislators saw redistricting as a necessary, but unpleasant, process for the good of democracy. I considered redistricting vitally important to maintain the sacrosanct democratic mandates of "one-person, one-vote" and "equal protection."<sup>7</sup> However, redistricting was unpleasant because of its inherently tedious and political nature, with incumbents seeking protection, political parties seeking power, and other interests pursuing agendas. Also, as an elected state representative, I realized that redistricting was consuming the legislative agenda, leaving little time for the public policy issues important to my constituents. At the time, redistricting was not an endeavor that the majority of legislators would agree to engage in more frequently than the every ten years required by law.

During the 1991 regular session, the Texas Legislature passed redistricting bills for the new Texas House and Senate districts. It drew the new congressional districts in an August 1991 special session. Predictably, passing redistricting bills was far from the end of the process. Lawsuits were noth-

ing new and had been part of the art of redistricting for years.

*COURTS AND SPECIAL SESSIONS*

Various interests filed a number of voting rights lawsuits challenging the house, senate, and congressional districts that the Texas Legislature devised in 1991. The Governor called special sessions on redistricting in August of 1991 and January of 1992. Ultimately, the state of Texas held the 1992 Texas House and Senate elections in districts that the court redrew and substantially changed.<sup>8</sup> As a result of court actions, the state held the 1994 house and senate elections in districts redrawn by the Legislature in 1992 with significant changes in the senate districts.<sup>9</sup> After additional court actions, the Legislature made changes in the 1997 regular session to the Texas House and Senate districts for the 1998 elections.<sup>10</sup>

Plaintiffs filed a lawsuit in federal court in 1994, challenging the congressional districts. The court voided the primary elections in 13 of the 30 State of Texas Senate districts and required special elections in those districts according to court-drawn interim districts.<sup>11</sup> When the Texas Legislature was unable to draw new districts, the court required its plan to be used for the 1998 elections.<sup>12</sup>

**1993 LEGISLATION: THE ART**

The 1991 redistricting saw the debut of the RedAppl computerized system, but the art of redistricting remained largely unchanged. Incumbents attempted to draw districts to their advantage, challengers with sway attempted to draw districts to their advantage, the dominant political party sought to maintain power, and voting rights challenges occurred. After all was said and done, incumbent Republican State Senator Jeff Wentworth of San Antonio found that his house was no longer in his district, and he had to move.<sup>13</sup>

In the 1993 Texas legislative session, Senator Wentworth introduced a constitutional amendment to change business as usual and the art of redistricting in Texas. Wentworth's proposed constitutional amendment took legislators out of the process directly, but allowed the Texas House and Senate to each appoint two Democrats and two Republicans to a redistricting board. At the time, many Republicans, who were in the minority in the Texas Legislature, supported the constitutional amendment, and most Democrats did not.<sup>14</sup> Needless to say, the constitutional amendment did not pass

the Legislature. Nevertheless, a number of other states are using some type of redistricting board. Senator Wentworth has continued to introduce his constitutional amendment in every regular legislative session since 1993.

### THE NEW SCIENCE OF REDISTRICTING: 2001 AGE OF REDAPPL

By 2001, the Texas Legislative Council had made quite significant improvements to the computerized redistricting modeling application, RedAppl.<sup>15</sup> The 2001 RedAppl system ran on a PC in each member's Capitol office, and it was much faster and more user-friendly, with new features.<sup>16</sup> In addition, legislators were able to review and print some plans and maps in their offices, and proposed public plans were accessible to citizens on an Internet application called RedViewer.<sup>17</sup>

Not only was the 2001 version of RedAppl more convenient for legislators, it also was not limited any longer to legislators' use. Since RedAppl was available on PCs in the Texas House and Senate members' offices, political consultants, political party strategists, and a host of other players could draw districts and maps with laser-like precision. A whole new age in the science of redistricting had arrived with enhanced tools for incumbents seeking protection, political parties seeking power, and other interests pursuing agendas.

#### 2001 HOUSE AND SENATE REDISTRICTING

In the 2001 regular session, the Texas House passed a bill redrawing the Texas House and Senate districts. However, the situation was much different in the Republican-controlled Texas Senate. There, Senator Jeff Wentworth chaired the Redistricting Committee, which had a membership of four Democrats and four Republicans. The Redistricting Committee devised a map that seven of its eight committee members voted for. Nevertheless, the map failed to pass the Texas Senate because the Republican majority believed that it could get a more partisan Republican map by letting the Legislative Redistricting Board draw the map.<sup>18</sup>

#### THE LEGISLATIVE REDISTRICTING BOARD (LRB) IN 2001

According to the Texas Legislative Council, "The LRB was created in 1948 by constitutional amendment to ensure that the state would 'get on with the job of legislative redistricting which had been neglected or purposely avoided for more than twenty-five years.'"<sup>19</sup> The LRB is authorized to

create Texas House and Senate districts if the Texas Legislature fails to do so in the first regular session after the census, as required by the Texas Constitution.<sup>20</sup> The LRB has five members: the lieutenant governor, speaker of the house, attorney general, comptroller, and land commissioner.<sup>21</sup>

The new Texas House and Senate districts devised by the LRB helped change the balance of political party power in the Texas House from Democratic to Republican, paired a number of incumbents against each other in the newly drawn districts, and assisted some challengers.

#### 2001 CONGRESSIONAL REDISTRICTING

The Texas House passed a congressional redistricting plan in the 2001 regular session, but the plan died in the Texas Senate. Governor Perry refused to call a special session, even though the law allows special sessions for congressional redistricting. (In Texas, only the governor can call special sessions, and they are not allowed for Texas House and Senate redistricting.) Governor Perry stated, "I believe that Texans would be even more disappointed if we expend considerable sums of taxpayer money to call the legislature into a special session that has no promise of yielding a redistricting plan for Congress."<sup>22</sup> Hence, the task fell to a three-judge federal panel, which added two new Republican congressional districts.

### THE NEW DYNAMICS AND ART OF REDISTRICTING: 2003

The governor, lieutenant governor, speaker of the house, and Texas Legislature took actions in 2003 that dramatically changed the dynamics and art of redistricting. At the urging of Republican U.S. House Majority Leader Tom DeLay of Texas, the Texas Legislature took up a congressional redistricting bill in the 2003 regular session, without any statutory, constitutional, or court mandate.<sup>23</sup> DeLay wanted the congressional districts redrawn to increase the number of Republicans in the U.S. House of Representatives.<sup>24</sup> Months of mammoth political brawling ensued.

Of course, the Democrats in the Texas Legislature were not amused by the prospect of increasing the number of Republican U.S. House districts at the bidding of Tom DeLay. In May of 2003, at the end the regular session, most of the Democrats in the Texas House fled to Ardmore, Oklahoma, and broke the quorum. The 2003 regular session ended without new congressional districts, but

the saga was far from over. By its end, the 78th Texas Legislature had three special sessions on congressional redistricting.

#### *FIRST SPECIAL SESSION*

Governor Perry called the first special session on congressional redistricting in July of 2003. However, the special session ended with no action on congressional redistricting because the Texas Senate lacked the 16 vote, two-thirds majority to bring the bill to the floor for consideration.<sup>25</sup> Ironically, the Texas Senate has the two-thirds rule in order to require substantial bipartisan consensus before a bill reaches the floor.<sup>26</sup>

#### *SECOND SPECIAL SESSION*

The second special session on congressional redistricting immediately followed the failed first special session in 2003. However, 11 of the 12 Senate Democrats already had fled to Albuquerque, New Mexico, leaving the Texas Senate unable to make a quorum. The 11 Democratic Senators voiced their disapproval of the lieutenant governor's decision to eliminate the Texas Senate's two-thirds support rule to bring a bill to the Senate floor.<sup>27</sup> Even the imposition of monetary fines and the removal of budgets, cell phones, parking places, and other privileges by the Republican Lieutenant Governor, David Dewhurst, and the Republican members of the Texas Senate (except Republican Senator Bill Ratliff, who stayed home in his district to express his disapproval) did not compel the Democrats to return. Thus, the second special session ended with, yet again, no action on congressional redistricting.<sup>28</sup>

#### *THIRD SPECIAL SESSION*

Governor Perry called the third, and final, special session on congressional redistricting in September of 2003. Democratic Texas State Senator John Whitmire broke ranks with the Democrats in New Mexico, giving the Texas Senate a quorum and forcing the Democrats to return and fight in the Legislature. This time, with a quorum present and the two-thirds rule suspended, a congressional redistricting bill came to the floor of the Texas Senate and passed.

The congressional redistricting bill also passed the Texas House, and Governor Perry approved it. This phase of the Texas 2003 congressional redistricting saga came to an end not a moment too soon. Each special session cost the State of Texas approximately \$1.7 million, the public was fed up, and the governor's and lieutenant governor's approval

ratings dropped with each special session.<sup>29</sup> Many members of the public and press wondered why the Texas Legislature could spend time and money on congressional redistricting and not on important state issues. What about public policy?

### **PUBLIC POLICY CONSIDERATIONS**

Redistricting is the art and science of balancing political and legal issues; the balance in the State of Texas has changed to the detriment of public policy. Redistricting in the Texas Legislature has always been political and partisan, but it has reached higher levels with the convergence of new art and science. Since the 1990s, the art of redistricting has changed with a willingness to redraw districts without a statutory, constitutional, or court mandate, and the science of redistricting has changed with computer technology enabling people to draw districts with laser-like precision.

The tools exist for incumbents of either party to draw extremely precise districts for self-preservation, and the motivation exists for whichever political party is in power to maintain dominance. A huge concern from the public policy standpoint is can we ever put the genie back in the bottle? The Texas Legislature cannot tend to important matters of public policy if it is constantly drawing new districts instead of only undertaking redistricting every ten years as required by law.

Public policy in the state of Texas has been the big casualty of the new art and science of Texas redistricting. The cherished bipartisan nature of the Texas Senate, which has been such an asset to public policy, has been called into question. Precious legislative time for considering major public policy matters has been squandered. As Senator Wentworth recently stated, "Voters want the Legislature to work on health care, tax policy, and public education."<sup>30</sup>

A Travis County grand jury has indicted several of Tom DeLay's close associates for their alleged involvement with illegal corporate contributions in the 2002 Texas elections.<sup>31</sup> For the 2005 Texas legislative session, legislators, in a bipartisan effort, have filed a new round of bills calling for recording all legislative votes and restricting corporate and union campaign contributions. Once again, Senator Wentworth will file his constitutional amendment to limit the Texas Legislature's direct involvement in redistricting by creating a bipartisan redistricting board.<sup>32</sup> In a recent interview, Wentworth said that the process should be balanced and fair for Texans.<sup>33</sup> "I oppose a one-party Texas, and all in-

cumbents should be in danger of being tossed out if their constituents are not happy," he added.<sup>34</sup>

The new congressional districts achieved Tom DeLay's goal in the 2004 congressional elections, with Republicans winning 21 of Texas' 32 seats in the U.S. House of Representatives. However, it may not be over yet. In a new twist, because of a ruling in another redistricting case, the U.S. Supreme Court sent the Texas Democrats' redistricting case back to the 5th U.S. Circuit Court of Appeals for reevaluation.<sup>35</sup> Redistricting could end up back at the Supreme Court, and then back in the Texas Legislature. There even could be new Texas congressional districts and special elections in two years, and, of course, there always could be a new round of lawsuits.

What about public policy? We shall see.

**LBJ**

## NOTES

1. Texas Legislative Council, *Guide to 2001 Redistricting* (Austin, Tex., February 2000), p. 27.
2. Texas Legislative Council, *State and Federal Law Governing Redistricting in Texas* (Austin, Tex., March 2001), p. 2.
3. *Ibid.*, p. 116.
4. *Ibid.*, p. 7.
5. *Ibid.*, p. 5.
6. Texas Legislative Council, *Guide to 2001 Redistricting*, p. 1.
7. *Ibid.*, p. 3.
8. *Ibid.*, p. 13.
9. *Ibid.*
10. *Ibid.*, p. 14.
11. *Ibid.*, p. 13.
12. *Ibid.*, p. 14.
13. Telephone interview by Sherri Greenberg with Senator Jeff Wentworth, December 2, 2004.
14. *Ibid.*
15. Texas Legislative Council, *Guide to 2001 Redistricting*, p. 1.
16. *Ibid.*
17. *Ibid.*
18. Wentworth interview.
19. Texas Legislative Council, *State and Federal Law Governing Redistricting in Texas*, p. 8 (endnote 25).
20. *Ibid.*, p. 9.
21. Texas Legislative Council, *Guide to 2001 Redistricting*, p. 8.
22. Dave McNeely, "Perry, GOP do a 180 on redistricting," *Austin American-Statesman* (July 3, 2003).
23. *Ibid.*
24. *Ibid.*
25. *Ibid.*
26. Dave McNeely, "Dewhurst at crossroads in redistricting in Senate," *Austin American-Statesman* (July 16, 2003).
27. Editorial, "Time to Deal," *Dallas Morning News* (August 15, 2003).
28. Ken Herman, Laylan Copelin, and David Pasztor, "Democrats face another slap on the wrists," *Austin American-Statesman* (August 16, 2003).
29. Eric Allen and Associated Press, "Perry calls third special session," *news8austin.com*, September 9, 2003. Online. Available: <http://www.news8austin.com/shared/print/default.asp?ArID=83326>.
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32. Wentworth interview.
33. *Ibid.*
34. *Ibid.*
35. "Back to the Congressional drawing board?" *Austin American-Statesman* (October 18, 2004). Online. Available: <http://statesman.printthis.clickability.com/pt/cpt?action=cpt&title=statesman.com+%7C>.

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