

New seats make U.S. redistricting less painful for incumbents

by William Lutz

As it does with state House and Senate districts, the Legislature has to redraw congressional districts in 2011. The difference: Whereas the Texas Constitution specifies the number of House and Senate districts, census estimates suggest that Texas will gain three to four congressional districts at the expense of other states.

What that means is the ideal district population – the number of Texans per district – won't increase as fast for congressional districts as it does for state House or Senate districts.

And that's good news for incumbents in slow-growth parts of the state – particularly, West Texas.

With additional districts added, the law won't force lawmakers to pair incumbents. Lawmakers could draw a map that favors their party without having to place two incumbents in one district. That is not the case with the state House map and might not be the case with the state Senate map.

Nonetheless, lawmakers must still pay attention to population shifts and reflect them in the map. Where the three to four new congressional seats go will largely reflect the areas of high population growth in the state.

The U.S. Bureau of the Census produces population estimates by counties between decennial censuses. But these estimates provide less information for congressional maps, as these maps have to cut county lines, and all districts have to have an equal population, based on census numbers.

The Bureau provided estimates to the House Redistricting Committee earlier this year that looked at how the existing congressional districts would fare under a 35-district map (gain of three congressional seats).

According to the Census Bureau, the vast majority of the current Congressional districts would be overpopulated under a 35-district map (obviously). That said, the Census Bureau estimated that seven Congressional districts would be under-populated under a 35-district map. These are the districts currently represented by U.S. Reps. **Randy Neugebauer** (R-Lubbock), **Mac Thornberry** (R-Amarillo), **Pete Sessions** (R-Dallas), **Sheila Jackson Lee** (D-Houston), **Gene Green** (D-Houston), **Al Green** (D-Houston), and **Charlie Gonzalez** (D-San Antonio). The Jackson Lee, Gene Green, Al Green, and Gonzalez districts would likely

survive any redistricting effort, however, because they are protected by Section 5 of the federal Voting Rights Act, which makes eliminating districts with a majority of racial minorities difficult.

Of the under-populated districts, however, only the Jackson Lee, Sessions, Neugebauer, and Thornberry districts would remain so under a 36-district map. And of those, only the Thornberry district will be difficult to fix. The increases in population in suburban Collin County could easily be tapped to keep the Sessions district intact, and a redrawing of Houston-area districts would solve Jackson Lee's problem. But the Thornberry and Neugebauer districts will require substantial redrawing. The population shifts away from West Texas make it difficult to keep both districts completely intact.

One district not on the endangered list is the one currently represented by U.S. Rep. **Michael Conaway** (R-Midland), largely because the Hill Country counties at the Eastern end of the district are growing. If Texas gains a fourth new congressional seat, the Conaway district could be overpopulated, which would alleviate the pressure on the Thornberry and Neugebauer districts.

The other main question with congressional redistricting is where do the new districts go? Population numbers show substantial growth in parts of South Texas, the Austin-San Antonio corridor, the northern suburbs of Dallas and Fort Worth, and the suburban counties near Houston.

Elected officials have substantial discretion about where to draw the districts within those metropolitan areas. "Obviously," said redistricting specialist **Trey Trainor**, of the Beirne, Maynard & Parsons law firm, "those districts are where the growth has occurred and the districts quite naturally tend to follow, but the new districts will need to appropriately reflect the voting patterns of Texas."

The most overpopulated districts in the state are those represented by U.S. Reps. **Michael McCaul** (R-Austin), **Michael Burgess** (R-Lewisville), **Pete Olson** (R-Houston), **Sam Johnson** (R-Plano), and **John Carter** (R-Round Rock). The McCaul district is dramatically more over-populated than any other district, and an interesting judgment call is whether it loses territory from Austin or Houston, as the district

includes parts of both.

In addition to the fact that the state gains congressional seats, there are many other significant differences to the process of drawing Congressional maps. Here are a few:

The Legislative Redistricting Board has no authority over Congressional districts. With State House and Senate maps, the holder of the down-ballot statewide offices has a key trump card – the Legislative Redistricting Board draws maps when the Legislature fails to do so in regular session. In 2001, and probably in 2011, that trump card will be held by Republicans.

But the constitutional amendment creating LRB only applies to State House and State Senate, not a congressional map. Therefore, only the Legislature or a court can draw a map. If the Legislature deadlocks on a map, the Governor can call a special session, or he can let state and federal courts resolve the matter.

The federal Voting Rights Act still applies, and the Obama administration plays a role in enforcing it. A congressional map must receive preclearance under Section 5 of the Voting Rights Act, which as a practical matter usually means it cannot eliminate districts that contain a majority of voters who are racial minorities. Pre-clearance can be granted either by the U.S. Department of Justice or by a three-judge federal court in Washington DC. Politics is sometimes cited in the Justice Department's decisions on pre-clearance, and Republicans are skeptical they will get a fair shake from President **Barack Obama's** Justice Department.

"The Obama Administration," Trainor said, "is acutely aware, from a national perspective, that redistricting can lead to a 30- or 40-seat shift in Congress, and Texas is the most important piece of that puzzle, so I am sure any Texas plan will receive significant scrutiny."

The map is also subject to challenge under Section 2 of the Voting Rights Act, which prohibits discrimination against racial minorities more broadly. Compliance with Section 2 is usually determined by a three-judge federal court in response to a legal challenge.

Let the games begin. ○

We welcome your leads, suggestions and comments. Please contact us at 512/832-4702, Fax 832-9905 or e-mail lsr@lonestarreport.org.

