

FEDERALISM IN Action

Texas Redistricting and Federal Law

According to the Article 1, section 4 of the U.S. Constitution, “The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing [sic] Senators.” In practice this has meant that states take the lead in election laws. Still, over the years the federal government has provided some guidelines for drawing election districts. First, the state must abide by the one person, one vote standard that originated in the Supreme Court’s *Baker v. Carr* (1962) decision. Second, Texas is subject to the Voting Rights Act of 1965, which was passed to ensure the fair representation of minorities who have historically faced discrimination. Southern states, including Texas, attempted to circumvent the Fifteenth Amendment by passing laws that disenfranchised minorities. As a result, the Voting Rights Act of 1965 contained a provision whereby any of these states’ change in election laws had to be approved by the Department of Justice. While the Voting Rights Act of 1965 initially applied to African Americans, the law expanded to include protections for Asian Americans, Native Americans, and Hispanics.

The federal government encourages the creation of majority-minority districts. A **majority-minority district** is an election district in which the majority of the population comes from a racial or ethnic minority. In Texas, majority-minority districts have been created to benefit African American or Hispanic populations. However, these

districts remain controversial. In *Hunt v. Cromartie* (1999),ⁱ the U.S. Supreme Court ruled that while race can be one factor in drawing Texas’s district lines, it cannot be the only factor. Yet the Court continued to rule that the drawing of district lines for partisan advantage remains acceptable as long as the principle of one person, one vote established by the U.S. Supreme Court in *Baker v. Carr* is followed.

For decades Texas fell under the Voting Rights Act of 1965 provision that changes to its election procedures be approved by the federal government. Texas’s history of electoral discrimination against minority racial and ethnic groups prompted this requirement. When Texas gained four seats after the 2010 census, the state drew new districting maps. The U.S. Department of Justice objected to the maps, arguing that they did not create enough majority-minority districts, or districts in which the majority of voters are minorities. Minority groups in Texas argued that since the lion’s share of population gain was in minority populations, at least half of the new districts should be drawn as majority-minority districts. The U.S. Supreme Court, federal courts, state politicians, and civil rights groups all entered the fight to draw new district lines. The Republican Party wanted to protect its advantage in any new district map, and Texas politicians objected to federal oversight of the state’s election laws. Eventually, the state legislature’s maps were used to define the state’s new districts.

In the summer of 2013, Texas won a major victory when the U.S. Supreme Court eliminated the requirement that states receive prior approval from the U.S. Department of Justice before passing a redistricting plan.ⁱⁱ The U.S. Department of Justice can still bring court cases against states for redistricting if the state engages in discrimination, but the action by the national government must occur after the fact. In addition, the burden of proof shifts from states with a history of discrimination proving that they are not engaged in discrimination to the national government proving that a state continues to engage in discrimination.

In 2014 two Texans sued the state, arguing that the state should no longer use total population for determining district size. Total population, which is the standard used in all states, includes immigrants, inmates, the mentally disabled, and other nonvoter residents who, the plaintiffs argued, diluted their votes. In *Evenwel v. Abbott* (2016) the U.S. Supreme Court ruling supported the state’s use of total population for calculating districts, while it did not explicitly preclude other methods of calculating one person, one vote. Although the Supreme Court sided with Texas, the case cites the framers’ intention, previous Supreme Court rulings, and widespread usage of total population in its reasoning for accepting the calculation.ⁱⁱⁱ The Texas solicitor general argued that the state had the right to redistrict however it chose so long as it did not do so in a way that was “arbitrary, irrational, or invidious.” Texas made a federalist argument based, in part, on the idea that if Texas chooses to utilize different calculations in the future that it could do so.

A lot is at stake in the battle over redistricting. Whichever party controls the state legislature can significantly alter the power distribution in the state. The national government has also created standards that affect that power distribution. Texas no longer has to have changes in its election laws precleared, but the federal government can step in if those laws are found to disenfranchise a minority. If our recent redistricting battles tell us anything, the next census is likely to see more contentious fighting and even more legal challenges.

- How long should states remain under suspicion due to past discrimination?
- Who should get to decide what is meant by one person, one vote? Should different states be allowed to utilize different standards?

i 526 U.S. 541.

ii *Shelby County, Alabama v. Holder* (2013) 570 U.S.

iii *Evenwel v. Abbott* (2016) 578 U.S.