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HOUSE RESEARCH ORGANIZATION

daily floor report

Wednesday, August 20, 2025
89th Legislature, Second Called Session, Number 4
The House convenes at 10 a.m.

HB 4 by Hunter, adopting congressional redistricting, is placed on the Major State Calendar for second reading consideration today. The bill digest begins on the following page.

Dynamic Floor Report: https://hro-dfr.house.texas.gov/floor-reports

Alma Allen
Vice Chairman
89(2) - 4

SUBJECT: Adopting congressional redistricting

COMMITTEE: Congressional Redistricting, Select — committee substitute recommended

VOTE: 12 ayes — Vasut, Geren, Guillen, Hefner, Hickland, Hunter, McQueeney, Metcalf, Pierson, Spiller, Tepper, Wilson

8 nays — Rosenthal, Gervin-Hawkins, Guerra, Manuel, Moody, Thompson, Turner, Wu

1 absent — J. Garcia

WITNESSES: None (*Considered in a formal meeting on August 18)*

BACKGROUND: Texas Constitution, Art. 3, sec. 28 requires the Legislature to apportion the state into House and Senate districts at its first regular session after the publication of each United States decennial census. Neither the Texas Constitution nor Texas state statutes address the standards or procedures for congressional redistricting. There also are no constitutional or statutory provisions that specifically govern mid-decade redistricting. Maps proposed by the Legislature until 2030 will be based on the 2020 census.

Legal standards. The legal standards for congressional redistricting fall into three general areas:

- federal constitutional requirements, including that congressional districts must be as equal in population as practicable;
- federal Voting Rights Act (VRA) criteria for challenging discriminatory voting practices under Section 2; and
- U.S. Supreme Court decisions prohibiting racial gerrymandering, beginning with *Shaw v. Reno*, 509 U.S. 630 (1993).

District population equality. A key requirement for congressional redistricting plans is that each district must have approximately equal populations. This principle was first outlined in *Gray v. Sanders*, 372 U.S. 368 (1963), wherein the U.S. Supreme Court established a requirement for

population equality among districts, known as the equal-population doctrine of "one person, one vote."

The Supreme Court also has held that a state's congressional districts must contain equal populations "as nearly as practicable" (*Westberry v. Sanders*, 376 U.S. 1, 7-8 (1964)), requiring a state to make a good-faith effort to achieve absolute equality. In 1983, the Supreme Court further specified in *Karcher v. Daggett*, 462 U.S. 725 (1983), that if a state's plan falls short of precise population equality, to the extent practicable, the state must show that the variances, no matter how small, were necessary to achieve a legitimate state objective. Through this case, the court reconfirmed its standard that "absolute population equality [is] the paramount objective" in congressional redistricting.

Federal Voting Rights Act. Congressional redistricting plans also are subject to the Voting Rights Act (VRA), which Congress enacted in 1965 to protect the rights of minority voters to participate in the electoral process in southern states.

Section 5, preclearance. The VRA originally included a requirement in Secs. 4 and 5 that certain states and other jurisdictions were required to obtain federal "preclearance" approval of policy changes affecting elections and voting, including changes made by redistricting. Preclearance was amended in 1975 to cover Texas, among certain other jurisdictions. However, in *Shelby County v. Holder*, 570 U.S. 529 (2013), the Supreme Court effectively ended the Sec. 5 preclearance requirement by ruling that the formula used to determine which states and localities were subject to Sec. 5 was unconstitutional because it was based on outdated conditions. Until Congress adopts a new Sec. 5 coverage formula, preclearance will continue to be unenforceable, unless a jurisdiction becomes covered by a separate court order entered under another provision of the VRA. Accordingly, Texas is no longer subject to VRA preclearance requirements.

Section 2, vote dilution challenges. Sec. 2 of the VRA offers a legal avenue to challenge voting practices on the grounds that they are discriminatory on the basis of race, ethnicity, or language group. Sec. 2 became a major factor in redistricting in 1982, when Congress amended

this provision to specify that disparate results as well as discriminatory intent may constitute prohibited discrimination, based on the "totality of the circumstances."

In *Thornburg v. Gingles*, 478 U.S. 30 (1986), the Supreme Court established a three-part test that plaintiffs must prove when claiming discriminatory vote dilution in an electoral district, including that:

- the affected racial, ethnic, or language minority group is sufficiently large and geographically compact to constitute a majority in a single-member district;
- the minority group is politically cohesive; and
- the majority group votes in a bloc to the extent that the minority voters' preferred candidate is defeated in most circumstances.

In *Bartlett v. Strickland*, 556 U.S. 1 (2009), the Supreme Court held that Sec. 2 does not require the creation of "crossover" districts in which a protected group makes up a minority of the voting-age population but can still elect the candidate of its choice with the support of voters from the majority.

In 2024, the U.S. Court of Appeals for the Fifth Circuit, which covers Texas, reversed prior legal precedent regarding how Sec. 2 applies to political coalitions of minority voters. The court held in *Petteway v. Galveston County*, (111 F.4th 596 (5th Cir. 2024) (en banc)), that voter dilution claims may not be brought under Sec. 2 on behalf of combined minority groups that together could constitute a majority of the population in a single-member "coalition district," but would not, constitute a majority individually. The court's opinion specified that Sec. 2 of the VRA and the *Gingles* test require a single racial, ethnic, or language minority group to comprise more than 50 percent of a proposed district to satisfy the first *Gingles* condition.

Other Supreme Court decisions have addressed the issues of the proportionality of minority-controlled districts to minority populations within the state overall, and whether Sec. 2 requires "maximizing" majority-minority districts. In *Johnson v. De Grandy*, 512 U.S. 997 (1994), the court determined that Sec. 2 does not require maximization of

minority voting strength. Additionally, the court's majority opinion held that the three *Gingles* conditions are not necessarily sufficient on their own to establish a Sec. 2 violation, and that proportionality is relevant to, but not sufficient on its own, in determining a Sec. 2 vote dilution claim.

Gerrymandering. The technique of maximizing the electoral prospects of one party or group while reducing those of its rivals has traditionally been referred to as "gerrymandering." The word was coined in 1812, when a Massachusetts redistricting plan designed to benefit the party of Gov. Elbridge Gerry resulted in a district that a political cartoonist drew to resemble a salamander.

Generally, there are two methods used to gerrymander districts, referred to as "cracking" and "packing." Cracking separates members of a political cohort across multiple districts to prevent an effective voting bloc in a given district. Packing concentrates aligned voters into fewer districts to reduce their voting influence in other districts.

Racial gerrymandering. Racial gerrymandering refers to when a state purposefully discriminates based on race during the redistricting process by using race as the predominant factor in drawing district lines.

Several redistricting challenges during the 1990s led the U.S. Supreme Court to address the tension between race-conscious VRA requirements and the constitutional restraints against race-based actions under the 14th and 15th Amendments. In *Shaw v. Reno*, 509 U.S. 630 (1993), the Supreme Court rejected redistricting legislation with districts alleged to be so "bizarrely" shaped that on their face they were considered "unexplainable on grounds other than race," ruling that the state had failed to provide sufficient justification for separating voters in this manner. In *Miller v. Johnson*, 515 U.S. 900 (1995), the Court held that those challenging a redistricting plan need not necessarily show that a district was bizarrely shaped to establish impermissible race-based gerrymandering. In *Bush v. Vera*, 517 U.S. 952 (1995), a case challenging the Texas congressional redistricting plan, the Supreme Court recognized that the state could consider race as a factor, but found the Texas congressional plan unconstitutional because race was the predominant

factor motivating the drawing of the district, taking precedence over traditional, race-neutral districting principles.

More recently, the court's decision in *Cooper v. Harris*, 581 U.S. 285 (2017), held that while race-based redistricting decisions may be enacted to comply with the VRA, a state must demonstrate that it has good cause to believe that drawing the districts without considering race would have resulted in a VRA violation. In *Alexander v. South Carolina NAACP*, 602 U.S. 1 (2024), the court established a more stringent evidentiary standard for racial gerrymandering claims, requiring challengers lacking direct or strong circumstantial evidence to prove that race was the predominant factor in drawing the districts by submitting an alternative map that shows the same partisan advantage could be achieved along with greater minority representation. The court also found that if partisan motivations or racial considerations could reasonably correlate to the drawing of the same map, courts must presume that the legislature acted in good faith.

The courts in these and other racial gerrymandering cases have identified certain race-neutral redistricting criteria, often called "traditional" criteria, including:

- compactness;
- contiguity;
- preserving counties, voting precincts, and other political subdivisions;
- preserving communities of interest;
- preserving the cores of existing districts;
- protecting incumbents; and
- achieving legitimate partisan objectives.

Partisan gerrymandering. In *Davis v. Bandemer*, 478 U.S. 109 (1986), the U.S. Supreme Court recognized that a politically gerrymandered redistricting plan might violate the Equal Protection Clause of the 14th Amendment if challengers could show 1) an actual or projected history of disproportionate partisan electoral results, and 2) that the electoral system is arranged so that it consistently degrades a voter's or a group of voters' influence on the political process as a whole to the point where the individual or group "essentially [has] been shut out of the process."

In *LULAC v. Perry* (548 US 399 (2006)), in which plaintiffs claimed that Texas' 2003 mid-decade redistricting plan was unconstitutional partisan gerrymandering, the Supreme Court held that, among other findings, the Constitution did not prevent Texas from redrawing its electoral boundaries before the next census, so long as redistricting took place at least once per decade.

After several other intervening cases in which plaintiffs failed to prove partisan gerrymandering, the Supreme Court in 2019 held that partisan gerrymandering claims are nonjusticiable by the federal courts because the court lacks a "limited and precise standard" for evaluating and resolving such issues (*Rucho v. Common Cause*, 588 U.S. 684 (2019)).

Current maps. The state's current congressional maps were drawn in 2021, following the 2020 census. These maps were challenged in federal court by the League of United Latin American Citizens (LULAC) and several other plaintiffs for alleged Sec. 2 and constitutional violations. The hearing (*LULAC v. Abbott*) was held in May and June of 2025, and the case is currently under consideration by a three-judge panel of the U.S. District Court for the Western District of Texas, El Paso Division. The plaintiffs argue, among certain other claims, that Texas' congressional map violates the VRA by failing to draw certain possible Latino-majority districts, effectively denying Latino voters the opportunity to elect candidates of their choice. The state contends that the maps were drawn based on partisan, rather than racial, considerations and are compliant with the law.

On August 11, 2025, the Court suspended a September 3 deadline for filing certain findings and conclusions related to the *LULAC* case due to the shifting status of Texas' maps before the Legislature and other pending legal decisions. On August 18, plaintiffs in the case requested that the Court reinstate the deadline and set aside dates for an expedited September hearing to consider impending claims against the maps expected to pass during the Second Called Session of the 89th Texas Legislature. The plaintiffs also argued that the current Sec. 2 claims against certain electoral districts established in the 2021 maps, which have already been tried in court, are not mooted by the creation of a new map.

The U.S. Department of Justice (DOJ) also raised constitutional concerns regarding Texas' current congressional districts TX-09, TX-18, TX-29, and TX-33 in a letter to the governor and the attorney general dated July 7, 2025. The DOJ letter asserts that these four districts constitute "coalition districts" drawn predominantly on race-based considerations and must be redrawn.

DIGEST:

CSHB 4 would adopt districts for the election of members of the U.S. House of Representatives as described by Plan C2333 on the redistricting computer system operated by the Texas Legislative Council. Exact data on district population and other demographic information on Plan C2333 and other data are available at: https://dvr.capitol.texas.gov/Congress/73/PLANC2333.

The plan would apply starting with the primary and general elections in 2026 for congressional seats in the 120th Congress in 2027.

CSHB 4 would repeal the congressional redistricting plan enacted by the Legislature in 2021 and redraw Texas' 38 congressional districts. The ideal size of a congressional district is 766,987 based on the 2020 census. Under CSHB 4, 766,987 also would be the mean average size of congressional districts. No district would deviate from the ideal size by more than one person.

Under the bill, it would be the intent of the Legislature that if any county, tract, block group, block, or other geographic area was erroneously omitted, a court reviewing the bill should include that area in the appropriate district in accordance with the Legislature's intent.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, the bill would take effect the 91st day after the last day of the legislative session.