

## Prologue: Scope and Methods

This work is a tapestry. Redistricting analyses typically adopt a specific methodological approach, or topical focus, or address a particular time period or institution. We do not quarrel with any of those approaches—indeed, several of us use such approaches in our own work. In this volume, though, we seek to weave together an understanding of Texas redistricting through the voices and analyses of political scientists, lawyers, and practitioners. We believe that by presenting viewpoints and approaches from these differing vantage points, readers will gain a clearer, richer, and more complete understanding of redistricting realities than is possible through just one approach.

Political scientists seek to assemble redistricting data, test hypotheses, and fashion theories to build an understanding of redistricting; lawyers seek to use precedent to defend a policy in court, or, using unique fact situations from a redistricting outcome, break new legal ground with innovative legal theories; practitioners seek to protect an existing power bloc or to increase representation from groups that they perceive to be underrepresented in the legislative process.

This volume is unique in that we ask lawyers, social scientists, legislators, and general readers to explore one another's approaches and seek commonalities. Social scientists who look for data-rich analysis and hypothesis testing will find that in Chapter 6; lawyer-litigators who follow case history and doctrine de-

velopment will find them in several chapters; citizens and general readers will see good examples of these varying approaches and, we hope, learn the value of each. Every chapter is different, then, by design. We approach fifty years of Texas redistricting from all these perspectives, with the intent that, by the end, the explorations, data analyses, histories, and observations will build a realpolitik understanding of redistricting, revealing who benefits from it and why.

In the introduction, “The Prequel—Unequal Representation,” Gary A. Keith provides a brief review of recent literature on redistricting, succinctly describes the twentieth-century history of Texas redistricting, and lays out the critical U.S. Supreme Court cases that altered the redistricting landscape. That history begins with the Texas legislature shirking its duty to redistrict in order to protect the governing rural (and white) bloc. Even when the legislature began redistricting again mid-century, it produced state legislative and congressional districts with significant population variances—with rural areas overrepresented and urban (and minority) areas underrepresented. The U.S. Supreme Court decisions of the early 1960s changed the power dynamics by declaring that redistricting outcomes were justiciable issues, as they involved compliance first with the Equal Protection Clause of the Constitution, then with the Voting Rights Act (VRA). The Texas legislature was compelled not only to redistrict, but to meet standards the judiciary determined were essential to achieve equal representation.

In Chapter 1, “Entering the Thicket: 1965,” Keith revisits Texas’s 1965 redistricting, the first done after *Baker v. Carr* and other court decisions forced Texas to embed political equality in its decennial carvings. That 1965 battle was triangulated between the dominant conservative Democratic faction, the weaker liberal/labor/minority Democratic faction, and the emerging Republican Party. The redistricting both foreshadowed and shaped modern Texas politics, including a shift to urban dominance, racial/ethnic politics, partisan battles, and ideological conflicts.

In Chapter 2, “Legislating in the Thicket,” Craig A. Washington introduces us to legislative and congressional politics—the

kitchens of redistricting. In the kitchen of the Texas legislature, Speaker politics, policy battles, Anglo-Black-Hispanic dynamics, party politics, and high office ambitions are all aswirl every session—and redistricting is just another seasoning added as the sausage ingredients are ground and mixed once a decade. Washington's choice to throw in with the winning Speaker candidate in 1975 led to his inside seat with the leadership team during the 1981 redistricting. His leadership on behalf of the Black Caucus, the Houston legislators, the Speaker's interests, and Democrats in general shows the complexity of the internal politics affecting redistricting. Then, in the 1991 session, Washington was a congressman, returning to the state legislature at the behest of the Texas Democratic delegation in Washington, D.C., to lobby for the seats of Democratic incumbents. Craig Washington is also an attorney, and he describes his experiences combining litigation strategizing along with his legislator roles.

In Chapter 3, "Litigating Texas Redistricting: A Democratic Lawyer's Experience," David R. Richards explains the time line of Texas redistricting litigation from the 1970s to the early twenty-first century. Richards was an attorney for plaintiffs in many of those cases. In the 1980s, he represented the Texas attorney general, defending the state's redistricting plans. Richards describes the legal strategies and courtroom dramatics that he and other litigators engaged in, portraying the back-and-forth litigation, in state and federal courts, as a continuous chess match. Lawyers represent their clients; Richards often sued the State of Texas on behalf of his clients (Democratic and minority legislators, candidates, and constituents); yet when he went inside with the new attorney general, he switched sides and defended the State. Lawyers have considerable leeway, though, in steering litigation for policy objectives, and Richards's ends were often the same whether he was inside or outside.

In Chapter 4, "Texas Redistricting: A Republican Lawyer's Perspective," J. D. Pauerstein begins with the battles that Republicans fought against the majority Democrats in the 1980s legislatures, then plunges into the fiercely contested battles of the 1990s, when Republicans became ascendant. If redistricting

is a game of the powerful protecting their power, then in the context of the century-long dominance of Texas politics by Democrats, the Republicans were constantly fighting an uphill battle for representation in the legislature. When they lost there (as they usually did), the courtroom became the next battleground. As Republican statewide candidates began winning (especially the governorship), Republican litigators had a power chip they lacked in earlier battles. The combination of inroads to political power in the state, coupled with national political developments, allowed Pauerstein and others in the Republican legal team to joust with Richards and the Democrats' legal team and win victories that they had not won before.

Redistricting is not solely a state-level matter. In Chapter 5, "The Voting Rights Organizers," José Garza describes local grassroots efforts in Texas that reached up to the courts and expanded voting rights. Local governments, too, must redistrict—and because there are so many local governments, much of the redistricting skirmishes happen locally, even if they do not get the popular attention that state legislative and congressional redistricting get. The concepts that were established in the legislative and congressional litigation cases cascaded down into local government voting equality cases in Texas as well. Garza and other lawyers from advocacy groups were swamped with pleas from local communities to help. Garza describes the application of the court precedents to local governance, the resistance from local governments, and the criticality of organizing and persistence from local residents, coupled with skilled legal counsel.

In Chapter 6, "Analyzing Redistricting Outcomes," Seth C. McKee and Mark J. McKenzie use descriptive and multivariate analyses to examine the partisan and incumbent protection dynamics in Texas redistricting in the 1990s and to show how redistricting affected the parties and incumbents from 2002 to 2010. McKee and McKenzie examine the levels of support constituents grant each party and its respective incumbents before and after redistricting, versus how much support constituents grant a different incumbent following redistricting. They put the recent and current redistricting dynamics into the broader picture

of long-term class-and-race political economy structure and power battles in Texas. With modern, sophisticated computerization of voting data, legislators are able to use redistricting to pick their constituents, rather than the other way around. McKee and McKenzie describe how legislators use redistricting to disrupt (or maintain) the electoral relationship between incumbents and their longtime constituents.

Finally, in the conclusion, “Redistricting Redux: 2011 and Beyond,” and the epilogue, Keith broadly outlines the ongoing efforts to redistrict Texas lines after the 2010 census. The dynamics described and explained in the first six chapters are revisited, demonstrating their continuity. Lessons learned from Chapters 1 through 6 provide a ten-point rubric for analysts, citizens, legislators, and lawyers to use in coming to a more focused understanding of this decade’s Texas redistricting.

THIS PAGE INTENTIONALLY LEFT BLANK

**Rotten Boroughs, Political Thickets,  
and Legislative Donnybrooks**

THIS PAGE INTENTIONALLY LEFT BLANK