



Congressional and State Legislative Redistricting Litigation, 2011-2012

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With the completion of the 2010 Census, state legislatures are now in the process of completing the decennial redrawing of congressional, state, and local electoral districts. Unfortunately, the process of creating new boundary lines is highly partisan and often comes at the expense of voters. Legislators attempt to gain political advantages and protect incumbents by gaming the redistricting process and gerrymandering districts which often leads to legal challenges. A number of states are currently facing litigation over the redistricting process. In Nevada, for example, political gridlock caused the legislative session to end before the passage of redistricting legislation meaning the courts will be tasked with drawing the new lines. Likewise, Maine is facing a court order commanding the legislature to adopt a redistricting plan before the 2012 elections.

Legal challenges to redistricting plans in 2011 can be grouped into four broad categories.

1. **Timeliness of redistricting:** The first category of challenges come about because legislatures are not redistricting even though the existing districts are out-of-date and need to be updated with current data. These challenges typically occur in states where the law does not require redistricting immediately following the release of Census data. The goal of this type of litigation is to either have a court order the legislature to redistrict, or to have the court create a redistricting plan itself. States with pending litigation that fits in this category include Colorado, Maine, Minnesota, Nevada, Oregon and Texas; a federal court already has ordered Maine to move ahead with congressional redistricting.
2. **Vote dilution:** The second category of challenges arises when redistricting is believed to be unconstitutional because it dilutes a particular group's vote. These lawsuits are brought in cases of partisan gerrymandering, racial gerrymandering and other protected groups. These challenges often turn on racial minority voting rights as established in the Voting Rights Act (VRA). Conversely, there are also constitutional challenges to the continued validity of the VRA itself. States with pending litigation of this type include: Alabama, New Jersey, Texas and Washington.

3. **Who to count – and where:** The third type of challenge revolves around the question of which population was counted to determine the ideal population of each district. People can argue whether the population of a district should be determined by the total population, the voting age population, the citizen voting age population or other measures. There is also a debate about whether prisoners who are incarcerated in a district should be counted as part of the population of that district or of the district where they resided before their incarceration. States with this type of challenge include New York and Texas.
4. **Redistricting process:** The fourth category of challenges that surround redistricting is the composition and legality of the body which creates the redistricting plan. These lawsuits tend to challenge the method by which a redistricting commission is created or state law which governs the redistricting process. The states with pending litigation on these topics include Florida, Illinois and Oklahoma.

The following overall state-by-state analysis was last updated on June 20, 2011. The summaries below reflect major pending litigation regarding the redistricting process to the best of FairVote's knowledge but may not reflect an entirely exhaustive list. Updates to individual states in the future will be noted at the end of that state's write-up. If you have comments or additional information about the report, please send an email to: jsroka@fairvote.org.

Alabama

Court: Federal
Status: Justice Dept. filed a Notice of Supplemental Information on June 16
Category: Vote dilution
Last Updated: June 20, 2011

Following the 2010 Census, Alabama was apportioned seven congressional seats, the same that it had for the previous ten year period. Despite not changing the number of seats, Alabama, like all states, must redistrict to account for changes in the population. In years where the state legislature is involved in redistricting, such as 2011, Alabama's [redistricting](#) is done by a 22-member committee. The committee consists of: 4 members appointed by the state's Speaker of the House, 4 appointed by the Lieutenant Governor, 1 member of the state Senate from each congressional district and 1 member of the state House of Representatives from each congressional district. Republicans control both chambers of the state legislature and the governorship, but have not yet submitted a plan. Once the legislature passes a plan the governor has to sign it. Because Alabama is covered by Section V of the Voting Rights Act (VRA), it will have to submit the plan to the U.S. Department of Justice, or the U.S. District Court for the District of Columbia, for final approval.

No congressional or state legislative redistricting lawsuits have been filed yet but litigation with potential national implications has emerged from Shelby County, which has filed a federal lawsuit (*Shelby County v. Holder*) [challenging](#) the county being covered by the federal Voting Rights Act (VRA). It argues that its redistricting policy should not be subject to Justice Department approval under VRA's Section V because if data from the county's last three presidential elections was used, Shelby County would not have qualified for coverage under Section IV. According to Shelby County, Congress can only impose sanctions that target current violations and therefore its authority over the county is no longer "congruent or proportionate" as required by the Supreme Court. The Justice Department is defending the VRA and argues that as long as the federal government is acting within established legal limits it only needs to have a "rational basis" between the goals it is attempting to achieve and its actions in achieving those goals. It further argues that, even under the "congruent and proportionate" standard, the continued use of the VRA is warranted because current data demonstrates a current pattern of underrepresentation of minorities in Alabama. For all of the filings related to *Shelby County* please refer to this [litigation page](#).

Colorado

Court: Federal
Status: A hearing is set for the week of October 17
Category: Timeliness of redistricting
Last Updated: June 20, 2011

The 2010 Census did not change the apportioning of Colorado’s Congressional seats, with the state keeping the same seven seats that it held after the 2000 Census. While Colorado uses a commission for state legislative redistricting, Colorado’s [redistricting](#) process for the U.S. House entails members of both chambers of the state legislature creating a plan which then gets voted on by the full legislature, subject to a veto by the governor. After the results of the 2010 Census were delivered, the legislature—with divided control between Republicans controlling the house and Democrats the senate—was [unable](#) to compromise on a single plan and the time period in which they had to authorize a plan passed. Pursuant to law, a federal district court is now responsible for creating a redistricting plan. Both the Democratic and Republican parties have [filed lawsuits](#) asking the court to redraw the districts. Both lawsuits claim the voting districts in place prior to the 2010 Census do not reflect the current population and are therefore unconstitutional under the “one person, one vote” requirement created by Article I, Section 2 of the U.S. Constitution as well as the Equal Protection and Privileges and Immunities Clauses of the 14th and 15th Amendment. Both suits will [be heard](#) at the same time on October 17.

Florida

Court: Federal
Status: Both parties filed motions for summary judgment which will be heard on July 29
Category: Redistricting process
Last Updated: June 20, 2011

Following the 2010 Census, Florida gained two U.S. House seats, which brought Florida’s seat total to twenty-seven. The two new seats were added through Florida’s redistricting process which consists of the full state legislature [creating](#) a committee composed of its members and the committee creating a plan guided by certain criteria, with their plan then to be passed as a joint resolution and approved by the state supreme court. In addition, because much of Florida is covered by the VRA, any changes to Florida’s districts must be approved by either the U.S. Justice Department or the U.S. District Court for the District of Columbia.

During the 2010 election cycle the citizens of Florida [passed](#) two amendments to the state constitution which stated that legislative and congressional districts had to be contiguous, compact, equal in population and, to the fullest extent possible, make use of existing city, county and geographic boundaries. The amendments also prohibited districts which are drawn to favor or disfavor incumbents or political parties or which deny or abridge the equal opportunity of racial or language minority groups’ ability to participate in the political process or diminish their ability to elect the representatives they choose. Although there was debate about the [timing](#) of submission for preclearance, the amendments were [submitted](#) and the Justice Department pre-cleared the amendments on May 31, 2011. However, incumbents Congressman Mario Diaz-Balart and Congresswoman Corrine Brown [challenged](#) the amendment that deals with congressional seats in a lawsuit filed in federal court. The Congressman claims the amendment violates the U.S. Constitution’s Elections Claus. (Article I, Section 4, Clause 1)

In the lawsuit, the plaintiffs are seeking a declaratory judgment that the amendment is unconstitutional and an injunction on Florida's enforcement of it. According to [the plaintiffs](#), the U.S. Constitution gives state legislatures the right to choose the time, place, and manner by which US Representatives are elected from that state and this right can only be limited by an act of Congress or the state legislature itself, not through an amendment to the state constitution that the state legislature is not involved in. Diaz-Balart and Brown claim that because the amendment was passed through a referendum it was created outside the legislative process without the consent of the state legislature, and therefore an unconstitutional limitation on the legislature's authority.

In response, Florida's Secretary of State is [arguing](#) that because a state constitution determines the rules governing the state legislature's authority, the state legislature's power is whatever the state constitution says it is. According to the Secretary, because the state constitution creates the state legislature it has complete authority over it and because the state constitution allows citizens to amend it thorough referendums the amendment is valid. The Secretary further notes that, as in this case, unless a state legislature is specifically directed to act in a certain way by the U.S. Constitution or federal law, the state legislature is still subject to its constitution when carrying out a task delegated to it by federal mandate.

This lawsuit could affect redistricting laws in states, such as California and Arizona, where redistricting reform has been passed through ballot measure. If the court invalidates all redistricting legislation that did not originate in the state legislature these two states' laws, and many others', could be challenged. Both parties in Florida have filed motions for summary judgment which will be heard on July 29, 2011.

Illinois

Court: State
Status: Illinois Supreme Court denied to take the case on June 15
Category: Redistricting process
Last Updated: June 20, 2011

Illinois lost one U.S. House seat in the 2010 reapportionment process, lowering its total to 18. Illinois has a hybrid system for creating a [redistricting](#) plan with the state General Assembly getting the first opportunity. The Governor has veto power but if the legislature fails to create a plan before its June 30, 2011 deadline a nonpartisan "backup commission" will be formed to create a plan. A federal judge will review the plan that either the General Assembly or the commission creates.

The commission is composed of eight members with the President of the State Senate, Speaker of the House, House Minority leader and State Minority Leader each selecting two. By law there cannot be more than four members from one party and each of the four appointers must pick one legislator and one non-legislator. If the eight member commission is not able to agree on a plan the state Supreme

Court will choose two people, of different parties, to be the ninth member and Illinois's Secretary of State will randomly select one of the names.

Although the General Assembly's time limit has not yet expired, Democrats control the process, and the Republican Party has [filed](#) a lawsuit (*Brady v. Madigan*) for a declaratory judgment and injunctive relief against the procedure by which the ninth member of the backup commission would be selected. According to the suit, the process violates that U.S. Constitution's Guaranty Clause as well as the 1st and 14th Amendments. The suit [claims](#) that since in recent history neither the legislature nor the eight person committee has been able to create a viable plan, a ninth member will almost certainly need to be chosen. Furthermore, because the ninth member always votes to adopt a plan that is most favorable to his political party, the appointment of that member virtually decides which party will control the state government for the next decade. Because of this, and because the ninth member is chosen at random, the Republican Party argues that the process violates the Constitution's guarantee of a republican form of government. According to the Republican Party the political question exception, which prevents courts from deciding purely partisan issues, does not apply to situations where a decision is made by random chance. The suit also claims that the current process threatens the privilege of participating in the election process, which the 14th Amendment's Privileges and Immunities Clause guarantees. Finally, the suit alleges that the Republican Party, as a group protected by the 1st Amendment's freedom to associate and freely hold beliefs, is being threatened by a process which gives one person in the state the power to determine the manner by which everyone else will assemble. On June 15, the Illinois Supreme Court [declined](#) to take the case.

Maine

Court: Federal
Status: Court ordered redistricting to proceed and is now in the process of deciding which process will be followed and the manner in which the districts will be drawn
Category: Redistricting process
Last Updated: June 20, 2011

The 2010 apportionment process left Maine with two congressional seats, the same number it had prior to the reapportionment. Maine's [redistricting](#) process gives the state legislature the authority to create a plan, subject to a veto by the governor, but creates a fifteen member commission acting in an advisory role. State law also allows the legislature to wait until 2013 to redistrict, which means that the 2012 elections theoretically could have been conducted with the old districts in place.

This law, about waiting until 2013, was successfully [challenged](#) in federal court based on the Constitution's Equal Protection requirement. (*Desena et al. v. State of Maine*). The plaintiffs sought declaratory and injunctive relief and asked the court to order the state legislature to draft a redistricting plan before the 2012 primary election filing due date. The plaintiff argued that not changing the districts is unconstitutional both *per se* and *de facto* because although the Supreme Court allows for some

variation in population between districts, the state legislature must make a good faith effort to create districts that are as equal as possible. Based on the 2010 census there is an 8,669 vote disparity between the districts which is much higher than any variation that has been allowed in the past and dilutes the vote of the district with more residents. The State of Maine conceded that in this case there is a constitutional violation but argued that because it is theoretically possible that a new census would reveal equal districts, the law does not create a *per se* constitutional violation.

On June 9th, the court [ordered](#) both parties, and the Democratic Party which was acting as a third party defendant-intervenor in defense of the state law, to submit redistricting plans by June 17th and gave them until June 20th to review each other's work. The court is now in the process of deciding which process will be followed and the manner in which the districts will be drawn.

This decision has broader political implications due to the fact that Maine allocates electoral votes by congressional districts, rather than a winner-take-all system. Currently, the Democratic Party holds one of Maine's congressional districts. However, the Republican Party has control of both legislative chambers and the governorship which will give them virtual control of the redistricting process going forward. Because of this, the Democratic Party is [concerned](#) that the district they hold could potentially be redrawn in a manner that would make it more viable for Republicans and therefore strip them of a seat in Congress and eliminate a winnable electoral vote in the 2012 presidential elections.

Minnesota

Court: Federal & State
Status: Federal court appointed redistricting panel and set deadline of February 12, 2012 for legislature and governor to act
State court heard motions on June 6
Category: Timeliness of redistricting
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Minnesota's [redistricting](#) of congressional and state lines is the responsibility of the state legislature, subject to a veto by the governor. Following reapportionment based on the 2010 Census, the state will maintain its eight congressional seats. Both Republicans and Democrats have filed lawsuits regarding the redistricting process. In federal court (*Britton v. Ritchie*, No. 0:11-CV-00093 (D. Minn.)) Democrats are [challenging](#) the unequal population distributions under the current, non-updated districts for both state legislative and federal congressional seats. The complaint states that unequal districts violate the 14th Amendment by discriminating "against citizens in highly populous legislative districts and prefers other voters in the least populous legislative districts." All further action on the case was stayed as of February 7, 2011, pending further filings. A motion to lift the stay was filed on May 17, and heard on June 6. In state court (*Hippert v. Ritchie*, No. 86-CV-11-433 (Minn. Dist. Ct., Wright County) & No. A110152 (Minn. Sup. Ct.)), Republicans [filed](#) a similar challenge regarding the current district lines due to the legislature's failure to produce new districts consistent with the 2010 Census. As a result, [on June 1](#), the Minnesota Supreme Court [appointed a special redistricting panel](#) of five judges to redraw

congressional and legislative district boundaries which will take effect if the legislature and governor do not pass and sign a new redistricting plan by February 21, 2012.

Michigan

Court: County
Status: Pending
Category: Redistricting process
Last Updated: June 20, 2011

Michigan carries the distinction of being the only state to have a lower population in 2010, in absolute terms, than it did 2000. The state will be losing one seat from its congressional delegation, dropping its total to fourteen. Michigan's [redistricting](#) of congressional and state lines is the responsibility of the state legislature, which is controlled by Republicans.

Currently, the only pending litigation in the state involves a local city council race in which two candidates are challenging the validity of a redistricting reforms placed on the November 2010 ballot. The reforms reduced the number of council members from nine to seven, with five elected from wards and the two remaining at large council seats to be filled by voters citywide. The lawsuit contends the petition placing these reforms on the ballot for voter approval was misleading. Further, the suit [claims](#) that the district map approved by the boundary board and discussed in recent weeks by the council involves gerrymandering "designed solely to entrench certain Council members who are political devotees of the mayor."

Mississippi

Court: Federal
Status: Federal court ruled Mississippi only required to redistrict by 2012; plaintiffs appealed directly to the U.S. Supreme Court on June 7
Category: Timeliness of redistricting
Last Updated: June 20, 2011

In Mississippi, the responsibility for [redistricting](#) congressional and state lines falls to the legislature, subject to a veto by the governor; although a backup commission is formed if legislators fail to pass a plan. Following the 2010 Census, Mississippi will retain its four congressional seats. The NAACP has been involved in two lawsuits over redistricting plans at both the state and federal levels. The [federal case](#) sought to have the districts redrawn in time for off-year 2011 state legislative elections, arguing that using the current lines would be a violation of voters' rights due to population shifts in the preceding decade.

On May 16, the [court ruled against](#) the NAACP holding that under state law the legislature is only required to redistrict state legislative lines by 2012, and the federal constitution does not compel a different result. The court ordered Mississippi to either prepare maps and get preclearance from the U.S. Justice Department by June 1, 2011—the qualifying deadline for candidates—or to run the 2011 elections under the existing legislative boundaries. On June 7, plaintiffs [appealed](#) the ruling [directly](#) to the U.S. Supreme Court. Having failed to meet the deadline, Mississippi lawmakers will have to return to the issue during next year’s legislative session to redraw House and state legislative district boundaries.

Nevada

Court: Federal & State
Status: Complaints were filed in federal and state court on May 9 and March 31, respectively
Category: Timeliness of redistricting
Last Updated: June 20, 2011

Nevada's congressional and state legislative lines are drawn by the legislature, subject to gubernatorial veto. With an increasing population, Nevada has gained one seat to its congressional delegation for a total of four Representatives. The Democratic-controlled legislature has approved redistricting plans for both state and congressional districts, but the Republican governor [has vetoed](#) two passed bills, most recently on May 31.

The legislative session ended on June 7 with the legislature failing to enact a redistricting plan. As a result, the processes will be handled by the courts, with both Democrats and Republicans submitting briefs and their proposals to the court. Two other lawsuits have already been filed regarding the legislature’s failure to act. In state court, (*Guy v. Miller*, No. 11-OC-00042-1B (Nev. Dist. Ct.)), plaintiffs are [challenging](#) the malapportionment of current districts some of which are now overpopulated relative to others. The lawsuit alleges violations of the Nevada state constitution and the U.S. Constitution because Nevada has yet to pass a redistricting bill based on the 2010 Census. Plaintiffs are likewise [challenging](#) the current districts in federal court (*Teijeiro v. Schneider*, No. 3:11-cv-00330 (D. Nev.)) based on malapportionment. The complaint alleges that due to population increases and shifts, the current districts are not apportioned properly and thereby dilute the influence of certain citizens. Hispanic populations are also divided between multiple representative districts, thereby reducing their ability to elect a representative of their own choice.

New Jersey

Court: State
Status: Court denied the plaintiff’s request for an injunction to prevent the recently adopted maps from going into effect for June primary elections.
Category: Vote dilution

Last Updated: June 20, 2011

New Jersey will lose one congressional seat, reducing its number to twelve, following reapportionment based on the 2010 Census. [Drawing](#) new congressional lines is the responsibility of the New Jersey Redistricting Commission, a 13-member politician committee with a balanced partisan composition. The commission must produce a congressional plan no later than January 17, 2012; otherwise it must submit two plans to the state Supreme Court, which will select a winning plan. New Jersey uses a separate 10- or 11-member politician commission to redraw its state legislative boundaries. This commission approved state legislative districts on April 3.

On April 21, a group affiliated with the Tea Party movement [filed suit](#) based on the maps [put forward](#) by the state redistricting commission (*Gonzalez v. NJ Apportionment Comm'n*, No. C-000069-11 (N.J. Trial Court)). The plaintiffs allege violations of the state and federal constitutions because districts in southern New Jersey have larger populations relative to northern districts. The suit also claims that reducing the number of times Jersey City and Newark are split, from three to two, dilutes and nullifies the voices of voters in those jurisdictions. According to [local news sources](#), "Jersey City and Newark have been split into more than two legislative districts for decades despite the state Constitution's provision that [they] should not be split more times than necessary according to their population. But recent federal case law led both Democrats and Republicans to only split the two cities twice on their 2011 redistricting proposals." A court [recently denied](#) the plaintiff's request for an injunction to prevent the recently adopted maps from going into effect for June primary elections.

New York

Court: State
Status: Other parties are currently seeking to intervene to defend the statute counting prisoners as residents of their prior address rather than place of incarceration
Category: Who to count – and where
Last Updated: June 20, 2011

The New York State legislature is responsible for [redrawing](#) congressional and state legislative district lines, subject to a veto by the governor. There is an advisory commission that recommends plans, which the legislature is free to consider or ignore. However, there is a currently a legislative campaign [underway](#) to establish an independent, bipartisan commission on redistricting. As a result of the 2010 Census, New York will have twenty-seven congressional seats, down two from 2010.

Litigation in New York has centered on a new statute which counts incarcerated individuals, for purposes of redistricting, as residents of their address prior to conviction, rather than the location of the prison. Advocacy groups had long [argued](#) that counting prisoners by place of incarceration provided undue representation to rural districts with prison facilities while diluting representation of more urban areas from which many prisons came. The lawsuit (*Little v. New York Legislative Task Force on*

Demographic Research and Reapportionment, No. 2310-2011 (NY S. Ct.) [alleges](#) this process violates the N.Y. State Constitution and exacerbates vote dilution in upstate rural communities. Specifically, the plaintiffs claim this method of counting enhances generally Democratic downstate districts by shifting population counts of non-voting prisoners to New York City districts and away from largely Republican districts in upstate New York. The suit contends that such a shift constitutes partisan gerrymandering. Note that the Department of Justice has already precleared the prisoner allocation statute under Section 5 of the VRA (three boroughs in New York City are covered by the Voting Rights Act). The litigation is ongoing with other parties currently [seeking to intervene](#) to defend the statute counting prisoners as residents of their prior address.

Oklahoma

Court: State
Status: The Oklahoma Supreme Court declined to take original jurisdiction in the case in February, and the case will proceed, if at all, through the trial courts first
Category: Redistricting process
Last Updated: June 20, 2011

Oklahoma's congressional district lines are [drawn](#) by the state legislature, subject to a veto by the governor. The state will experience no change in the number of congressional seats which will remain at five. In 2010, a backup commission was established by initiative which would be used if the legislature fails to act. In [Duffee v. State Question 748](#), No. O-109127 (Okla. Sup. Ct.), plaintiffs are challenging the legality of this commission because it specifies membership for only the Democratic and Republican parties, while excluding non-affiliated or independent citizens. Plaintiffs claim this unfairly discriminates against a large number of Oklahomans based on party affiliation. However, Oklahoma's governor [signed](#) redistricting bills in May 2011 for both state and congressional lines. The backup commission was not used, therefore this issue is essentially moot for this cycle. On February 28, 2011, the Oklahoma Supreme Court declined to take original jurisdiction in the case. The case will proceed, if at all, through the trial courts first.

Oregon

Court: State
Status: Complaint filed on May 18
Category: Timeliness of redistricting
Last Updated: June 20, 2011

Oregon's [redistricting process](#) for congressional lines is the responsibility of the state legislature, subject to a veto by the governor. Oregon will maintain its five seats in the House of Representatives following the 2010 Census. Redistricting plans were recently released by the legislature and public input

continues to be gathered. The legislature has a deadline of July 1 to act on the proposed plans. If the legislature fails to enact a legislative redistricting plan, the Governor vetoes the plan, or there is a successful court challenge to its plan or a portion of it, the responsibility for drawing legislative districts lines, or for correcting a specific problem, falls to the Secretary of State, who is a Democrat. Republicans filed a lawsuit filed May 18 (*Meeker v. Kitzhaber*, No. CV-110197 (Ore. Cir. Ct.)) in state court requesting that a three-judge panel be set up to create a non-partisan plan should the legislature fail to act. The suit [alleges](#) the current congressional districts are out of compliance with federal and Oregon state law due to unequal populations.

Texas

Court: Federal & State
Status: Eight cases listed below are pending, see individual case write-up for status
Category: Timeliness of redistricting; Vote dilution; Who to count – and where
Last Updated: June 20, 2011

To address important issues left unresolved during the regular legislative session Governor Rick Perry, a Republican who signed the well-known “re-redistricting” plan for congressional districts in 2003, called a [special session](#) of the Texas state legislature on May 30. Already slated to address contentious issues like education and health care funding, Governor Perry also added congressional and state redistricting to the legislative session to avoid the [empanelling](#) of a Legislative Redistricting Board or court-ordered redrawing. Republicans control the Texas legislature and have put forward a plan which [some say](#) is designed protect Republican districts while mitigating the effect of minority population gains. Further complicating the process is the fact that Texas is a “[covered jurisdiction](#)” under Section 5 of the Voting Rights Act, meaning any changes to its electoral procedures needs to be precleared by the Department of Justice or the U.S. District Court for the District of Columbia before implementation. As a result of the 2010 Census, Texas will be adding four seats to its congressional delegation for a total of thirty-six.

The redistricting plans and population counting standards have already spawned a number of legal challenges, here presented in reverse chronological order of their filings:

On May 31, following the release of the new maps drawn by Republican state legislators, Democratic U.S. Representative Gene Green of Houston, along with three other Democratic House members, [filed suit](#) in federal and state court (*Green v. _____* (W.D. Tex.; Tex. Dist. Ct., Travis County)). The lawsuit alleges the redistricting plan violates the rights of Hispanic voters in Harris County which is the [largest county](#) in Texas with a population of 4,092,459, representing 20.3 percent growth since 2000. Due to the large increase in the Hispanic population, Rep. Green is “[seeking](#) creation of two congressional districts in Harris County with more than 60 percent Hispanic population.” The recently released redistricting plan, on the other hand, does not create any additional majority-minority districts for Hispanic voters in Harris County. Due to increased population [indicated](#) by the 2010 Census, the

Texas congressional delegation will increase from 32 to 36 members, and the proposed map is designed to create safe Republican seats in 26 of those districts. The plan has garnered significant Republican support in Texas, while Democrats contend drawing lines that, for example, [divide up voters](#) in the generally-liberal Austin area, will dilute the few Democratic strongholds in the state.

On May 30, following the failure of the state legislature to pass a redistricting plan during its regular session, a group of registered voters and localities brought [suit in federal court](#) against the state (*Rodriguez v. Perry*, No. 1:11-cv-00451 (W.D. Tex.)). The plaintiffs argue the current congressional lines are invalid as violative of the Constitution and request that the court impose a revised redistricting plan based on the 2010 Census. Due to population shifts since 2000, twenty-seven congressional districts are currently overpopulated, five are underpopulated, and none meet the ideal district population for approximately equal districts. Under such circumstances, plaintiffs contend those in overpopulated districts are denied their right to equal representation. Plaintiffs are requesting that the court declare the current lines invalid, that the court establish redistricted lines, or alternatively, set a deadline for the state to adopt and enact a new plan.

On May 23, U.S. Representative Joe Barton [filed suit](#) in state court challenging the congressional redistricting process in Texas (*Barton v. _____* (Tex. Dist. Ct., Navarro County)). Barton has stated his intent is to solve the problem legislatively and if a new map is approved and signed by the governor, the lawsuit would be moot.

On May 9, Texas State Representative Harold Dutton, Jr. and voter Shannon Perez brought suit in federal court against Governor Perry and other state officials regarding malapportionment of state legislative districts (*Perez v. Perry*, No. 5:11-cv-00360 (W.D. Tex.)). Dutton, a Democrat from Houston, [argues](#) that the way Texas counts its people leads to population disparities between districts in violation of the U.S. Constitution. The [lawsuit alleges](#) state electoral districts in Texas suffer from great population disparities which exceed the allowable 10% deviation to be constitutionally valid. Further, the plaintiffs contend the 10% deviation rule should be replaced with a good faith effort requirement to achieve population equity because modern computer technology removes barriers and renders the need for flexibility less significant. In addition, the suit alleges that counting prison inmates based on the county of incarceration rather than their former addresses leads to misappropriation. The result is overstating the population in rural Texas counties, where most prisons are, and understating the populations of urban communities. The plaintiffs contend partisan gerrymandering and population deviations between districts violate the 14th Amendment of the U.S. Constitution.

On April 5, the Mexican American Legislative Caucus (MALC) filed a [lawsuit](#) in state court against Texas requesting that redistricting measures be halted due to alleged misrepresentation of Hispanics (*Mexican American Legislative Caucus v. Texas*, No. C-902-11-C (Tex. Dist. Ct., Hidalgo County)). The lawsuit alleges the population counts being used in the redistricting efforts are defective as the data severely undercount Latinos. The plaintiffs argue that such population underestimates will limit the number of majority-Latino districts that can be drawn and will violate the equal population requirements of the Texas and United States Constitutions. Historically, poor and minority communities have been difficult to count for the Census due to lack of permanent addresses and response rates.

Large Latino communities along the U.S.-Mexico border called “colonias” were not subject to the “mail-out, mail-in” counting strategy, which plaintiffs allege contributed to an undercounting of that population. The suit contends that the resulting undercount was between 4% and 8% for this border region. According to plaintiffs, there are also population variances of up to 109% between some districts. According to *Cox v. Larios*, 542 U.S. 947 (2004), compliance with one person, one vote “does not provide a complete safe harbor, even when a plan has less than a 10% total deviation. Unless the jurisdiction can articulate a legitimate non-racial, non-political reason for its deviation, districts should be as equal in population as is practicable.” To remedy this situation plaintiffs call for a special election using a plan approved by the court that properly counts Latinos and affords minorities with an equal opportunity to elect candidates of their choice.

On May 9, MALC filed a [companion case](#) in [federal court](#) (*Mexican American Leg. Caucus v. Texas*, No. 5:11-cv-00361 (W.D. Tex.)) pleading the same facts and alleging violations of Section 2 of the Voting Rights Act and violations of the Equal Protection Clause of the 14th Amendment. On June 10, the League of United Latin American Citizens (LULAC) filed a motion to [intervene as plaintiffs](#) in the federal case. In addition to the incorrect census count claim, [LULAC also claims](#) the maps released by Texas Republicans violate the VRA by packing Latino voters into districts in disproportionate numbers. The suit is currently pending before the Court of Appeals.

On February 10, registered voters [filed a suit](#) in federal court challenging the population distributions for federal and state districts in Texas due to the counting of undocumented immigrants (*Teuber v. Texas*, No. 4:11-cv-00059 (E.D. Tex.)). Plaintiffs claim that counting undocumented immigrants, who cannot vote, toward the total population used for delegating congressional and state legislative seats creates smaller eligible voting populations in areas with large Hispanic population. This creates a situation in which districts within Texas have disproportionate numbers of eligible voters thereby diluting the vote of citizens in districts with fewer undocumented immigrants. Plaintiffs contend this violates Section I, Article 2 of the Constitution as well as the 14th and 15th Amendments, Section 2 of the Voting Rights Act, and provisions of the Texas state constitution. The lawsuit points out that population changes over the past 10 years have created large variances between districts and argue that a vote in an overpopulated district (compared to its ideal, equitable value) is worth less than a vote in a smaller district. The plaintiffs seek a court order that the Census data are inaccurate and cannot be used for reapportionment and redistricting without violating the rights of Texas citizens. They propose using adjusted 2010 Census figures, which would exclude undocumented immigrants, as the constitutional and most accurate way to redistrict.

Texas also has an important redistricting case involving local districts, but with potential national implications. In *Lepak v. City of Irving* (N.D. Tex.), plaintiffs are [challenging](#) the constitutionality of Irving’s recently-adopted electoral plan for single-member city council positions. Specifically, the federal lawsuit seeks to overturn the city’s use of population, rather than the number of voting age citizens, to equalize the number of people in each district. Irving created a majority Hispanic district in which the number of voting age citizens is roughly half that of other districts due to the number of non-citizens within that district. The suit alleges this create vote dilution in the other districts because “the vote of a citizen residing in the majority Hispanic district is worth nearly twice as much as the vote of a citizen

residing in one of the other districts.” In other words, the weight of one’s vote depends on where the voter resides. The plaintiffs are challenging this scheme under the “one-person, one-vote” principle under the 14th Amendment.

The case raises important issues regarding the relevant measure of population equality during redistricting. On February 11, [the district court ruled](#) in favor of the city, rejecting the new standard of equal voter population proposed by the plaintiffs. The court noted that the Supreme Court has long held total population to be an appropriate baseline for satisfying one-person, one-vote. However, the choice as to what measure to use is one generally left to the legislative process. The district court noted three circuit court opinions addressing this issue all came to that same conclusion. The plaintiffs have now appealed to the Fifth Circuit Court of Appeals. Of note is the fact that the Justice Department has [filed an amicus brief](#) in support of the city. The DOJ argues that the district court is correct, based on precedent, in its assessment that the relevant population measure should be left to the legislature. However, the brief also supports the idea that total population is appropriate because it supports the constitutional values of equality and representative government. Because all individuals within a district, regardless of voting history or citizenship, will have their interests represented by the elected official, total population counts help ensure the legislator will be responsive to all people within the district. The brief also notes, but does not advocate the appeals court go as far, that the Ninth Circuit has held a voting-age citizen baseline measurement itself would be unconstitutional. *See Garza v. County of Los Angeles*, 918 F.2d 763 (9th Cir. 1990). Plaintiff-appellants dispute these arguments and have [filed a brief](#) and [reply brief](#) as the case is pending before the Court of Appeals.

Washington

Court: County
Status: Pending
Category: Vote dilution
Last Updated: June 20, 2011

The State of Washington uses a bipartisan, five-member redistricting commission and will be adding one congressional seat, for a total of ten, due to population increases. Although there are currently no direct challenges to state or federal redistricting processes in Washington, a lawsuit challenging local elections may have broader implications for the Voting Rights Act (VRA). The [suit against](#) the City of Yakima alleges that the process by which city council members are elected violates Section 2 of the VRA. Specifically, plaintiffs argue because the majority-white population votes at a higher rate than the minority-Latino population, minorities are denied the ability to elect a representative of their choice in the current mixed at-large and district system. The city is approximately 40 percent Latino but has never elected a Latino council member. The suit proposes seven territorial districts with a majority-Latino district that would allow for the election of a desired representative even if Latino voters continue to vote at a lower proportional rate than white voters. Critics claim the only way to create such a district is to count undocumented immigrants as part of the district population.

Therefore, the case has implications for the continued ability to create majority-minority districts under the VRA and the proper baseline measurement for population under the one-person, one-vote principle.