

SUBJECT: Adopting the court-drawn map for Texas Congressional districts

COMMITTEE: Redistricting, Select — favorable, without amendment

VOTE: 11 ayes — Darby, Clardy, Creighton, Gonzales, Huberty, Hunter, Keffer, Morrison, Orr, Price, Villalba

5 nays — Y. Davis, Deshotel, Pickett, Raymond, S. Thompson

3 absent — Harper-Brown, Martinez Fischer, Oliveira

SENATE VOTE: On final passage, June 14 — 16-11 (Davis, Ellis, Garcia, Hinojosa, Lucio, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini)

WITNESSES: *(On House companion bill, HB 4 by Darby:)*
For — Rolando Rios, Congressman Cuellar; Jay Hamburger, OSWNA, Old Sixth Ward Neighborhood Assn.; B R "SKIPPER" Wallace, Texas Republican County Chairs Association; *(Registered, but did not testify: Kara Sands, Hispanic Republicans of Nueces County; and four individuals)*

Against — Yannis Banks, Texas NAACP; Gordon Benjamin, Neighborhoods First Alliance; Tommy TC Calvert, Bexar County Voting Rights Coalition; Marti Castaneda, Neighborhoods First Alliance; Stephanie Collier, Communication Workers of America District 6; Willie Davis, Congresswoman Sheila Jackson Lee; Deece Eckstein, Travis County Commissioners Court; Joseph M. Fonseca Jr., Immigration Services Action Project; Jose Garza, MALC; Sondra Haltom, Empower the Vote Texas; Christopher Herring, NAACP Life Member, San Antonio Chapter; Oliver Hill, SA Unit NAACP; Ernest Martinez, Cesar E. Chavez Legacy & Educational Foundation; Marion Mlotok, Activate Austin; John Patrick, Texas AFL CIO; Jaime Rios, J.P. Paving Co.; Lucille Scott, Neighborhoods First Alliance; Matt Simpson, ACLU of Texas; Shawn Stevens, Democratic Party of Collin County; and 34 individuals; *(Registered, but did not testify: Leonard Aguilar, Southwest Pipe Trades Association; Horace Brown, NAACP; JC Dufresne, Common Cause Texas; Omar Narvaez, Stonewall Dallas; Shannon Perez, SEIU Texas; Susan Pintchovski, National Organization of Jewish Women - Texas State*

Advocacy Policy Network; Richard C Shaw, Harris County AFL-CIO Council; Joseph Tijerina, Precinct Chair 0026 Harris County; Benjamin Willis, PC # 1056; and 35 individuals)

On — Tim Arndt; David R. Hanna, Texas Legislative Council; Barbara Harless; Nina Perales, MALDEF, Mexican American Legal Defense and Educational Fund; (*Registered, but did not testify*: Ashley Fischer, Texas Secretary of State; Keith Ingram, Texas Secretary of State, Elections Division)

BACKGROUND: During its first called session in 2011, the 82nd Legislature enacted SB 4 by Seliger, which revised political boundaries for the state’s Congressional districts following the 2010 Census.

Legislative redistricting in 2011 was followed by legal challenges to the new maps. Those legal challenges are ongoing in federal district court in San Antonio. A separate federal district court in Washington, D.C. denied preclearance of the Congressional map, finding that the state had not met its burden, as required under federal law, to show that the map had not been enacted with discriminatory intent and that it did not have a retrogressive effect.

Preclearance and retrogression. Sec. 5 of the Voting Rights Act (42 U.S.C., sec. 1973c) requires certain states, including Texas, with histories of low turnout and discrimination against certain racial and ethnic minorities to submit for preclearance any proposed policy changes affecting voting and elections to the U.S. Department of Justice or to the U.S. District Court for the District of Columbia. Under sec. 5, state and local governments bear the burden of proving that a proposed change is neither intended to nor has the effect of denying or abridging voting rights on account of race, color, or membership in a language-minority group.

The federal district court in Washington, D.C. in 2012 denied preclearance, finding that Texas had not met its burden under sec. 5 to show that the map for Congressional districts was not enacted with discriminatory intent and that it did not have a “retrogressive” effect. A proposed plan is retrogressive under sec. 5 if its net effect would be to reduce minority voters’ “effective exercise of the electoral franchise” (as defined in *Beer v. United States*, 425 U.S. 130 (1976)) when compared to a benchmark plan. The decision of the D.C. district court denying preclearance of the Texas map under sec. 5 is on appeal to the U.S.

Supreme Court.

The Supreme Court also is considering a challenge to the constitutionality of sec. 5 of the Voting Rights Act in *Shelby Co. v. Holder*, 679 F.3d 848 (D.C. Cir 2012) *cert. granted* (U.S. Nov. 9, 2012) (No. 12-96). A decision in the *Shelby* case is anticipated soon.

Interim map. With the approach of the 2012 primaries, the federal district court in San Antonio, based on constitutional and Voting Rights Act challenges ongoing in that court, redrew the maps that had been enacted by the Legislature. On an appeal by the state of these findings, the U.S. Supreme Court in *Perry v. Perez*, 565 U.S. __ (2012), granted a request from the state for a stay of the court-drawn maps. After hearing oral arguments, the Supreme Court remanded the case to the district court in San Antonio. The Supreme Court said in its opinion that the district court should defer to the legislatively enacted state plan as a starting point, except where there was a “likelihood of success” on a challenge under the Constitution or sec. 2 of the Voting Rights Act or where aspects of the state plan stand a “reasonable probability of failing to gain sec. 5 preclearance.” Section 2 prohibits voting practices that discriminate on the basis of race, color, or membership in a language minority group and provides a legal avenue for those who wish to challenge voting practices on the grounds that they are discriminatory.

Following the remand by the Supreme Court, the federal district court in San Antonio ordered an interim Congressional redistricting plan (Plan C235), which was implemented for the 2012 elections.

Outstanding challenges regarding sec. 2 violations in the maps originally enacted by the Legislature remain before the district court in San Antonio, which held hearings in May to receive updates from the parties and to evaluate how it should consider the findings of the D.C. district court.

DIGEST:

SB 4 would adopt Plan C235, the interim map drawn by the federal district court in San Antonio. The plan would apply to the primary and general elections in 2014 for Congressional seats in 2015.

SB 4 would create 36 Congressional districts. Under the bill, the mean average size of a district would be 698,488, which is also the ideal size of a Congressional district based on the 2010 Census. The population range between the largest and smallest districts would be 32, or 0 percent.

Congressional District (CD) 22 in Fort Bend, Harris, and Brazoria counties would be the largest district. With a population of 698,504, it would be 16, or 0 percent, greater than the mean average. CD 14, extending along the coast from Chambers County to Aransas County, would be the smallest district. With a population of 698,472, it would be 16, or 0 percent, less than the mean average.

The bill states legislative intent that adopting the plan would diminish the expense of ongoing litigation, avoid disruption of the upcoming election cycle, and provide certainty and continuity to citizens with regard to districts used to elect members of the U.S. House of Representatives.

The bill would repeal the Congressional district plan enacted by the Legislature in 2011.

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

NOTES:

Exact data on district population and other demographic information on Plan C235 and other data are available at <http://gis1.tlc.state.tx.us/?PlanHeader=PLANc235>.

Chairman Darby plans to offer a floor substitute of SB 4 that contains textual descriptions of the geography of the court-ordered U.S. House of Representatives district map.

SB 4 U.S. House District Demographics

Ideal Population Deviations and Racial / Ethnic Breakdown

	Population	# Deviation from Ideal*	Percentage -----				
			Anglo	Black	Hisp	B + H**	Other
DISTRICT 1	698,488	-	64.4	18.5	15.5	33.7	1.9
DISTRICT 2	698,488	-	50.8	10.5	30.8	40.7	8.5
DISTRICT 3	698,488	-	62.4	9.3	14.5	23.4	14.2
DISTRICT 4	698,488	-	73.8	11.5	12.2	23.5	2.7
DISTRICT 5	698,488	-	57.2	14.9	25.2	39.7	3.1
DISTRICT 6	698,498	10	54.3	19.3	20.8	39.4	6.2
DISTRICT 7	698,488	-	47.3	12.4	30.1	41.8	10.9
DISTRICT 8	698,488	-	68.4	8.9	19.7	28.2	3.4
DISTRICT 9	698,488	-	11.5	40.3	37.3	76.5	12.0
DISTRICT 10	698,487	-1	57.5	11.2	26.3	36.9	5.6
DISTRICT 11	698,488	-	61	4.3	33.3	37.1	1.9
DISTRICT 12	698,488	-	66.4	8.6	20.6	28.9	4.7
DISTRICT 13	698,488	-	67	6.1	24.1	29.8	3.2
DISTRICT 14	698,472	-16	53.3	21.2	22.1	42.8	3.9
DISTRICT 15	698,488	-	16.3	2.0	80.6	82.2	1.5
DISTRICT 16	698,488	-	14.7	4.1	80.1	83.4	1.9
DISTRICT 17	698,487	-1	57.7	14.5	23.3	37.2	5.2
DISTRICT 18	698,488	-	16.7	41.4	38.7	79.2	4.1
DISTRICT 19	698,487	-1	57.4	6.9	33.9	40.2	2.4
DISTRICT 20	698,488	-	23	5.8	68.6	73.4	3.6
DISTRICT 21	698,488	-	64.8	4.1	27.0	30.6	4.5
DISTRICT 22	698,504	16	45	13.4	24.6	37.5	17.5
DISTRICT 23	698,488	-	25.5	3.6	69.3	72.4	2.1
DISTRICT 24	698,488	-	53.4	11.0	23.4	33.9	12.6
DISTRICT 25	698,478	-10	70.3	8.3	17.3	25.1	4.6
DISTRICT 26	698,488	-	68.4	7.8	17.3	24.7	6.9
DISTRICT 27	698,487	-1	42.8	6.0	49.5	54.9	2.3
DISTRICT 28	698,488	-	17.8	5.0	76.3	80.7	1.5
DISTRICT 29	698,488	-	11.8	10.7	76.3	86.2	2.0
DISTRICT 30	698,487	-1	17.3	46.3	34.7	80.2	2.5
DISTRICT 31	698,487	-1	59.5	12.9	22.5	34.5	6.0
DISTRICT 32	698,488	-	53.3	13.0	25.6	38.1	8.6
DISTRICT 33	698,488	-	14.5	17.2	66.3	82.7	2.7
DISTRICT 34	698,487	-1	15.2	1.6	82.7	83.9	1.0
DISTRICT 35	698,488	-	25.2	10.8	62.8	72.5	2.4
DISTRICT 36	698,488	-	65.8	9.9	21.2	30.8	3.4

* Ideal district population is 698,488

** Total number of persons who identify as racially black, ethnically Hispanic, or both